

BY-LAW NO. 1122.

Being a by-law of the Rural Municipality of Morris to authorize a Development Agreement under the Planning Act CCSM Cap. P80.

WHEREAS Rosenort Development Corporation Limited desires to subdivide certain lands and premises located within the dyke surrounding the unincorporated Village District of Rosenort;

AND WHEREAS the Rural Municipality of Morris has agreed to approve the said subdivision on condition inter alia that Rosenort Development Corporation Limited enter into a Development Agreement pursuant to Section 63 of the Planning Act;

NOW THEREFORE be it enacted as a by-law of the Rural Municipality of Morris, in Council duly assembled, as follows:

1. That the Rural Municipality of Morris enter into and be bound by the terms and conditions of a Development Agreement with Rosenort Development Corporation Limited, the said Agreement to be in manner and form similar in every respect to the Agreement attached hereto and marked Schedule "A" to this by-law.
2. That the proper signing officers for the Rural Municipality be and they are hereby authorized to do all things and sign all documents and attach the seal of the Rural Municipality to all documents required to carry out the provisions of this by-law.

DONE AND PASSED in Council duly assembled at the Council Chambers in the Town of Morris, in Manitoba, this 26th day of JUNE., 1979.

RURAL MUNICIPALITY OF MORRIS

Per: Alexander Rempel
Clerk

Per: Alice Loving
Secretary-Treasurer

Read a first time this 17th day of MAY, 1979;

Read a second time this 26th day of JUNE, 1979.

Read a third time this 26th day of JUNE, 1979.

This is Schedule "A" to By-Law No. 1122 being a by-law of the Rural Municipality of Morris to authorize a Development Agreement with Rosenort Development Corporation Limited.

DEVELOPMENT AGREEMENT

This Agreement made in duplicate this 18th day of July ~~April~~ 1979.

BETWEEN:

THE RURAL MUNICIPALITY OF MORRIS
(hereinafter referred to as the "Municipality")

- and -

ROSENORT DEVELOPMENT CORPORATION LIMITED
(hereinafter referred to as the "Developer")

WHEREAS Section 63 of the Planning Act, CCSM Cap. P80, provides that a municipality may require a developer to enter into a development agreement as a condition precedent to obtaining approval of a subdivision of land and the development thereof within the jurisdiction of the municipality;

AND WHEREAS the Developer is entitled to be the owner of the lands and premises outlined in red on the plan attached hereto as Schedule "A", which lands are described herein as the "planned area";

AND WHEREAS the Developer desires to develop the said planned area for residential and commercial purposes;

NOW THEREFORE this agreement witnesseth that in consideration of the premises, and of the mutual covenants and agreements herein contained and the mutual benefits to be gained by the performance thereof, the parties hereto agree as follows:

1. For the purpose of this agreement the following definitions shall apply:

"engineer" - shall mean the engineer appointed by the Municipality as their consulting engineer for the purpose of this agreement.

"planned area" - shall mean the lands outlined in red on Schedule "A" hereto.

"streets or street" - shall include all highways, roads, lanes, avenues, thoroughfares and ways of a public nature, and also includes sidewalks, parks, public squares and other public places unless the contrary is stated.

"land dedication" - shall include that part of the lands contained within the planned area outlined in yellow on Schedule "A" hereto.

2. The Agreement between the parties hereto shall consist of the following:

- (a) this Agreement;
- (b) the Plan of Subdivision attached hereto as Schedule "A";
- (c) (such other plans and specifications as may be required by the municipality)
- (d) any variations in, additions to or deletions from this Agreement or the plans and specifications, profiles and drawings which the parties hereto may agree upon from time to time and which shall be confirmed by both parties in writing, all of which shall be binding upon the parties hereto as fully and to the same extent as those now incorporated herein.

3. The developer covenants and agrees

- (a) to construct, install and complete in a good and workman-like manner within the planned area and at the developer's expense, all roads, drains and such other services or costs as the Council of the Rural Municipality of Morris may deem necessary, and to do so according to the standards established by the municipality;
- (b) that all roads, drains and other services referred to in this Agreement and which the developer is required to install pursuant to the terms hereof shall become the property of the municipality, or the province, or Manitoba Hydro or Manitoba Telephone System, as the case may be, without any cost to any of the aforementioned parties, upon certification by the engineer that such work has been properly installed and completed;
- (c) to guarantee the roads, drains and other services constructed or installed against faulty workmanship or defective materials for a period of 12 months from the date of certification by the engineer;
- (d) to dedicate to the use of the public all such parts of the land contained within the planned area as are outlined in yellow in Schedule "A" hereto, and to provide the municipality with all such documents as may be required to fulfill this clause;
- (e) to provide Manitoba Hydro and/or the Manitoba Telephone System with easements covering such of the lands contained within the planned area as may be required by the said Manitoba Hydro and Manitoba Telephone System for the installation and maintenance of hydro and telephone services

to the planned area, together with all other documentation as may be reasonably required to effect registration of the said easements in the Land Titles Office.

4. It is understood and agreed by and between the parties hereto that the portion of the lands contained within the planned area outlined in blue on Schedule "A" hereto shall be rezoned "GC" General Commercial district under the provisions of the Morris Planning Scheme, 1968, and amendments thereto, and the area of the said lands outlined in green on the said Schedule "A" shall be rezoned "RA" Suburban District under the provisions of the said planning scheme and that in addition the following building restrictions shall apply to the area zoned "RA" Suburban District:

- (a) no more than one driveway shall be constructed for each dwelling unit and the driveway shall not have more than one access to and from an abutting street and such access shall not be to and from more than one street within the planned area;
- (b) no dwelling unit not presently in existence shall be erected or moved upon the lands contained within the planning area or any part thereof, having a floor area, exclusive of any open porch, garage or breezeway, of less than the following number of square feet, such unit to have a fair market value of not less than \$20,000.00.
 - (i) bungalow - minimum area of house only - 800 square feet;
 - (ii) split level - minimum area of house only - 1200 square feet;
 - (iii) bi-level - minimum area of house only - 1800 square feet;

(iv) two-storey - minimum area of house only - 1800 square feet;

for the purpose of this paragraph "floor area" shall mean the floor area of a dwelling unit measured within the exterior faces of the exterior walls of the dwelling unit. The floor area in the basement, porches and garage shall not be included in the calculations of the dwelling unit area;

- (c) no excavation shall be made on the lands contained within the planning area except for the purpose of building on the same or for the improvement of the gardens and grounds thereof;
- (d) no building waste or other materials of any kind shall be dumped or stored on the lands contained within the planning area except clear earth for the purpose of levelling in connection with the erection of a building thereon or the immediate improvement of the grounds;
- (e) no animals other than household pets normally permitted in private homes in urban residential areas shall be kept upon the lands contained within the planning area;
- (f) no sewage ejector systems shall be allowed on any of the lands contained within the planned area;
- (g) the location of all septic disposal fields shall be approved by the public health inspector before any construction is commenced on any of the lands within the subject area;
- (h) the burden and benefit of these restrictions and covenants shall run with the lands contained within the subject area

and shall be annexed to and run with each and every part of the said lands.

5. Until development of the lands contained within the planned area has been completed, the developer agrees, at all times at its own expense, to maintain all uncompleted areas in a presentable manner so that they will not be unsightly. Such maintenance shall include but is not limited to levelling same to the grade of the surrounding area, the cutting of grass and weeds thereon, removal of debris and providing proper drainage for any water that may accumulate so as to ensure public safety and proper maintenance of the site.

6. During the term of this Agreement, the developer agrees to indemnify and save harmless the municipality from and against all public liability and property damage claims and personal damage claims arising in respect of the construction, installation or improvement of the development works undertaken by the developer hereunder or in respect of any defect therein or thereby, together with all costs, charges and expenses arising by reason of or in connection with any such claims, and the developer further agrees to procure and maintain at its own expense, or if the municipality consents, to cause any owner of any portion of the lands contained within the planned area constructing or installing any of the said development works, to procure and maintain at his own expense, a policy of public liability and property damage insurance in an amount satisfactory to the municipality, and to furnish to the municipality, upon the request of the municipality, a certified copy of each such policy showing loss payable thereunder to the developer and to the municipality as their respective interests may appear; provided that nothing in this clause shall extend the indemnity to any acts, matter or thing done, or omitted to be done by the municipality, or its agents, servants or employees,

or invitees; and provided further that nothing in this agreement shall be construed as rendering the developer, or any agent, employee or servant of the developer, an agent, servant, employee or invitee of the municipality.

7. Nothing herein contained shall be construed so as to make the developer, its agents, servants or employees the agents, servants or employees of the municipality, it being distinctly understood and agreed that the developer shall execute, carry out and implement the development works referred to in this agreement on its own behalf in a safe and prudent manner, and save harmless the municipality from and against all claims, demands, actions, sums, liabilities, obligations, losses or suits of any nature or kind whatsoever, whether at law or equity arising at any time during the term of this Agreement out of any matter or thing to be done by the developer under the terms of this Agreement provided that nothing shall extend this indemnity to any act or thing done by the municipality or omitted to be done by the municipality.

8. It is understood and agreed that all of the covenants and agreements herein made by the municipality, and all of the acts and undertakings herein agreed to be done by the municipality shall be performed, done and undertaken within the limits of all applicable laws, rules and regulations of legislative bodies superior to the municipality and notwithstanding anything hereinbefore contained, the municipality shall be under no higher obligation or duty than to exercise its best efforts to perform, do and undertake those covenants, agreements, acts or undertakings hereinbefore referred to, and the municipality shall be under no liability to the developer or any other person, firm or Corporation for its failure to perform, do or undertake any of the said covenants, agreements, acts or undertakings, if such failure is beyond the control of the municipality or is caused by operation of law.

9. The developer agrees to conform to any and all zoning requirements, building restrictions, building codes, municipal by-laws and regulations that affect the lands contained within the planned area. It is further agreed that the developer shall apply for all necessary permits required under any applicable provincial or municipal legislation, regulations or by-laws.

10. This Agreement or any part thereof shall not be assignable nor assigned by the developer without the consent of the municipality first had and obtained in writing, which consent shall not be unreasonably withheld. It is further understood and agreed that all conditions of this agreement shall be binding upon any and all assignees.

11. The provisions of this Agreement shall be binding upon any person who is an assignee, lessee or purchaser of all or any portion of the lands contained within the planned area.

12. The developer undertakes and agrees to have the within Agreement registered by means of a caveat in the Winnipeg Land Titles Office against the lands contained within the planned area. Any subsequent purchaser of the said lands, in whole or in part, shall be bound by the provisions of this Agreement and such purchaser may be required by the municipality to enter into an Agreement with the municipality whereby such purchaser is bound by the terms and conditions of this Agreement.

13. In the event that any provision of this Agreement shall ever be found by a Court of competent jurisdiction to be void, invalid or unenforceable, it shall be severable from the rest of the Agreement which shall remain in full force and effect.

14. In the event that a dispute arises between the parties hereto as to any aspect of this Agreement (with the exception of those matters set out herein which are to be completed to the sole satisfaction of the municipality or to be decided solely by the municipality) then such dispute shall be referred to a single arbitrator, if the parties can mutually agree upon one, otherwise to three arbitrators, one to be appointed by the municipality, one to be appointed by the developer and the third to be chosen by the first two arbitrators so appointed. Should the first two arbitrators fail to agree upon a third arbitrator, then either party to this Agreement may apply to a Judge of the Court of Queen's Bench to appoint a third arbitrator, who shall act as chairman of such arbitration. Any arbitration hereunder shall be conducted in accordance with the provisions of the Arbitration Act, CCSM, Cap. A120.

15. Either party to this Agreement may waive the performance of any provision required to be performed for its benefit by the other party, provided that such waiver shall be in writing, and provided further that any such waiver shall extend to only the particular breach so waived or performance so excused, and shall in no way be deemed to be a continuing waiver of such provision or of any other terms or provisions of this Agreement.

16. The developer covenants and agrees to inform in writing each prospective purchaser of all or any of the lands contained within the planned area of the fact that a sewage disposal system is planned to service the said lands and may be installed in the near future.

17. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused their Corporate seals to be hereunto affixed, attested by the hands of the proper officers in that behalf on the day and year first above written.

RURAL MUNICIPALITY OF MORRIS

Per: *Alvin Rempel* Reeve

Per: *Alice Lovin* Secretary-Treasurer

ROSENORT DEVELOPMENT CORPORATION LIMITED

Per: *[Signature]* President

Per: *[Signature]* Secretary