



**PLANNING & BUILDING
SERVICES REPORT**

PBS2012-11

FEBRUARY 14, 2012

**PROPOSED BROWNFIELD TAX ASSISTANCE AGREEMENT AND TAX
INCREMENT GRANT AGREEMENT WITH THOROLD PARK REDEVELOPMENT
INC., AND ASSOCIATED BROWNFIELDS INC.
MUNICIPAL, REGIONAL AND EDUCATION CANCELLATION BY-LAW
ADJUSTMENTS TO THE COMMUNITY IMPROVEMENT PLAN
(FORMER EXOLON LANDS)
DOWNTOWN THOROLD AND THOROLD CENTRE
COMMUNITY IMPROVEMENT PLAN 2005,
QUEEN STREET AND BEAVERDAMS ROAD**

RECOMMENDATION(S):

The General Committee recommends the following:

1. The General Committee support the adjustment to Section 5.4.1 b) of the Community Improvement Plan to permit a three (3) year commencement period per Phase after Council approval of the initial agreement to facilitate the Phasing of the redevelopment subdivision proposal.
2. Support the adjustment to Section 5.4.3 k) of the Community Improvement Plan to permit partial disbursement of grant money within a Phase notwithstanding if a property is in a position of tax arrears.
3. Support in principle a By-law to cancel Municipal, Regional and the Education portion of taxes and a Brownfield Tax Assistance Agreement between Thorold Park Redevelopment Inc. and Associated Brownfield Inc. and that the said By-law be circulated to the Ministry of Finance for approval of education tax exemption and Regional Municipality of Niagara approval for cancellation of the Regional portion of taxes.
4. That a By-law authorizing the execution of a Tax Increment Grant Agreement between Thorold Park Redevelopment Inc. and Associated Brownfields Inc. be presented for approval at this evening's Special Council Meeting.

5. That a copy of this report be circulated to the Ministry and Region for their respective approval of the Cancellation By-law and confirmation of the Region's participation in the Tax Increment Grant Agreement.
6. That staff's recommendation to discontinue the refunding of Building Permit and Planning application fees for all CIP programs and current applications be considered in a forthcoming detailed report.

PROPOSAL

Applications for a Tax Increment Grant Agreement and Brownfield Tax Assistance Agreement were received from Thorold Park Redevelopment Inc., and also comprise lands owned by Associated Brownfields Inc. (the 'Owner'), on April 15, 2010 and August 4, 2010, respectively, under the City's Downtown Thorold and Thorold Centre Community Improvement Plan 2005 (CIP).

After considerable discussions and meetings with senior staff and the Owner, the Owner requested that the proposal be divided into three (3) Phases with construction anticipated in late 2013. A copy of the Phasing Plan is attached as Appendix "A".

Site Description

Location:

The subject lands are situated on the north side of Beaverdams Road, south of Highway 58 and west side of Queen Street and east of Collier Road, and comprising of two separate parcels of land bisected by Trillium Railway Line with a total area of approximately 17 hectares (42 ac.), municipally known as 181 Queen Street and 1686 Beaverdams Road.

Surrounding and Existing Land Use:

The subject lands are bounded by Highway 58 to the north, McCleary Drive Industrial Subdivision to the west and an existing industrial operation (General Chemical); the Trillium railway spur line bisects the subject lands; Queen Street to the east with residential across the street.

The subject lands are predominantly vacant with the exception of a large existing industrial building presently being used for storage of recycled material associated with the current rehabilitation of the site.

Detailed Development Proposal

The Exolon redevelopment plan consists of approximately 42 acres, with a total of 475-575 residential units projected. This represents an overall gross development density of 11.3 – 13.7 units per acre. To date, Official Plan Amendment approvals have been obtained for approximately 31 acres of the subject lands, redesignating the lands from 'Industrial' to 'Residential' with site specific development policies, and provisions for site remediation and noise mitigation. To facilitate the first phases of the proposed development and implement the Official Plan Amendments, applications for Zoning By-law Amendment and Draft Plan of Subdivision will be applied for in the imminent future.

The proposed residential community is further refined to provide two residential components, along the southerly portion of the lands about 25 acres are intended for a planned adult lifestyle community while the remainder to the north will offer traditional subdivision development.

The traditional portion of the project will be designed for freehold residential units on municipally owned roads. A variety of street townhomes, semis, and small and larger singles are planned. While the final housing mix will be determined by market needs, on a preliminary basis, about 200 units can be accommodated.

The adult lifestyle community targets purchasers who want a maintenance free home. In addition, a clubhouse is planned to provide private fitness and social activities.

Approximately 250 units can be provided on the 25 acres. The form of housing will be attached townhomes and potentially may also include a low-rise apartment building. The entire project will be developed through private condominium roads with controlled architectural and landscape features. This adult lifestyle component is premised on an existing Starward Homes project called Garth Trails, located in the City of Hamilton. Garth Trails consists of new bungalow townhomes totaling 444 units over approximately 54 acres of land, centered around a luxury clubhouse and walking trails. This project attests to the success of adult lifestyle type of communities. The intention is to draw from the characteristics of Garth Trails and apply them to the proposed development. The Garth Trail Site Plan is attached as Appendix "B". Also attached in Appendix "C" are photos of key features in the Garth Trail development.

The Owner is currently attempting to assemble another 20 acres of industrial lands. The goal of this assembly is to remediate the lands and thereby remove any potential land use conflicts. These additional lands would be incorporated into the development and are intended to be added to the planned adult lifestyle community.

The proposed residential redevelopment of the subject lands will act to facilitate the reuse of underutilized brownfields within the City, as well as direct intensification to the urban built-up area. It will further result in a desirable use of the lands, creating an attractive, cleaner, healthier, more livable environment, reflecting the City's Community Improvement Plan goals for the Thorold Centre area.

STARWARD HOMES

Starward Homes is one of Ontario's oldest home-builders. Founded in Hamilton more than 100 years ago, Starward is a family business, having been passed along four generations of the Campbell family. The company has amassed an impressive collection of distinctive neighbourhoods and exceptional homes that all stand the test of time, as well as a reputation for excellence and our vision to the future. Since the late 1980s, Starward has also played a key role in the development industry, developing over 2,500 residential units in southern Ontario.

In particular, Starward has recognized the market demand for ground-oriented living in a carefree condominium style. The Starward name has become synonymous with quality townhouse condominium living in the Hamilton area, with eight completed and three ongoing projects, totaling over 1,000 condos built or under development. In fact, in 2004 for their Garth Trails project (an adult lifestyle community located in Hamilton) Starward was awarded the Hamilton-Halton Home Builder's Association Project of the Year Award, as well as the Best Product Design for a Townhome Award in both 2004 and 2007.

PLANNING BACKGROUND

Phase 1 – approximately half of this phase contains an approved Official Plan and Zoning By-law Amendment for future residential purposes. Application for Draft Plan of subdivision is forthcoming.

Phase 2 – approximately half of this phase contains an approved Official Plan Amendment for future residential purposes. Application for Draft Plan of subdivision and Zoning By-law Amendment are forthcoming.

Phase 3 – this phase for the most part requires an Official Plan and Zoning By-law Amendment and application for Draft Plan of subdivision, which are forthcoming.

Phasing of the Development

1. Boundaries:

The City acknowledges that the boundary limits of the Phases detailed in Appendix "A" is intended to be conceptual in nature. Notwithstanding the generality of the foregoing, it is mutually agreed that each Phase will be formally identified through the registration of a Draft Plan.

2. Order of Phases:

For the purpose of the Tax Increment Grant Agreement, the Owner commits to the redevelopment of the Land in three (3) Phases. The final sequence, or order in which the Phases will be redeveloped, shall be determined at the sole discretion of the Owner.

EXOLON BACKGROUND HISTORY

Exolon was a producer of fused aluminium oxide, a metallic abrasives product. Exolon was established on Queen Street in 1914. The factory was purchased by Washington Mills in 2001 and sold shortly thereafter in 2002. The factory officially closed in 2001.

The subject property has been undergoing remediation since 2006. Remedial endeavours are intended to return the affected areas to accommodate full urban/residential uses.

In early 2008 the Ontario Ministry of Economic Development and Trade awarded funding of \$1 million to the Regional Municipality of Niagara for the development of new technologies for waste and site material recycling and land reclamation for the Thorold Park Redevelopment Inc. (Exolon) brownfield site. The new technologies are intended to assist other brownfield properties.

On-going Recycling Summary

The Owner has developed methodologies for recycling the various materials deposited on the subject lands over the history of operations as an abrasives plant. The Ministry funding of \$1 million was used to aid in research, product and market development. To date the applicant has successfully mined, produced and sold over 100,000 tonnes of materials from the subject lands. 7,000 tonnes of Ferrosilicon has been recycled. 11 acres are clean and have a Record of Site Condition with another 20 acres anticipated to be completely remediated and under a Record of Site Condition this summer and ready for redevelopment. The remaining material will be recycled to the former landfill and this remediation process should be completed in 2013. The developed research, product and market development process will ensure that the remediation will be completed at a cost that assists in making the proposal more viable.

The alternative option was to landfill the materials. This was estimated to cost more than \$20 million rendering the project undevelopable. The target was to recycle all of the materials on site and to minimize the amount of landfill disposal. All work is being completed under the auspices of the Ministry of Environment Certificates of Approvals (CofA). The current on site landfill CofA has been amended in order for the applicant to be able to mine the landfill and eventually revoke the landfill CofA.

Recycled Materials and After Use

1. 'Alumina' product is used in the cement making process to replace bauxite;
2. 'FeSi' is used in smelting process as a catalyst and fluxing agent (Inco, Xstrata, etc.) and used in steel and nickel manufacturing process;
3. 'Silicon Carbide' is used in specialty blast and abrasives products;
4. 'Brown fused alumina' is used in the manufacture of refractory bricks and as lining in blast furnaces;
5. 'Recycled electrodes' used in graphite products;
6. 'Concrete' is recycled to produce an accepted standard of granular 'A' material; and
7. 'Steel reinforcing bars' recycled for various steel products.

PARTNERSHIPS – CITY REGION FCM

In keeping with the intent of the Thorold CIP to encourage participation with City, Regional, and Provincial programs and initiatives intended to facilitate community improvement, this proposal brings together a major partnership between the City of Thorold, Regional Municipality of Niagara and the Federation of Canadian Municipalities (FCM).

The City and the Region provide the Brownfield Incentive Programs, the Province provides cancellation of the Education tax and FCM has approved a loan in the amount of \$16,000,000 through their Green Municipal Fund Program to assist in financing the redevelopment of the subject lands, subject to the execution of the Tax Increment Grant Agreement.

2005 COMMUNITY IMPROVEMENT PLAN (CIP)

The subject lands are within a designated Community Improvement Plan (CIP) and are located within the Thorold Centre Community Improvement Project Area. The CIP establishes a framework for the City's support and implementation of a program to encourage maintenance, rehabilitation, development and redevelopment of Downtown Thorold and Thorold Centre.

Part A - Section 1: Brownfields, speaks to the development of brownfield sites within the City of Thorold and discusses the following:

The City of Thorold has a number of properties that have been or may be impacted by former industrial or commercial uses and may be contaminated as a result of these former activities. These properties are vacant, underutilised or abandoned. There are concerns over their environmental liability, the stigma attached to the former use, and/or the financial costs for the site rehabilitation.

These properties are located in some cases within the Thorold Centre area of the City with access to existing infrastructure and services and close proximity to various transportation networks. Abandoned or vacant brownfield sites represent lost property tax revenue, lost residential development, and lost employment opportunities.

Vacant or abandoned brownfield sites can also present serious health issues related to deteriorating buildings and/or surface debris present on the site.

The development/redevelopment of brownfield sites is intended to increase the municipal tax base and to revitalize those areas located within the Community Improvement Project Areas containing abandoned or vacant brownfield sites. The development and redevelopment of such sites has the potential effect of encouraging development on surrounding properties in the Community. The revitalization of these sites will benefit the community in generating jobs and further expanding the tax base and making it a more desirable and healthy place for people to live and operate a business.

Further, the relevant Goals and Objectives of the CIP specific to this proposal are as follows:

Goals:

- Assist in creating a cleaner, healthier, safer and more liveable environment;
- Strengthen, stabilize and rehabilitate residential, commercial, industrial, heritage, recreational, natural and environmental areas;
- Maximize the utilization of the existing urban infrastructure by intensification of land uses; and,
- To reconcile existing and minimize future land use conflicts.

Objectives:

- To encourage residential development/redevelopment;
- To encourage the redevelopment of brownfields;
- To encourage development/redevelopment which improves the area's importance as a destination for residents and visitors;
- To provide for the more efficient utilization of the municipal physical infrastructure by infilling or developing vacant or underutilised land while maintaining the compatibility of land uses;
- To encourage development/redevelopment in keep with "smart growth" principles and urban design guidelines such as sustaining a strong economy, building a strong community, and promoting a health environment including clean up of "brownfield" sites;
- To encourage the eventual elimination and/or relocation of incompatible land uses, and where this is not possible to execute mitigation measures;

- To reduce or eliminate environmental hazards;
- To encourage positive change within the Community Improvement Project area;
- To relieve pressure on urban boundaries;
- To encourage intensification during the rehabilitation of properties and facilities;
- To enhance the attractiveness of the area; and,
- To encourage investment in maintaining or improving surrounding properties.

The fundamental intent of the CIP is to encourage appropriate redevelopment in the Community Improvement Project Areas without unduly placing financial burden on our taxpayers.

COMMUNITY IMPROVEMENT PLAN PROGRAMS

The CIP encourages appropriate redevelopment in the Community Improvement Areas and to this end the following relevant programs are provided by the municipality for proposed developments of this nature:

1. Brownfield Financial Tax Assistance Program (BFTAP); and
2. Tax Increment – Based Grant Program (TIGP).

Brownfield Financial Tax Assistance Program

This Program provides the cancellation of Municipal and Regional property taxes and may include the education portion of taxes subject to the approval of the Minister of Finance. The cancellation of taxes may occur during the Rehabilitation and Development periods for the property. The draft Cancellation By-law and BFTAP Agreement is attached as Appendix "E".

The total amount of an approved grant shall not exceed the actual eligible costs of rehabilitating the lands.

Tax Increment – Based Grant Program

This Program provides financial incentives in the form of grants to property owners who undertake appropriate development or redevelopment of properties that increases property assessment resulting in increased municipal property taxes. This incentive program is meant to stimulate investment by the private sector that would otherwise not take place by providing a property owner with a grant equivalent to a portion of the resultant municipal property tax increases. It is anticipated that the nature of the development and redevelopment will be in the form of conversion and/or intensification of underutilised sites for residential, commercial or industrial uses.

The maximum grant is the equivalent of 80% percent of the increase in the municipal portion of the property taxes each year for 10 years from the commencement of each phase with the remaining 20% directed to the municipality to partially cover the additional costs incurred to service growth.

The total amount of an approved grant shall not exceed the actual eligible costs of rehabilitating the lands.

REGIONAL INCENTIVE PROGRAMS

The Regional Municipality of Niagara provides incentive programs which support all Thorold CIP Programs. The Region is aware of the BFTAP and TIGP applications and a copy of this report will be circulated to the Region for their approval of the BFTAP and support of the TIGP.

EXISTING REDEVELOPMENT PROJECTS

Thorold was at the forefront of brownfield redevelopment in 2001 aided by a partnership with Regional Niagara and the Provincial Government. This resulted in approval of a site specific Gallaher Community Improvement Plan and the successful brownfield site redevelopment of the Book Depot and Welland Mills mixed commercial/residential and street townhouse developments on Front Street North and Pine Street North, respectively. These properties currently have applications on file for participation in the Tax Increment Grant Program.

Other examples of successful commercial intensification redevelopment projects are the former CVL site known as Front Street Plaza at 133 Front Street North and the former Pizza Pizza site known as 54 Ormond Street. These properties also currently have applications on file for participation in the Tax Increment Grant Program.

ADJUSTMENTS TO THE CIP

Section 5.4.1 states in part that all grant payments will cease:

- a) when total grant payments provided under this program equal the total value of rehabilitation work done under the eligible program costs (Section 5.4.3 g) that resulted in the increased value; or
- b) ten (10) years after the municipal Council approval of the initial agreement related to the project; whichever comes first.

The Community Improvement Plan did not anticipate large redevelopment projects developed in Phases over an extended period of time. The present wording in subsection

- b) above would only provide a 10 year period to recover eligible costs for the proposed development having approximately 575 residential units.

Section 5.4.3 k) states that "the subject property shall not be in a position of tax arrears prior to the disbursement of any grant money;"

Section 5.4.3 k) creates a situation whereby one residential property in arrears within a Phase would prevent any grant money even if all other residential properties within the Phase have all paid taxes.

Section 8.0 Amendments to the Program states in part as follows;

"Based on the reviews noted above the municipality may adjust the terms of the programs, or discontinue any of the programs in this Plan, without amendment to this Plan. City staff will notify the Ministry of Municipal Affairs and Housing of any changes to the CIP or discontinuation of programs.

Any new programs or changes to programs that result in increased value of grants or a change to Community Improvement Project Area boundary will require an amendment to the Plan and approval by the Minister of Municipal Affairs and Housing."

The above Section 8.0 and the proposed intended adjustments were discussed with the City's Solicitor and it was their opinion that the proposed adjustments do not create any new programs or changes any programs that result in increased value of the grants. Accordingly, the following adjustments are proposed:

1. Permit the adjustment to Section 5.4.1 b) of the Community Improvement Plan to permit a three (3) year commencement period per Phase after Council approval of the initial agreement to facilitate the Phasing of the redevelopment proposal.
2. Permit the adjustment to Section 5.4.3 k) of the Community Improvement Plan to permit the partial disbursement of grant money from taxes paid within a Phase notwithstanding that a property is in a position of tax arrears.

The impact of permitting a three (3) year commencement period for each of the proposed 3 Phases would extend the period to recover eligible costs, as it extends the time frame that the City and Region must provide tax rebates to the owner, assuming commencement periods as follows:

- a) in 2013 for Phase 1 from 2023 to 2026,
- b) in 2014 for Phase 2 from 2024 to 2027, and
- c) in 2015 for Phase 3 from 2025 to 2028.

As stated earlier the CIP requires that all grant payments will cease when total grant payments equal the value of total actual eligible costs or ten (10) years after Council approves the initial agreement, whichever comes first.

PLANNING AND BUILDING PERMIT FEE REFUNDS

Section 4.0 Context of Plan

The intent of the CIP is to encourage appropriate redevelopment in the Community Improvement Project Areas. To this end the following actions or programs may be implemented by the municipality:

- a) acquire, improve and sell lands to facilitate developments;
- b) Façade Improvement Grant Program (FIGP);
- c) Brownfields Financial Tax Assistance Program (BFTAP); and
- d) Tax Increment-Based Grant Program (TIGP).

The following programs do not constitute part of the Community Improvement Plan and do not require approval of the Minister of Municipal Affairs and Housing:

- e) refund of building and demolition permit fees;
- f) refund of planning application fees; and
- g) Development Charge exemption.

Presently, the City will refund Official Plan, Rezoning, Draft Plan and Minor Variance application fees and Building Permit fees after the execution of a Brownfields Financial Tax Assistance Agreement and/or Tax Increment-Based Grant Agreement and subject to the final approval of by-laws associated with the above noted planning applications and substantial completion of the building as determined by the City's Chief Building Official.

REVISIONS TO THE PLANNING AND BUILDING PERMIT FEE REFUNDS

City staff has observed the present practice of refunding Planning and Building Permit Fees in area municipalities, as a component of CIP Programs, in order to assess this practice and the ability of the City to pay, as such refunds are at the discretion of Council and subject to annual municipal budget approvals.

Also, the CIP states that funding for all programs shall be contingent upon annual municipal budget approvals.

After a review of the proposal of approximately 500 residential units it was determined that the refund of Building Permit fees would amount to approximately \$1,000,000 upon full build out and would require budgeting from the general levy. Assuming a 10 year build out, this would impact our ratepayers by an additional 1% levy increase. Given the challenges facing the city and our ability to maintain our existing services and assets, and balancing this need against taxpayer affordability, staff would respectfully suggest that this is unduly burdensome to our ratepayers.

Staff is proposing in this report to alter the CIP to accommodate the phasing and commencement period of the proposed development which provides the Owner additional time to recover the actual eligible costs, and also to allow a partial disbursements if properties are in arrears. These accommodations, on the City's part, will provide the owner with significant additional revenues and cash flow, from the City and the Region, as the current CIP limits the recovery period to 10 years from the time of signing of the agreement versus the proposed 18 years. Therefore this accommodation should far exceed the Planning and Building Permit Fees refund.

It is staff's opinion that given the impact on the City tax payers the City does not have the ability to fund this discretionary incentive and staff will recommend that the refunding of Planning and Building Permit Fees be discontinued for all CIP programs and current applications. A further detailed report on this matter will be forthcoming.

FINANCIAL IMPLICATIONS

Brownfield Financial Tax Assistance Program (BFTAP)

1. The Owner would be eligible for 100% cancellation of the Municipal and Regional portion of the property tax.
2. The Owner may also be eligible for cancellation of the education portion of the property tax subject to approval by the Minister of Finance.
3. The property tax and education tax are limited to eighteen months and is limited to the Rehabilitation Period of the project.
4. The actual and remaining Eligible Remediation costs total approximately \$21,000,000.
5. The tax cancellation shall not exceed the actual eligible rehabilitation costs.

Tax Increment – Based Grant Program (TIGP)

1. The Owner would be eligible to receive an annual grant of 80% of the net increase in the assessment multiplied by the Tax Rate in the first year of commencement. Commencement period may be triggered 3 years after Council's approval of the initial agreement for each phase.

2. The proposed development is anticipated to be developed in three (3) Phases, generally described in the attached Appendix "C".
3. No funds will be advanced to the Owner under the TIGP until new taxes are generated and paid based on a Supplemental Assessment from the Municipal Property Assessment Corporation.
4. The estimated Eligible Costs total approximately \$35,000,000 (Remediation: \$21,000,000, Servicing Costs: \$14,000,000).
5. The annual grant returned to the Owner shall be 80% of the increased property taxes levied on the property, less any special levies, with the remaining 20% directed to the municipality.
6. The total grant shall not exceed the total actual eligible costs.

Appendix "D" details the estimated Brownfield Tax Increment Based Grant Program costs. The new annual tax, estimated by the Owner, is \$1,797,785 minus the base tax of \$32,782 results in incremental annual tax rebate of \$1,765,003.

The Brownfield Tax Increment Grant Agreement provides a rebate to the owner of 80% of the estimated \$1,765,003 incremental annual taxes of \$536,561 per year for ten (10) years for a potential rebate of \$5,365,609. The 20% retained by the City amounts to \$1,341,402 over the same ten (10) years. The Regional share of the rebate is also detailed in Appendix "D".

The total rebated by the City and Region is anticipated to be \$14,120,022 with the retained totaling \$3,530,006.

Once the TIGP is completed over a time frame of approximately 15 years the City receives full asset growth revenue.

CONCLUSION

The proposed development represents the largest brownfield project under development in the City and the Niagara Region. The proposal represents all that Community Improvement Plans are intended to achieve, such as, eliminate environmental hazards; assist in creating a cleaner, healthier, safer and more liveable environment; utilization of the existing municipal physical infrastructure by infilling or developing vacant or underutilised land while maintaining the compatibility of land uses; and enhances the attractiveness of the area and encourages investment in maintaining or improving surrounding properties.

The proposal also has the effect of generating new tax dollars that in most probability would have been cost prohibitive to finance without the City's and Region's CIP Programs.


BUDGETARY STATUS: BFTAP will cost approximately \$9,000 for 18 months.
TIGP cost of approximately \$537,000 per year which will be off-set by taxes generated through assessment growth. Once the TIGP is completed the City receives full assessment growth revenue

CANADIAN CONTENT: Thorold Park Redevelopment Inc. and Associated Brownfields Inc. are Canadian owned companies based in the Niagara Region

STRATEGIC PLAN: Sustainable & Well Planned Development

ATTACHMENTS:

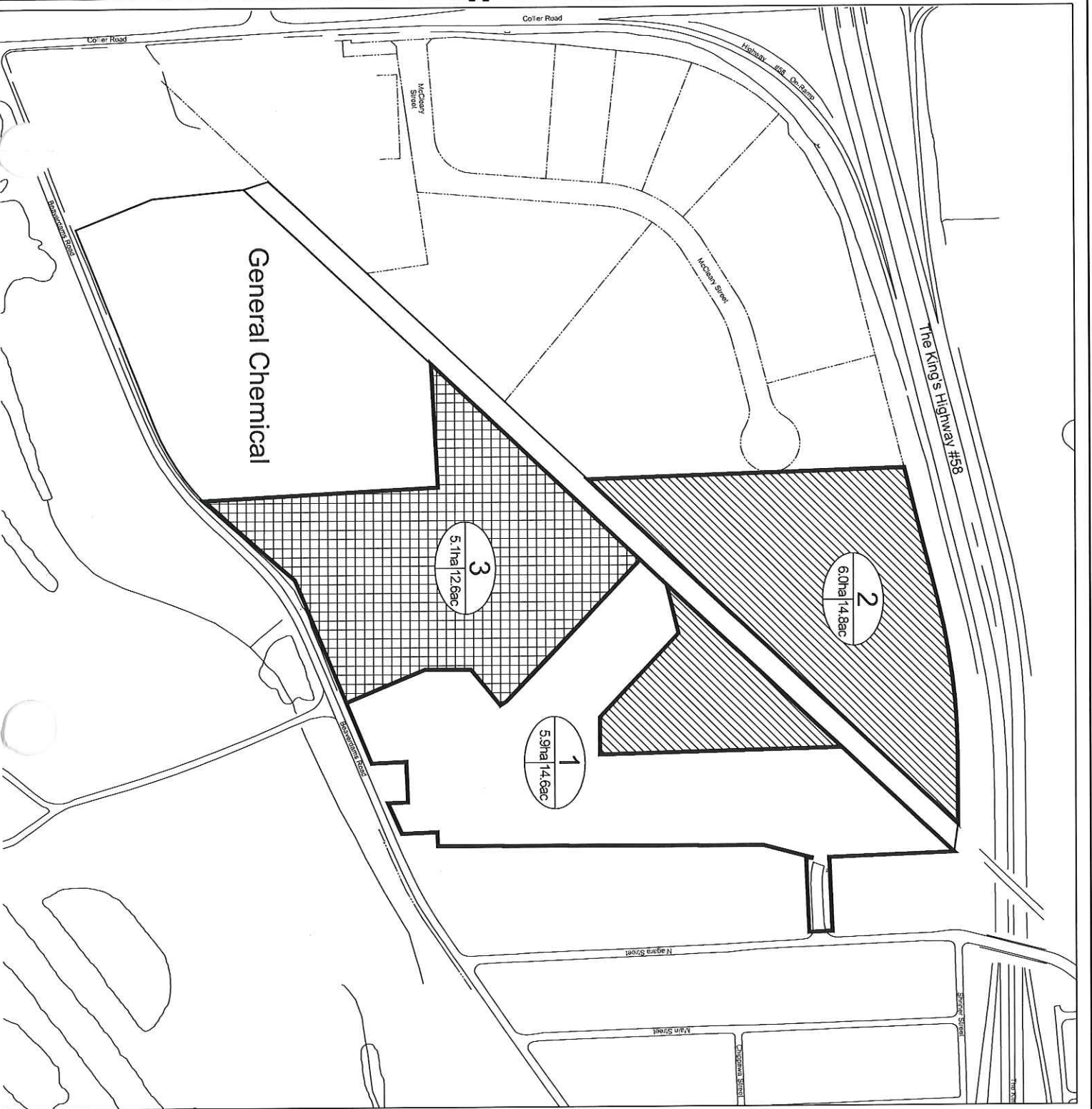
Appendix "A"	Phasing Plan
Appendix "B"	Garth Trail Site Plan
Appendix "C"	Garth Trail Photos
Appendix "D"	Estimated Tax Increment Based Grant Program
Appendix "E"	Draft Tax Cancellation By-law and Agreement


Prepared by:
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Planner


Submitted by:
Adele Arbour,
Director of Planning & Building Services


Approved by:
Frank A. Fabiano,
Chief Administrative Officer

Appendix "A"

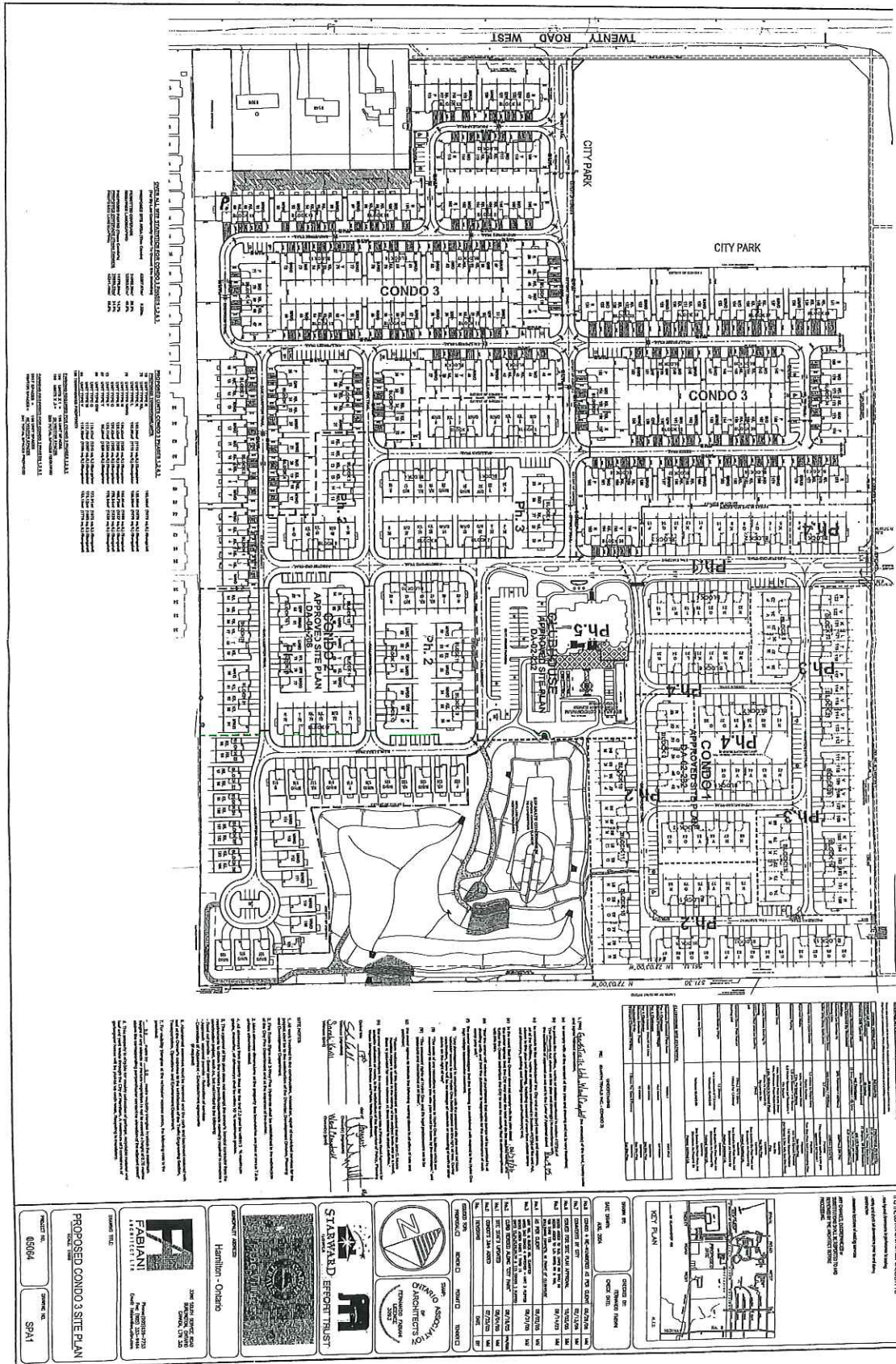


THOROLD PARK REDEVELOPMENT T.I.F. Phasing Plan

Phase	Area	
	(ha)	(ac)
1	5.9	14.6
2	6.0	14.8
3	5.1	12.6
Total	17.0ha	42.0ac

Note:
Boundaries of the phases are intended to be conceptual in nature. Registration of a Draft Plan will serve to provide the final location.

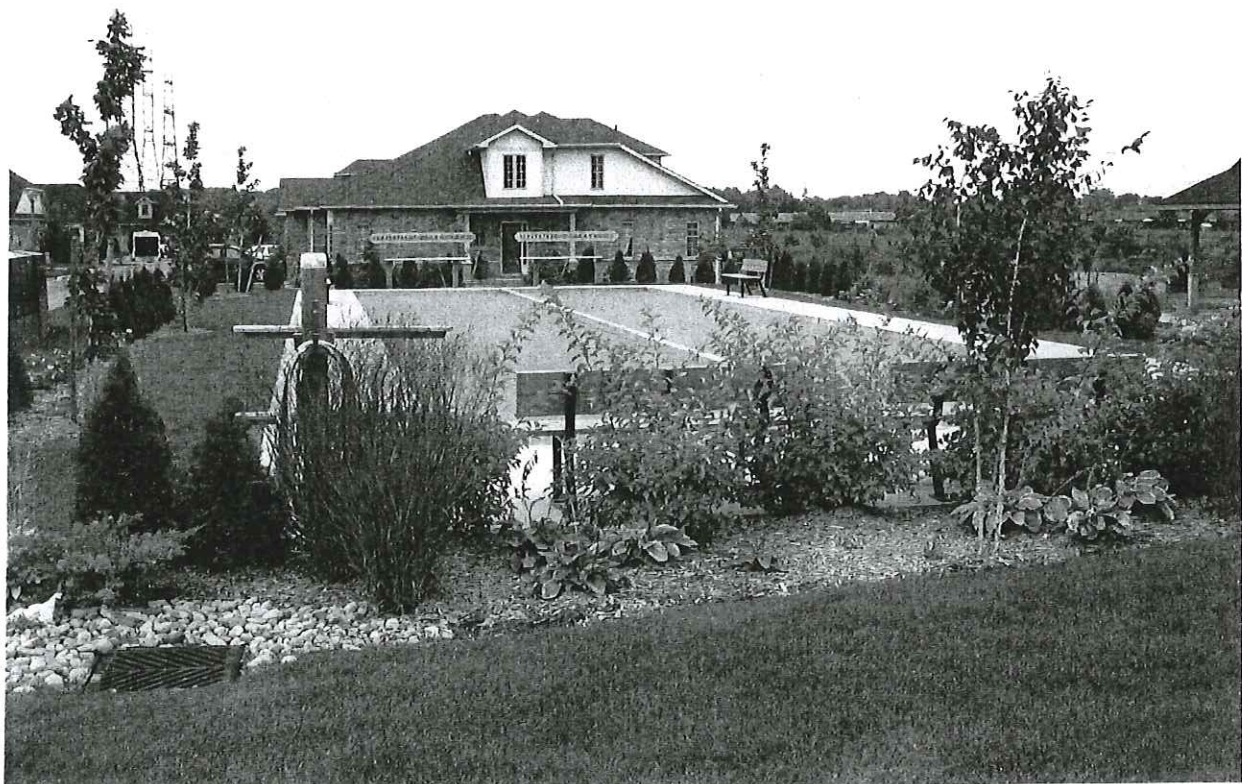
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Appendix "C"























Appendix "D"

Estimated Brownfield Tax Increment Based Grant Program
Municipal Address: 181 Queen St. S & Hwy 58 South Side
Roll Numbers: 2731 000 019 05410 0000
2731 000 019 05400 0000

2006 Property Taxes (Prior to Demolition) Eligible for TIG

City General	\$	12,230
Region	\$	20,552
Education	\$	-
	\$	32,782

	City	Region	Education
Base Taxes	\$ 12,230	\$ 20,552	not eligible

Projected New Tax Revenue Estimate Provided by Thorold Park Redevelopment*

Total New Annual Taxation	\$	1,797,785
Bases Taxes	\$	32,782
Incremental Annual Taxes	\$	1,765,003

ESTIMATED REBATES 80% of Tax Increment to a Maximum of Eligible Costs *

YEAR	To Be Rebated to Developer from City	To be Retained by City	To Be Rebated to Developer from Region	To be Retained by Region	Total Rebated City & Region	Total Retained City & Region
1	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
2	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
3	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
4	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
5	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
6	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
7	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
8	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
9	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
10	\$ 536,561	\$ 134,140	\$ 875,441	\$ 218,860	\$ 1,412,002	\$ 353,001
TOTAL	\$ 5,365,609	\$ 1,341,402	\$ 8,754,414	\$ 2,188,603	\$ 14,120,022	\$ 3,530,006

*Estimate Only. Final numbers to be based on development roll out, actual assessment growth and actual tax increments
Based on agreement, rebate will be spread over more than 10 years.

THE CORPORATION OF THE CITY OF THOROLD

BY-LAW NO. XX-2012

BEING A BY-LAW TO CANCEL MUNICIPAL, REGIONAL AND EDUCATION TAXES
FOR 181 QUEEN St. AND 1686 BEAVERDAMS ROAD

WHEREAS City of Thorold has by By-law 93-2005 adopted a Community Improvement Plan, which includes the property known as 181 Queen Street and 1686 Beaverdams Road. The said Community Improvement Plan includes in Section 5.3 a program referred to as the Brownfield Financial Tax Assistance Program (BFTAP) which incorporates provisions of Section 365.1 of the Municipal Act, 2001.

AND WHEREAS Thorold Park Redevelopment Inc. and Associated Brownfields Inc. (collectively the "Owners") are the registered owner of property municipally known as 181 Queen Street and 1686 Beaverdams Road and have applied to the City of Thorold to cancel property taxes for this property in accordance with the Community Improvement Plan and Section 365.1 of the Municipal Act, 2001 and the said property being an Eligible Property has conducted a Phase 2 Environmental Assessment and does not presently meet the criteria outlined in Section 168.4 of the Environmental Protection Act required to obtain a record of site condition.

AND WHEREAS the Minister of Finance has approved this By-law as required by Section 365.1 of the Municipal Act, 2001.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF THOROLD, pursuant to Section 28 of the *Planning Act*, R.S.O. 1990 and section 365.1 of the *Municipal Act*, 2001 S.O. 2001, c.25, as amended, enacts as follows:

1. For the purposes of this By-law, words and expressions shall be deemed to be defined in accordance with those definitions provided in Section 365.1 of the Municipal Act, 2001 and the applicable regulations thereto.
2. The City of Thorold shall provide Tax Assistance for the Eligible Property municipally known as 181 Queen Street and 1686 Beaverdams Road, subject to the provisions of this By-law, the confirmation that the Owners have paid all property taxes owing with respect to the Eligible Property for all years prior to the commencement of the Tax Assistance and compliance with the provisions of the Brownfield Financial Tax Assistance Program Agreement.
3. The Tax Assistance shall commence as of the date this By-law receives third reading and shall be effective only for the duration of the Rehabilitation Period.
4. The Owners, Thorold Park Redevelopment Inc. and Associated Brownfields Inc., shall be required to enter into the Brownfield Financial Tax Assistance Program Agreement and the City is hereby authorized to enter into the said Agreement which shall provide generally:
 - (a) that Tax Assistance shall be available for a maximum of 100% of the taxes for municipal and regional purposes and 100% of the taxes for education purposes levied during the Rehabilitation Period. The level of Tax Assistance shall be based on the Municipal Tax roll as returned in any given year and the said revision shall not require an amendment to this By-law, but the percentage of education taxes deferred or cancelled shall match the percentage of municipal and regional taxes deferred or cancelled. The City of Thorold shall notify the Ministry of Finance forthwith of any revisions to the level of Tax Assistance.
 - (b) where Tax Assistance is provided for a portion of any year, or where Tax Assistance represents only a portion of the taxes levied on the Eligible Property, the Owners shall be responsible for all property taxes levied during the portion of the year when Tax Assistance is not provided, and for all taxes not subject to Tax Assistance.

- (c) the Treasurer shall be authorized to alter the tax roll in accordance with the Tax Assistance to be provided for the Eligible Property.
 - (d) the Owners shall, within 18 months of the anniversary of the commencement of the Tax Assistance (or such date as may be agreed upon from time to time by the City of Thorold and the Minister of Finance) file a record of site condition with respect to the Eligible Property in the Environmental Site Registry under Section 168.4 of the Environmental Protection Act.
- 5. The Owners shall be required to give notice to the City of the filing of a record of site condition. The Owners shall be required to report and provide additional information pursuant to the provisions of the Brownfield Financial Tax Assistance Program Agreement.
 - 6. In the event that the Tax Assistance provided pursuant to this By-law exceeds the actual Remediation Costs for the Eligible Property, the amount of the Tax Assistance which exceeds the Remediation costs shall be paid by the Owners as property taxes.
 - 7. This By-law shall come into force and take effect on its passing.
 - 8. That the Mayor and Clerk be and each of them is hereby authorized to sign the Brownfield Financial Tax Assistance Program Agreement in the form annexed to this By-law and the Clerk is further authorized to affix the corporate seal thereto.

READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS
21st DAY OF FEBRUARY, 2012.

A.T. (Ted) Luciani, Mayor

Susan Daniels, City Clerk

BROWNFIELD FINANCIAL TAX ASSISTANCE PROGRAM AGREEMENT

THIS AGREEMENT made this ____ day of _____ 2012, and authorized by By-law No. _____ -2012 of the City of Thorold;

BETWEEN:

THE CORPORATION OF THE CITY OF THOROLD

(hereinafter referred to as the "City")

OF THE FIRST PART

- and -

THOROLD PARK REDEVELOPMENT INC.

-and-

ASSOCIATED BROWNFIELDS INC.

(hereinafter referred to as the "Applicant")

OF THE SECOND PART.

WHEREAS on September 13, 2005, City Council enacted By-law No. 93-2005, being a By-law to provide for the adoption of a Community Improvement Plan by designating the Thorold Centre Community Improvement Area as a Community Improvement Project Area.

AND WHEREAS the Community Improvement Plan provides for the Brownfield Financial Tax Assistance Program and incorporates the education portion of the Property Tax Assistance pursuant to Section 365.1 of the Municipal Act, 2001;

AND WHEREAS the City's Council approved an Application made by the Applicant under the Brownfield Financial Tax Assistance Program in respect of the Eligible Property municipally known as 181 Queen Street, in the City of Thorold;

AND WHEREAS as a condition for approval to receiving the Tax Assistance under the Brownfield Financial Tax Assistance Program, the Applicant is required to enter into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and covenants herein and the sum of One Dollar now paid by the Applicant to the City, the receipt of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. DEFINITIONS

1.1 Definitions

For the purpose of this Agreement, the following defined terms shall mean as follows:

"Agreement" means this Agreement;

"Applicable By-law" means By-law _____, which defers and cancels taxes for this Eligible Property subject to the terms of this Agreement;

"Applicant" means the Party of the Second Part which has applied and been approved for Tax Assistance under the Brownfield Financial Tax Assistance Program of the CIP;

"Application" means the application made by the Applicant and approved for Tax Assistance under the Brownfield Financial Tax Assistance Program of the CIP for the Rehabilitation/Remediation which is the subject of this Agreement;

"**BFTAP**" means the Brownfield Financial Tax Assistance Program;

"**CIP**" means the Community Improvement Plan, adopted by City of Thorold By-law No. 93-2005, as amended from time to time;

"**Eligible Property**" means the lands remediated by the Applicant and legally described in Schedule "A" hereto;

"**ESA**" has the meaning ascribed to it in Section 2.1 hereto;

"**Rehabilitation Period**" means, with respect to the Eligible Property, the period of time starting on the date that Tax Assistance begins to be provided under the Applicable By-law for the Eligible Property and ending on the earliest of,

- i) the date that is 18 months after the date that the Tax Assistance begins to be provided,
- ii) the date that a record of site condition for the property is filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act, or
- iii) the date that the Tax Assistance provided for the property equals the Remediation Costs;

"**Remediation**" has the meaning ascribed to it in Section 2.1 hereto;

"**Remediation Costs**" means the cost (described in s. 3.1 of this Agreement), of any action taken to reduce the concentration of contaminants on, in or under the Eligible Property to permit a record of site condition to be filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act and the cost of complying with any certificate of property use issued under section 168.6 of the Environmental Protection Act, and as further specified in the CIP;

"**Tax Assistance**" means the deferral or cancellation of Taxes for municipal, regional and education purposes levied on the Eligible Property during the Rehabilitation Period. In the period before the Applicant's obligations under the Applicable By-law have been met, Tax Assistance shall take the form of a deferral of taxes. Once the City has confirmed that the Applicant's obligations under the Applicable By-law have been met, Tax Assistance shall take the form of cancellation of taxes,

"**Taxes**" means the portion of real property taxes levied on the Eligible Property which are payable to the City and includes any portion of the total real property taxes paid to and collected by the City which are payable to the Regional Municipality of Niagara and the Ministry of Finance, but excluding the portion of the real property taxes that are attributable to (i) the urban service area levy; (ii) a local improvement levy; (iii) the hospital levy; (iv) levies under the *Drainage Act*; (v) levies for Business Improvement Area; and (vi) fees or charges that are levied under the *Municipal Act, 2001*.

2. BROWNFIELD FINANCIAL TAX ASSISTANCE PROGRAM

2.1 Application for BFTAP

The Applicant has applied for and the City has approved the Application, subject to the terms, covenants and provisions hereinafter set forth, under the BFTAP. The Applicant confirms to the City that the Eligible Property has had a Phase II Environmental Site Assessment ("**ESA**") completed and, as a result of this ESA, the Eligible Property requires environmental remediation to permit a Record of Site Condition to be filed with the environmental site registry (the "**Remediation**").

2.2 Applicant's Obligations

The Applicant covenants and agrees with the City that the Applicant:

- (a) is responsible for the remediation of the Eligible Property in order to permit a record of site condition to be filed in the Environmental Site Registry, and is eligible to receive Tax Assistance under the BFTAP of the CIP;
- (b) shall observe and perform the requirements of this Agreement and any other applicable requirements, stipulations, guidelines and directives of the City which relate to the Remediation;
- (c) shall provide to the City an annual report within thirty (30) days of the anniversary of the commencement of Tax Assistance for each year or part thereof that Tax Assistance is provided. The annual report shall include:
 - i) an update of the concentration and location of contamination on the Eligible Property,
 - ii) the status of remediation work completed to date,
 - iii) costs expended to date and an estimate of costs not yet incurred, and
 - iv) time estimates to complete the remedial work.
- (d) shall notify the City forthwith:
 - i) if the Applicant is in default of any provision of the Applicable By-law;
 - ii) if the Applicant is in default of any provision of this Agreement;
 - iii) if the Applicant fails to commence or ceases remediation for any reason;
 - iv) the Eligible Property is severed, subdivided or all or any portion of the property is conveyed; and
 - v) the Tax Assistance equals or exceeds the Remediation Cost.
- (e) shall be responsible for commencement and completion of the Remediation in accordance with the objectives and requirements of the CIP and the community improvement provisions of the *Planning Act*, the BFTAP, and this Agreement;
- (f) shall be responsible for payment of the total Remediation Costs and shall save and hold the City harmless with respect to any of such costs;
- (g) shall provide the City with all documentation requested regarding Remediation to the Eligible Property;
- (h) shall cause the Eligible Property, or such part or parts thereof, while under the Applicant's ownership, to be used in compliance with this Agreement, all municipal by-laws and all applicable environmental laws;

2.3 City's Obligation

The City of Thorold will forward an annual update to the applicable provincial Ministry.

2.4 Estimated Tax Assistance

The estimated Remediation Costs total approximately \$[NTD: Enter Amount]. The Applicant is eligible for a maximum estimated Tax Assistance for the Remediation by way of Tax Assistance in the amount of \$[NTD: Enter Amount]. (Based on 2011 property taxes (\$[NTD: Enter Amount] = Municipal - \$[NTD: Enter Amount], Region - \$[NTD: Enter Amount], Education - \$[NTD: Enter Amount]).

2.5 Regional and Provincial Portion

The Applicant understands and agrees that if at any time the Regional Municipality of Niagara and/or the Ministry of Finance ceases to participate in the BFTAP with respect to the Eligible Property, any portion of the total real property taxes collected by the City which are payable to The Regional Municipality of Niagara and/or the Ministry of Finance will be excluded from the Tax Assistance.

2.6 When Tax Assistance Suspended

Tax Assistance shall be suspended when an owner or the Applicant has not paid all of the taxes on the Eligible Property for the previous years in the Rehabilitation Period, subject to any specific exceptions provided for in the Applicable By-law and/or this Agreement.

2.7 When Tax Assistance Terminated

Tax Assistance shall be terminated when any one of the following occurs:

- i) the Applicant is in default of any provision of this Agreement or the Applicable By-law; or
- ii) the Applicant fails to commence or ceases remediation for any reason; or
- iii) the Eligible Property is severed, subdivided or all or any portion of the property is conveyed; or
- iv) the termination of this Agreement; or
- v) on the earlier of
 - a) the end of the Rehabilitation Period; or
 - b) the filing of a record of site condition in the Environmental Site Registry under section 168.4 of the Environmental Protection Act; or
 - c) the date that the Tax Assistance equals the rehabilitated cost; or
 - d) the date stipulated in the BFTAP By-law.

2.8 When Applicant Becomes Liable for Full Payment

Notwithstanding anything contained herein, the Applicant shall become liable for payment in full, with interest, for all Tax Assistance (whether such Tax Assistance has been deferred or cancelled) granted during the Rehabilitation Period for the property (the "**Repayment Amount**"), where the Applicant defaults on any of the conditions as detailed in the Applicable By-law and / or this Agreement or if it has been determined by the City that the Applicant was not otherwise entitled to the Tax Assistance. The Applicant acknowledges that the Repayment Amount will immediately be considered to be unpaid realty taxes against the Eligible Property and be added to the applicable municipal tax roll in the manner provided under the *Municipal Act, 2001*.

2.9 Non-Liability

In the event of non-fulfillment of this Agreement by the Applicant, or any breach or non-compliance of the provisions of this Agreement, the Applicant agrees that notwithstanding any costs or expenses incurred by the Applicant, the Applicant shall not have any claim against the City for compensation or reimbursement of such costs and expenses, and the City shall not be liable to the Applicant for losses, damages, interest or claims as a result of lapse of time where the City exercises its rights to terminate this Agreement.

2.10 Responsibility for Contamination

The Applicant acknowledges that the City, by approval of the Application, authorization of the BFTAP, execution of this Agreement or otherwise, assumes no responsibility or liability for the identification and remediation of contamination on the Eligible Property.

2.11 No Additional Obligation from Agreement

Nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the Eligible Property for compliance or noncompliance or to provide an opinion respecting any condition of the Remediation.

2.12 Approvals

The Applicant is at all times solely responsible for all costs of the Remediation and to apply for and obtain at the Applicant's sole expense all approvals required from the City and all other agencies for the Remediation.

2.13 Municipal Discretion

Nothing in this Agreement limits or fetters the City in exercising its statutory discretion under the *Planning Act* or under any other legislative authority or by-law.

2.14 Representations

Nothing in this Agreement is intended to be or shall be construed to be a representation by the City of compliance of the Eligible Property with applicable environmental laws, regulations, policies, standards, permits or approvals, or with any City by-laws or policies.

2.15 Release

The Applicant releases the City from any liability in respect of the City's reviews, decisions or inspections or absence of inspections regarding the Remediation and acknowledges it is the Applicant's responsibility at all times to implement the Remediation as would a careful and prudent landowner.

2.16 Indemnity

The Applicant shall indemnify, and save harmless the City and its Councillors, officers, employees and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss arising directly or indirectly from the City entering into this Agreement and any failure by the Applicant to fulfill its obligations hereunder, and this indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

2.17 Other Programs

The Applicant acknowledges and agrees that the Applicant is ineligible for any other financial incentive programs under the Community Improvement Plan in respect of the Remediation and Redevelopment, save and except the Tax Increment Based Incentive Grant Program. The Applicant confirms that any Eligible Costs which are used to obtain any Tax Assistance under this Agreement shall not be counted towards any eligible costs under the Tax Increment Based Incentive Grant Program.

3. REMEDATION COSTS

3.1 Determination of Remediation Costs

For the purpose of determining the Remediation Costs there shall be included, the costs of:

- (i) Phase II Environmental Site Assessments or Site Specific Risk Assessment (100%);
- (ii) environmental rehabilitation (100%);
- (iii) placing clean fill and grading (100%);
- (iv) obtaining a Record of Site Condition (100%);
- (v) the cost of financing (which, for greater certainty, means interest charges) of preparing the studies and undertaking the rehabilitation (100%); and
- (vi) the insurance premium to guarantee the rehabilitation will be completed.

3.2 Government Assistance

The Applicant agrees that the Remediation Costs do not include any costs otherwise covered by any form of financial assistance from the Federation of Canadian Municipalities, as Trustee of the Green Municipal Fund, a municipality (whether the City or The Regional Municipality of Niagara), Provincial or Federal Government, the Federation of Canadian Municipalities or any government board or agency.

3.3 Total Remediation Costs

The Applicant has provided the amount of the estimated total Remediation Costs of the Remediation as of the date of approval of the Application hereinbefore set forth and as set forth in Schedule "B" to this Agreement. Upon request, the Applicant shall provide to the City, any and all documentation of how the estimated total Remediation Costs has been determined and calculated and provide copies of any invoices of costs already incurred and paid, the scope of work to be completed, estimates or quotes received from third parties for work to be completed and any other information or documents requested by the City.

3.4 Remediation Costs

The City, having received the Applicant's estimate of the total Remediation Costs of the remediation in the amount of \$[NTD: Enter Amount], determined the maximum amount of the Tax Assistance. The decision of the City regarding the total actual amount of Remediation Costs and the actual Tax Assistance shall be final.

3.5 Accounting of Remediation Costs

Within ninety (90) days of completion of the Remediation, the Applicant shall provide the City with a complete accounting of the final actual total Remediation Costs including copies of all contracts, invoices, purchase orders, material supplied, receipts for fees and other costs incurred within the defined term of Remediation Costs. The Remediation Costs may be subject to verification, third party review or independent audit at the expense of the Applicant, if required by the City. Upon receipt of all required documentation the City shall, in its discretion, fix the amount of the total Remediation Costs, which amount shall be the maximum amount of the Tax Assistance.

4. REPORTING

4.1 Phased or Staged Rehabilitation

For the purpose of this Agreement, the Remediation is not phased or staged and the entire Eligible Property must be completely remediated.

4.2 Report

The Applicant will provide to the City, upon request, a report of the status and completion of the Remediation signed by the Applicant, being a detailed progress report including but not limited to the work schedule, existence and extent of any flaws or defects, the value of work done under any contract, the amounts outstanding to any contractor and the amounts paid or retained by the Applicant under any contract.

4.3 Construction Liens

The Applicant shall ensure there are no liens or other claims outstanding in respect of the Remediation and that all accounts for work and materials which can give rise to any claim for a construction lien against the Eligible Property have been paid. The Applicant further shall comply with the Construction Lien Act and the holdback requirements thereof.

4.4 Nuisance

The Applicant covenants that it will not commit or permit any waste or any nuisance on the Eligible Property and shall not permit any contamination thereof.

4.5 Inspection

The City, its employees, contractors and agents may enter and inspect the Eligible Property for compliance under this Agreement.

5. TAX ASSISTANCE

5.1 Commencement of Tax Assistance

The Municipal portion of the property Tax Assistance will commence as of the effective date of the Applicable By-law and subject to confirmation that the Applicant has paid all property taxes owing with respect to the Eligible Property for all years prior to the year in which the Applicable By-law was passed unless noted differently in this Agreement.

5.2 Annual Tax Assistance

Subject to the terms of this Agreement and any approvals which may be required, the Tax Assistance available shall be a maximum of 100% of the Taxes for municipal purposes and 100% of the taxes for education purposes levied during the Rehabilitation Period, provided that the Applicant understands that the Tax Assistance is a deferral of

Taxes until the City has confirmed that the Applicant's obligations under the Applicable By-law have been met, after which time the City will cancel the Taxes. The City may revise the level of Tax Assistance based on the municipal tax roll as returned in any given year and said revision shall not require an amendment to this Agreement, but the percentage of education taxes deferred or cancelled shall match the percentage of municipal taxes deferred or cancelled. The City of Thorold shall notify the Minister of Finance forthwith of any revision to the level of municipal and regional Tax Assistance.

Where Tax Assistance is provided for a portion of any year, or where Tax Assistance represents only a portion of the taxes levied on the Eligible Property, the Applicant is responsible for payment of all property taxes levied during the portion of the year when Tax Assistance is not provided, and for all taxes not subject to Tax Assistance.

The Applicant acknowledges that any Tax Assistance which is attributable to education is subject to the approval of the Ministry of Finance, and as such, the timing of such Tax Assistance may not be granted or come into effect at the same time as the Tax Assistance attributable to taxes owing to the City or the Regional Municipality of Niagara.

5.3 Change of Title and Assignment

In the event the Eligible Property is severed, subdivided or all or any portion of the property is conveyed after this Agreement is executed, Tax Assistance will be terminated immediately.

5.4 Overpayment

Any amount of Tax Assistance which is overpaid by the City, whether by reason of miscalculation or due to any breach of any condition in the application (an "Overpayment"), under the BFTAP, or this Agreement, or otherwise, shall be a debt payable to the City upon written notice thereof. The Applicant acknowledges that the Overpayment will immediately be considered to be unpaid realty taxes against the Eligible Property and be added to the applicable municipal tax roll in the manner provided under the *Municipal Act, 2001*.

6. CORPORATE MATTERS

6.1 Applicant's Representations

The Applicant represents to the City that:

- (a) the Applicant has been duly incorporated as a corporation and is in good standing under the *Business Corporations Act* and is in compliance with all laws that may affect it and will remain so throughout the term of the Agreement;
- (b) the Applicant has the corporate capacity to enter into the Agreement and to perform and meet any and all duties, liabilities and obligations as may be required of it thereunder;
- (c) the Applicant is a resident of Canada as of the date of this Agreement and that in the event the Applicant ceases to be a resident of Canada, the Applicant shall immediately notify the City, and, it is agreed, the City may deduct from any and all annual Tax Assistance payments such sums as may be required by the Canada Revenue Agency in order to meet the City's obligations as a payor and the Applicant's obligations under the *Income Tax Act* (Canada) and other applicable laws;

- (d) to the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Applicant in any Court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Applicant or title to its property or assets;
- (e) the Applicant shall notify the City immediately of any material change in the representations set out in subparagraphs (a) to (d) above; and
- (f) the Eligible Property is contaminated and must be rehabilitated in order to permit redevelopment of the Eligible Property.

7. STATUS OF AGREEMENT

7.1 When Agreement in Effect

This Agreement shall remain in effect from the date of its execution to the earlier of:

- (a) the Applicant informing the City in writing that the Applicant has decided not to accept the Tax Assistance pursuant to the terms hereof;
- (b) the City informing the Applicant in writing that the Agreement is terminated pursuant to the terms thereof;
- (c) the total amount of the Tax Assistance is equal to the Remediation Costs; and
- (d) the time period over which the Tax Assistance has expired.

7.2 Certificate of Status

The Applicant agrees that within ten (10) days after a written request therefor, it shall execute and deliver to the City, or to such person as may be identified in the written request, a written statement certifying that this Agreement is unmodified and is in full force and effect (or, if modified, stating the modifications and stating further that this Agreement is in full force and effect as modified), the amount of the Tax Assistance, and the date to which it has received Tax Assistance under this Agreement, whether or not there is any existing default on the part of the City or the Applicant of which the person signing the certificate has notice, and giving, in addition, such further information as the person requesting the certificate shall reasonably require.

7.3 Non-Assignment

The parties agree that this Agreement is not assignable, except only by the Applicant to the Federation of Canadian Municipalities, as Trustee of the Green Municipal Fund, or to a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company for the purpose of financing the Remediation, without the written consent of the City which the City may withhold in its sole discretion acting reasonably.

7.4 Termination by Applicant

The Applicant is bound by this Agreement unless the Applicant gives notice in writing to the City that the Applicant will not accept the BFTAP under this Agreement in which event this Agreement is terminated without liability of either party to the other, provided that any liabilities of the Applicant which have crystallized or have accrued up to the date of termination shall remain in full force and effect.

7.5 Termination by City

The City may terminate payment of the Tax Assistance under this Agreement without notice and at its sole discretion in the event that the Applicant cannot be reached for a period of greater than six months.

7.6 Breach of Conditions

Any of the following constitutes a breach of condition under this Agreement (each referred to herein as a "**Breach of Condition**"):

- (a) abandonment or attempted abandonment of the Eligible Property by the Applicant before completion of the Remediation, or failure to proceed with the Remediation;
- (b) where the scope of the Remediation is significantly changed by the Applicant, or is not maintained, in the opinion of the City acting reasonably;
- (c) where the Eligible Property while owned by the Applicant is re-contaminated, or is not maintained in its remediated condition by the Applicant;
- (d) failure by the Applicant to comply with work orders or orders to comply relating to the Remediation;
- (e) any representation or warranty made by the Applicant affecting entitlement of the Tax Assistance being incorrect in any material respect;
- (f) the Applicant making an assignment of this Agreement not in compliance with the provisions hereof;
- (g) failure by the Applicant to perform or comply with any obligations contained in any other agreement entered into between the Applicant and the City relating to the Remediation;
- (h) the Applicant becoming bankrupt or insolvent or taking the benefit of any statute for bankrupt or insolvent debtors, or making any proposal, assignment or arrangement with its creditors, or taking of any steps or commencement of proceedings for the dissolution, winding-up or other termination of the Applicant's existence or the liquidation of its assets, or a trustee, receiver, receiver/manager, or a person acting in a similar capacity being appointed with respect to the operation, business or assets of the Applicant; or taking of this Agreement or any of the Applicant's assets under a writ of execution or other like process; and
- (i) breach of any of the Applicant's covenants and provisions under this Agreement not remedied after thirty (30) days written notice.

7.7 Default and Remedies

If and whenever a Breach of Condition occurs, then without prejudice to any other rights which it has pursuant to this Agreement or at law, the City shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Agreement by notice to the Applicant;
- (b) to seek damages against the Applicant;

In the case of a Breach of Condition under Section 7.6, to recover from the Applicant all amounts granted as Tax Assistance as a debt payable to the City upon written demand.

8. INTERPRETATION

8.1 Covenants and Agreements

All of the provisions of this Agreement are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof.

8.2 Severability

If any Article or Section or part or parts of an Article or Section in this Agreement is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding on the parties as though such Article or Section or part or parts thereof had never been included in this Agreement.

8.3 Number, Gender, Effect of Headings

Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and vice versa. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement.

8.4 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

9. GENERAL

9.1 Relationship

No provision of this Agreement is intended to create nor creates a joint venture or partnership or any other similar relationship between the City and the Applicant.

9.2 Time

Time shall be of the essence of this Agreement.

9.3 Notice

Any notice required to be given by either party to the other shall be given in writing and delivered in person, by prepaid first class mail or by facsimile, in the case of the City to:

The Corporation of the City of Thorold
3540 Schmon Parkway, P.O. Box 1047
Thorold, ON
L2V 4A7
Attention: City Clerk
Fax: 905-227-5590

and in the case of the Applicant, to:

[NTD: Provide Contact Information]

Such notice may be delivered or sent by hand delivery, facsimile, registered mail with postage prepaid and return receipt requested. The time of giving of such notice, if mailed, shall be conclusively deemed to have given and received the third business day after the day of such mailing unless regular mail service is interrupted by strikes or other irregularities. Such notice, if delivered in person, shall be conclusively deemed to have been given and received on the day it was hand delivered to an authorized representative of the City of the Applicant. Such notice, if delivered or sent by facsimile, shall be conclusively deemed to have been given and received at the time of such delivery or the time of sending by facsimile, unless it is sent after 5 pm or on a day which is not a business day, in which case the notice will be deemed to have been given and received on the next business day. If, in this Agreement, two or more persons are named as Applicant, such notice shall be delivered personally to any one of such persons. For purposes of this Agreement, notice required to be given by this Agreement shall be deemed sufficient if addressed to either party as provided for in this Agreement or updated as a result of this Agreement in writing.

9.4 No Waiver

No condoning or waiver by either the City or the Applicant of any default or breach by the other at any time or times in respect of any of the terms, covenants and conditions contained in this Agreement to be performed or observed by the other shall be deemed to operate as a waiver of the City's or Applicant's rights under this Agreement, as the case may be, in respect of any continuing or subsequent default or breach nor so as to defeat or affect in any way the rights or remedies of the City or the Applicant under this Agreement, as the case may be, in respect of any such continuing or subsequent default or breach. Unless expressly waived in writing, the failure of the City or the Applicant to insist in any case on the strict performance of any of the terms, covenants or conditions contained in this Agreement to be performed or observed by the other shall not be deemed to operate as a waiver of the future strict performance or observance of such terms, covenants and conditions.

9.5 Survival of Applicant's Covenants

All agreements, covenants and indemnifications in this Agreement made by the Applicant shall survive the expiration or earlier termination of this Agreement, anything to the contrary in this Agreement notwithstanding.

9.6 Schedules

The Schedules attached to and forming part of this Agreement are:

Schedule "A" Description of Eligible Property
Schedule "B" Estimated Total Remediation Costs
Schedule "C" Estimated Tax Assistance

9.7 Entire Agreement

This Agreement, including any schedules attached hereto, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior agreements, representations, warranties, understandings, conditions or collateral agreements, whether oral or written, express or implied, with respect to the subject matter hereof.

9.8 Information

The Applicant acknowledges and agrees that the information in this Agreement is subject to the *Municipal Freedom of Information and Protection of Privacy Act*.

9.9 Enurement

This Agreement shall enure to the benefit of and be binding on the parties and their legal representatives, heirs, executors, administrators, successors and permitted assigns, as the case may be, subject to the granting of consent by the City to any assignment.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals under the hands of their proper officers duly authorized in that behalf.

**THE CORPORATION OF THE CITY
OF THOROLD**

A.T. (Ted) Luciani, Mayor

Susan Daniels, City Clerk

THOROLD PARK REDEVELOPMENT INC.
Per:

Name:
Title:

Name:
Title:

I/We have authority to bind the Corporation.

ASSOCIATED BROWNFIELDS INC.
Per:

Name:
Title:

Name:
Title:

I/We have authority to bind the Corporation.

SCHEDULE "A"

[LEGAL DESCRIPTION OF ELIGIBLE PROPERTY]

SCHEDULE "B"

ESTIMATED TOTAL REMEDIATION COSTS

Estimated Total Remediation Costs as of the \$[NTD: **Confirm Amount**] date of
Approval of Application

SCHEDULE "C"

ESTIMATED TAX ASSISTANCE

Property Taxes Levied (2011)

	Municipal	Region	Education	Total
Tax Levy Sub-total :				
Cap. Adj.				
Taxes Billed				

Note:

The chart above shows that the Applicant is eligible for an estimated Tax Assistance for the Remediation by way of a grant in the amount of **\$(NTD: Confirm Amount)** (based on 2010 property taxes **\$(NTD: Confirm Amount)** {Municipal - **\$(NTD: Confirm Amount)**, Region - **\$(NTD: Confirm Amount)**, Education - **\$(NTD: Confirm Amount)**}).