THE CORPORATION OF THE CITY OF GUELPH

By-law Number (2011)–19202

A by-law to cancel municipal and education taxes for a period of 3 years for the property known municipally as 5 Arthur Street South, Guelph.

WHEREAS By-law No. (2002)-16982, being a by-law to designate a community improvement project area, pursuant to section 28(2) of the *Planning Act*, was passed by Council of the City on November 4, 2002;

AND WHEREAS By-law No. (2002)-16983, being a by-law to adopt a Brownfield Redevelopment Community Improvement Plan for the designated community improvement project area was passed by Council of the City on November 4, 2002;

AND WHEREAS the Minister of Municipal Affairs approved the Brownfield Redevelopment Community Improvement Plan in March, 2004;

AND WHEREAS By-law No. (2008)-18586, being a by-law to adopt amendments to the Brownfield Redevelopment Community Improvement Plan was passed by Council of the City on July 28, 2008;

AND WHEREAS the Owner of the Property has applied to the City for Tax Assistance for the Property, in accordance with the Brownfield Redevelopment Community Improvement Plan and section 365.1 of the *Municipal Act, 2001*;

AND WHEREAS the Property is located within the community improvement project area and is eligible for Tax Assistance pursuant to section 365.1 of the *Municipal Act, 2001*;

AND WHEREAS the Owner has provided the City with a Phase 2 Environmental Assessment, demonstrating that Provincial standards cannot be met in order to file a Record of Site Condition in respect of the Property, and with a Remedial Work Plan in respect of the Property;

AND WHEREAS the City may pass by-laws providing for Tax Assistance pursuant to section 365.1 of the *Municipal Act, 2001*;

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 GUELPH ENACTS AS FOLLOWS:

1. In this By-law,

   a) "City" means The Corporation of the City of Guelph;

   b) "Development Period" means, with respect to the Property, the period of time starting on the date the Rehabilitation Period ends and ending on the earlier of:

      i) The third anniversary of the date of the passage of this By-law;

      ii) The date that the amount of the Tax Assistance provided for the Property equals the amount of the Remediation Costs; or

      iii) The date an occupancy certificate for any part of the Property is issued by the City;

   c) "Owner" means the registered owner of the Property, as named in Schedule "A" to this By-law;

d) "Property" means the lands more particularly described in Schedule "A" to this By-law;

e) "Rehabilitation Period" means, with respect to the Property, the period of time starting on the date on which this By-law is passed 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 amount of the Tax Assistance provided for the property equals the amount of the Remediation Costs;

f) "Remediation Costs" means the sum of the cost of any actions taken to reduce the concentration of contaminants on, in or under the 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 Brownfield Redevelopment Community Improvement Plan; and

g) "Tax Assistance" means the cancellation or deferral of taxes for municipal and school purposes levied on the Property for up to three years during the Rehabilitation Period and the Development Period pursuant to this By-law. In the period before the Owner's obligations under this By-law have been met, Tax Assistance shall take the form of a deferral of taxes. Once the City has confirmed that the Owner's obligations under this By-law have been met, Tax Assistance shall take the form of a cancellation of taxes.

2. Forthwith after passage of this By-law, unless the Owner has already done so, the Owner shall enter a Brownfield Tax assistance Agreement, generally in the form as attached as Schedule "B" to this By-law.

3. The City shall provide Tax Assistance for the Property subject to the provisions of this By-law and subject to confirmation that the Owner has paid all taxes owing with respect to the Property for all years prior to the year in which this By-law is passed.

4. The Tax Assistance shall commence as of the date this By-law is passed and shall be effective only for up to three years during the Rehabilitation Period and the Development Period. In no event shall the Tax Assistance continue past the third anniversary of the passage of this by-law.

5. Subject to the other provisions of this By-law, the maximum Tax Assistance available shall be 100% of the taxes otherwise payable per year.

6. Where Tax Assistance is provided for a portion of any year on the Property, the Owner is responsible for payment of all taxes levied during the portion of the year when Tax Assistance is not provided, and for all taxes not subject to Tax Assistance.

7. The City may:

a) Refund taxes to the extent required to provide the Tax Assistance in the year this By-law is passed, if the taxes for the Property have been paid; or

b) Credit the amount to be refunded to an outstanding tax liability of the Owner with respect to the Property, if the taxes have not been paid in the year that this By-law is passed.

8. The Treasurer of the City shall alter the tax roll in accordance with the Tax Assistance to be provided for the Property.

9. The Owner shall permit the City to inspect the Property from time to time to verify the matters addressed in this By-law.

10. The Owner shall provide to the City an annual report within thirty (30) days after the anniversary of the passage of this By-law for each year or part thereof that Tax Assistance is provided. Within 30 days after receiving such report from the Owner, the City shall provide a copy to the Minister of Finance. The annual report shall include:

    a) An update of the concentration and location of contamination on the Property;

    b) The status of remediation work completed to date;

    c) Costs expended to date and an estimate of costs not yet incurred; and

    d) Time estimates to complete the remedial and redevelopment work.

11. Forthwith upon the request of the City, the Owner shall provide to the City any information related to the subject matter of this By-law that may be required by the City or the Minister of Finance.

12. Tax Assistance shall be suspended, and the portion of the taxes for municipal purposes and/or the portion of the taxes for school purposes may be terminated, where any one of the following occurs:

    a) The Owner is in default of any obligation pursuant to this By-law;

    b) The Owner is in default of any provision of the Brownfield Tax Assistance Agreement entered into between the Owner and the City;

    c) The Owner fails to commence or ceases remediation for any reason;

    d) The Property is severed, subdivided or all or any portion of the property is conveyed;

    e) Tax Assistance has been provided for three (3) years;

    f) The total amount of financial assistance provided by the City to the Owner in respect of the Property, including Tax Assistance equals or exceeds the Remediation Costs, contrary to section 28(7.3) of the *Planning Act*;

    g) The Owner fails to comply with any building or other permits or work or other orders in respect of the Property;

    h) Any remediation work, techniques or materials are not satisfactory to the City; or

    i) The remediation fails to conform to and fulfil:

        i) The Brownfield Redevelopment Community Improvement Plan;
        ii) All applicable legislative requirements; or
        iii) Any other requirements of the City.

13. The Owner shall notify the City forthwith if any of the events in section 12 occur. The City shall then forthwith notify the Minister of Finance.

14. If Tax Assistance has been suspended under section 12, the City may:

    a) Terminate the Tax Assistance and provide the Owner with notice that the Tax Assistance is terminated ; or

    b) Provide the Owner with notice that the Owner may cure the default within such period and on such terms as the City specifies in writing, and that the failure to do so will result in termination of the Tax Assistance.

15. A notice under clause 14(b) is not effective with respect to taxes for school purposes unless it has been agreed to in writing by the Minister of Finance.

16. In the event that Tax Assistance is terminated pursuant to section 12 or 14 above, the City shall provide notice to the Owner under subsection 365.1(3.1) of the *Municipal Act, 2001*, that the conditions under this By-law have not been met and require that the Owner repay all of the taxes for school purposes which were subject to the Tax Assistance, and all or a portion of the taxes for municipal purposes which were subject to the Tax Assistance.

17. Where the City makes a requirement under section 16, interest is payable on the taxes which become payable under the requirement calculated at the standard rates of the City, as if the Tax Assistance had not been provided.

18. In the event that the Tax Assistance provided pursuant to this By-law exceeds the actual Remediation Costs for the Property, the amount that the Tax Assistance exceeds the Remediation Costs shall be paid by the Owner as property taxes.

19. Upon termination of the Tax Assistance, the Owner shall provide full particulars, to the satisfaction of the City, of all costs referenced in this By-law.

20. The Owner shall, within five years after the passage of this By-law, file a record of site condition with respect to the Property in the Environmental Site Registry under section 168.4 of the *Environmental Protection Act*. The Owner shall, within 30 days after such filing, notify the City of the filing. Within 30 days after receiving the notice from the Owner, the City shall advise the Minister of Finance of the filing. If the Owner fails to file the record of site condition within the said five years, the Owner shall forthwith reimburse the City for all Tax Assistance received pursuant to this By-law.

21. This by-law shall come into force and take effect on its passage.

PASSED this TWENTY FOURTH day of MAY 2011.

KAREN FARBRIDGE - MAYOR

TINA AGNELLO – ACTING CITY CLERK

By-law Number (2011) - 19202

Schedule "A"

OWNER:

Arthur EMPC Four Limited

PROPERTY:

The lands municipally known as 5 Arthur Street South, Guelph, and described as:

PIN 71338-0104 (LT)
Part of Grist Mill Lands, East Side of River Speed, Plan 113, Part of Lot 76 and Lots 77, 78, 79, 80, 81 and 82, Plan 113 (as amended), designated as Parts 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 on Reference Plan 61R-10767, City of Guelph, together with an easement over Part 7 on Reference Plan 61R-10767 as in Instrument No. WC212993.

PIN 71338-0106 (LT)
Part of Grist Mill Lands, Plan 113, East of River Speed, designated as Parts 1, 2, 3, 4 and 5 on Reference Plan 61R-10767, City of Guelph, subject to Instrument No. RO682767, together with an easement over Part 7 on Reference Plan 61R-10767 as in Instrument No. WC212993.

By-law Number (2011) - 19202
Schedule "B"

Brownfield Tax Assistance Agreement

THIS AGREEMENT made this day of , 2011.

BETWEEN:

THE CORPORATION OF THE CITY OF GUELPH
(hereinafter referred to as the "**City**")

And

ARTHUR EMPC FOUR LIMITED
(hereinafter referred to as the "**Owner**")

WHEREAS:

A. The City has passed or will pass a by-law (hereinafter referred to as the "**Tax Cancellation By-law**") generally in the form as attached as Schedule "A" to this Agreement, to cancel taxes for municipal and school purposes;

B. As a condition of approval for tax assistance under the City's Brownfield Redevelopment Community Improvement Plan, and as a requirement of the Tax Cancellation By-law, the Owner is required to enter into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the premises, covenants and agreements to be observed, fulfilled and performed pursuant to this Agreement, the parties hereto do hereby covenant and agree as follows:

1. Terms used in this Agreement shall have the same meanings as in the Tax Cancellation By-law.

2. Forthwith after the execution of this Agreement, unless the Owner has already done so, the Owner shall provide to the City a statutory declaration, satisfactory to the City's General Manager of Planning and Building Services, by a director or officer of the Owner certifying to the City that the Owner is a corporation in good standing and that it has taken all proper steps to authorize all actions in respect of this Agreement.

3. The Owner shall obtain, at the Owner's sole cost, any permits or approvals that may be required by the City or any other authorities prior to carrying out work on the Property. Forthwith after the receipt of any such permits or approvals, the Owner shall commence the environmental rehabilitation and development of the Property in accordance with the Remedial Work Plan.

4. Provided that the Owner is in compliance with the provisions of this Agreement and the Tax Cancellation By-law, the City shall cancel Taxes for the Property in accordance with the Tax Cancellation By-law.

5. The Owner shall:

   a. Comply with the Tax Cancellation By-law; and

   b. Indemnify, save defend and keep harmless from time to time and at all times, the City and its officers, employees, councillors and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from the City entering into this agreement and any failure by the Owner to fulfil its obligations under this Agreement; this indemnification shall remain in force following termination or expiry of this Agreement.

6. The Owner hereby acknowledges that the timing of, and conditions that apply to, the assistance available from the City pursuant to this Agreement may vary from those respecting the assistance available from the Province of Ontario in respect of the taxes for school purposes for the Property.

7. Each year, the City may determine whether the owner has satisfied all outstanding obligations pursuant to this Agreement. If the City determines that the Owner has not satisfied all its outstanding obligations, the City may refuse to proceed with the tax cancellation for the subsequent year until such outstanding obligations are satisfied.

8. The City may refuse to proceed with the tax cancellation at any time, if, legislative changes (such as to the *Planning Act*, *Municipal Act, 2001* or *Environmental Protection Act*) should, in the sole discretion of the City, require termination or amendment of this Agreement.

9. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective approved assigns.

10. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

11. The failure of the City at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect the City's right thereafter to enforce such obligation, nor shall the waiver by the City of the performance of any obligation under this Agreement be taken or be held to be a waiver of the performance of the same or any other obligation under this Agreement at any later time. Any waiver must be in writing and signed by the City.

12. Time shall be of the essence of this Agreement.

13. No amendment to this Agreement shall be effective unless in writing and signed by the parties.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their respective corporate seals duly attested to by their respective proper signing officers on their behalf.

SIGNED, SEALED AND DELIVERED GUELPH

THE COPORATION OF THE CITY OF

_____

KAREN FARBRIDGE – MAYOR

Dated and Signed this
day of , 2011.

_____

TINA AGNELLO – ACTING CITY CLERK

ARTHUR EMPC FOUR LIMITED

_____

Name:
Title:

_____

Name:
Title:
I/We have authority to bind the Corporation.