

THE CORPORATION OF THE CITY OF BROCKVILLE

By-law No. 104-2009

*By-law to Authorize the Execution of a Tax Increment Equivalent for Rehabilitation and Redevelopment (TIERR) Commitment and Grant Agreement
(The Wedgewood Brockville Inc., 15 Market Street East – TIERR 06/06)*

WHEREAS Section 28(4) of the Planning Act, R.S.O. 1990, provides that Council may adopt a Community Improvement Plan; and

WHEREAS the Council of the Corporation of the City of Brockville has adopted a Community Improvement Plan for Downtown Brockville by By-law 52-2007 and designated the downtown as a Community Improvement Project Area by By-law 051-2007; and


WHEREAS the Tax Increment Equivalent for Rehabilitation and Redevelopment (TIERR) Program is part of the Community Improvement Plan for Downtown Brockville; and

WHEREAS Council of the Corporation of the City of Brockville has deemed it expedient to enter into a Tax Increment Equivalent for Rehabilitation and Redevelopment Commitment and Grant Agreement with The Wedgewood Brockville Inc. respecting lands described as Lots 8, 9, 99 and 100, Part of Lot 10, Block 10, Plan 67, designated as Parts 1, 2 and 3 on Reference Plan 28R-9693, City of Brockville, County of Leeds. Together with a right-of-way over that portion of Lot 10, Block 10, Plan No. 67, designated as Part 8 on Reference Plan 28R-9693 per Instrument No. 257681.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF BROCKVILLE ENACTS AS FOLLOWS:

1. THAT the Mayor and Clerk be and they are hereby authorized to execute a Tax Increment Equivalent for Rehabilitation and Redevelopment Commitment and Grant Agreement with The Wedgewood Brockville Inc.
2. THAT Schedule "A" hereto annexed shall be read with and form part of this By-law.

Given under the Seal of the
Corporation of the City of Brockville
and passed this 24th day of November, 2009



MAYOR
David Henderson



CLERK



**TAX INCREMENT EQUIVALENT FOR REHABILITATION AND
REDEVELOPMENT GRANT PROGRAM (TIERR)**

COMMITMENT AND GRANT AGREEMENT

15 Market Street East, Brockville

Application No. TIERR-06/06

**THIS TAX INCREMENT EQUIVALENT FOR REHABILITATION AND REDEVELOPMENT
GRANT PROGRAM (TIERR) AGREEMENT** is made at the City of Brockville this 12th day of
November, 2009.

BETWEEN: THE CITY OF BROCKVILLE
(hereinafter referred to as the "City")

and

THE WEDGEWOOD BROCKVILLE INC.
(hereinafter referred to as the "Owner")

RECITALS:

WHEREAS the City of Brockville has adopted a Downtown Community Improvement Plan (hereinafter referred to as "CIP **Downtown**") pursuant to the Community Improvement provisions of the Planning Act, R.S.O. 1990, c.P. 13, as amended;

AND WHEREAS the Owner is the registered Owner of land located within the Downtown Community Improvement Project Area, which Lands are described in **Schedule "A"** of this Agreement (hereinafter referred to as the "Land");

AND WHEREAS the Owner has applied to the City on 24 October 2006 under the Tax Increment Equivalent for Rehabilitation and Redevelopment (TIERR) Grant Program as provided under the CIP Downtown;

AND WHEREAS as a condition of approval under the TIERR Grant Program under the CIP Downtown, the Owner is required by the City to enter into this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of:

- (a) the premises, covenants and Agreements to be observed, fulfilled and performed pursuant to this Agreement; and

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- (b) the Owner's application under the TIERR Grant Program to the City subject to, and in accordance with, the terms and conditions hereinafter recorded in this Agreement.

The parties do hereby covenant and agree as follows:

DEFINITIONS:

1. In this Agreement the following terms shall have the following meanings:
 - 1.1 "ACTUAL REHABILITATION/REDEVELOPMENT COSTS" means the Actual costs to Rehabilitate/Redevelop the Land, proven by the Owner to have been expended, and which are eligible for reimbursement under the TIERR Grant Program.
 - 1.2 "BASE TAX - MUNICIPAL" means the municipal portion of the tax bill immediately prior to the commencement of the Rehabilitation/Redevelopment Work;
 - 1.3 "BASE ASSESSMENT" will be the current value assessment as provided by the Municipal Property Assessment Corporation, hereinafter referred to as MPAC, in conjunction with the City at the date of the original TIERR Grant Program application or the date of application for Building Permit, whichever comes first.
 - 1.4 "BUILDING PERMIT" means a permit issued by the chief building official to allow the construction, renovation, rehabilitation, redevelopment or demolition of a building.
 - 1.5 "BUILDING" means
 - (a) a structure occupying an area greater than ten square metres (10 m²) consisting of a wall, roof and floor or any of them in a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto, or
 - (b) a structure occupying an area of ten square metres (10 m²) or less that contains plumbing, including the plumbing appurtenant thereto, or
 - (c) plumbing not located in a structure, or
 - (d) structures designated in the building code.
 - 1.6 "CHIEF PLANNING OFFICER" means the person appointed by By-law to administer planning related matters.


City (Initial)


Owner/Applicant
(Initial)

- 1.7 "CIP Brownfields" means the Brownfields Community Improvement Plan of the City of Brockville, approved by City Council and adopted by By-Law No. 050-2007;
- 1.8. "CIP DOWNTOWN" means the Community Improvement Plan for Downtown Brockville approved by Council for the Corporation of the City of Brockville and amended by By-Law No. 052-2007;
- 1.9. "CITY" means the Corporation of the City of Brockville;
- 1.10 "CERTIFIED COSTS" means those costs which have been claimed through submission of appropriate documentation and which have been confirmed as being eligible by the City;
- 1.11 "COMMITMENT AND GRANT AGREEMENT" means a document executed following completion of the Registration of Intent as defined herein. Said Commitment and Grant Agreement shall be between the Corporation of the City of Brockville and the Owner under the terms and conditions of the TIERR Grant Program and shall contain the obligations, rights and terms of both parties.
- 1.12 "CONSTRUCT" means to do anything in the erection installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere and "construction" has a corresponding meaning.
- 1.13 "DEMOLISH" means to do anything in the removal of a building or any material part thereof and "demolition" has a corresponding meaning.
- 1.14 "ELIGIBLE COSTS" under the TIERR Grant Program include costs related to development, redevelopment, construction and reconstruction of lands and buildings and exclude all costs which are identified as eligible costs under Section 5.0 of the City of Brockville Brownfield's Community Improvement Plan. (A copy of the Section 5.0 of the City of Brockville Brownfield's Community Improvement Plan is available upon request.)
- All costs related to environmental site assessment and environmental remediation are eligible costs under the City of Brockville Brownfield's Community Improvement Plan and are excluded as eligible costs from the TIERR Grant Program.
- 1.15 "LAND" means the property/properties known municipally as 15 Market Street East Brockville, and as more particularly described in **Schedule "A"** to this Agreement;
- 1.16 "MUNICIPAL REALTY TAX" means the levy on real property within the City of Brockville, as calculated by the assessment as provided by MPAC times the tax rate, subject to capping and threshold provisions as approved by Brockville City Council;


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- 1.17 "OWNER" means The Wedgewood Brockville Inc. and includes any successors, assigns, agents, partners and any affiliated corporation. For greater certainty, for the purposes of this Agreement and the entitlement to receive the benefits hereunder, Owner does not include a transferee of the Land or any part thereof including a subsequent Owner unless the Owner, by specific assignment agreement, has assigned the Owner's rights and benefits under this Agreement;
- 1.18 "PROGRAM ASSISTANCE" means all of the following programs, or any combination thereof, as authorized by the CIP Downtown: Building and Plumbing Permit Fees Grant, Tax-Increment Equivalent for Rehabilitation and Redevelopment (TIERR) Grant;
- 1.19. "PROGRAM ASSISTANCE TERM" means a maximum period of five (5) years from the date specified in the site specific by-law governing the implementation of the TIERR Grant Program for the Land.
- 1.20 "REGISTRATION OF INTENT" means a document completed by the applicant expressing an intent to participate in TIERR Grant Program within the prescribed period of the Plan (ending June 30, 2011);
- 1.21 "REHABILITATION / REDEVELOPMENT" means improvements to the Buildings and/or Land;
- 1.22. "SUBSEQUENT OWNER" means a registered Owner from time to time who has acquired title thereto from either the Owner or a subsequent Owner;
- 1.23 "TAX INCREMENT - MUNICIPAL" means the increase in municipal property taxes realized on the Land, or such portion thereof, that results from the redevelopment/rehabilitation of such Land, or such portion thereof, as the case may be.

The Tax Increment – Municipal shall be calculated as the difference between the base tax and the total municipal tax during each respective year of the Program Assistance Term.

The increment will be calculated as being net of any rebates on municipal property tax resulting from any source whatsoever. This shall include, but not be limited to, rebates for space occupied by charitable and other not-for-profit organizations; vacancies, etc.

Adjustments to the current value assessment of the property due to reassessment as defined by the Assessment Act will not be considered in determining the Tax Increment – Municipal and will not be eligible for rebate.

- 1.24 "TAX LIABILITY" means all real property taxes as levied by the City of Brockville
- (a) on their own behalf (municipal);


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- (b) as required by the Province of Ontario (education);
 - (c) any other applicable levies; and
 - (d) any other transfers that may be assigned to the tax roll as permitted by the Municipal Act;
- 1.25 "TIERR ACTION PLAN" means the comprehensive description of Work proposed to be completed under the TIERR Grant Program.
- 1.26 "TAX INCREMENT EQUIVALENT FOR REHABILITATION AND REDEVELOPMENT (TIERR) GRANT PROGRAM" means a financing tool established under the authority of Section 28 of the Planning Act, R.S.O. 1990, c.P. 13, that allows municipalities to provide property tax assistance to landowners as an incentive for rehabilitation and development being further described as follows:

"TIERR GRANT PROGRAM - TAX INCREMENT EQUIVALENT FOR REHABILITATION AND REDEVELOPMENT GRANT PROGRAM" means a program which would provide Program Assistance to Owners of lands and buildings who undertake improvements or redevelopment that would result in an increased property assessment. The amount of the Program Assistance provided will depend on the amount of the municipal portion of property taxes that has increased as a result of the improvements. The TIERR Grant Program offers Program Assistance of 100% of the increase in municipal realty taxes paid annually for a maximum period of five (5) years. The increase in realty tax represents the annual municipal realty tax in each year following improvement or redevelopment of lands and buildings over and above municipal realty tax prior to improvement or redevelopment of the lands in question. All commercial and residential property located within Priority Area 1 of the Community Improvement Project Area will be the target of the TIERR Grant Program.

More specifically, the details of the program are described as follows:

Background

This program is meant to stimulate and promote the rehabilitation of existing buildings, and the redevelopment of vacant or under-developed sites in downtown Brockville.

Target Area

All commercial and residential property located within Priority Area 1 of the Community Improvement Project Area will be the target of this program.


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(initial)

Eligibility

All Owners of commercial and residential lands and buildings located within Priority Area 1 of the Community Improvement Project Area will be eligible to participate in the program.

If the tenant would like to undertake work, the Owner and tenant must enter into an agreement stipulating the arrangement of the Program Assistance receipt and work to be done, independent of the City. Due to the fact that the Owner receives the tax bill from the City, the Owner must be the party with which the City enters into the Commitment and Grant Agreement. The Owner may elect to have the Program Assistance paid to an assignee, to be specified in the Commitment and Grant Agreement.

Program Description

The Tax Increment Equivalent for Rehabilitation and Redevelopment (TIERR) Grant Program would provide Program Assistance to Owners of residential and commercial lands and buildings. The program would provide Program Assistance to Owners who undertake improvements or redevelopment that would result in an increased property assessment. The amount of the Program Assistance provided will depend on the amount of the municipal portion of property taxes that has increased as a result of the construction. This does not include the Education Tax, or any other charges such as water, sewer or the DBIA levy.

The TIERR Grant Program offers Program Assistance equating to 100% of the increase in municipal realty taxes for a period of five consecutive years. After expiry of the term of the Program Assistance under this Agreement and in subsequent years, the municipal portion of the realty taxes must be paid in full, and no further Program Assistance will be paid. The difference between the municipal portion of realty taxes based upon the property assessment prior to construction and the taxes after the completion of the works resulting in an increase in property assessment, will be the portion eligible for Program Assistance under this program.

The TIERR Grant Program is time-limited. The deadline for receipt of a registration of intent under this program is June 30, 2011, subject to the further requirement that approval in principle for assistance under this program be achieved no later than December 31, 2011. This program may be extended beyond the dates indicated by resolution of City Council.

The duration of the assistance is a maximum of five (5) consecutive years from the date specified in the site-specific by-law governing the implementation of this program for any given property.


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(initial)

Implementation

The Owner must register an intent to participate in this program within the prescribed period of the Plan (ending June 30, 2011).

The program does not apply retroactively. The Registration of Intent cannot be accepted for any property which has already been completed and reassessed.

The total amount of the Program Assistance shall not exceed the eligible costs specified in this Plan.

Application Process

1. The Owner signs a Registration of Intent form indicating the Owner's intent in participating in the TIERR Grant Program.
2. The City reviews the proposed project on its merits and will approve, or otherwise, the assistance in principle. Following this, the City will produce a Commitment and Grant Agreement documenting anticipated assistance, including assistance from other programs as may be relevant, and obligations on the part of both the Owner and the City. This Commitment and Grant Agreement represents a site specific funding agreement which will be implemented once the property is reassessed. In order for a project to qualify, the proposed project must be in compliance with the City's Zoning By-law, Official Plan, the Ontario Building Code, and any applicable design guidelines established by the City.
3. On completion of the project, if the Notice of Reassessment shows an increased assessment, and if the construction complies with all applicable program guidelines established by the City (including verification of eligible costs), the Owner and the City will implement the site specific funding agreement. At that time the site specific funding agreement will stipulate the pre-improved and post-improved assessed value, applicable municipal tax rate of that year, the amount of the Program Assistance in that year, the method to be used to calculate the Program Assistance in the subsequent four years using municipal tax rates to be determined in each of those out years, and the anticipated delivery dates of the Program Assistance. The Program Assistance will only be paid following confirmation that taxes owing each year specified in the Commitment and Grant Agreement have been paid in full.

For projects located in Priority Area 1 which are also eligible for assistance under the Brownfields CIP, completion of a Registration of Intent under that Plan will be deemed to meet the registration requirements under this Plan.


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(initial)

Conditions of the TIERR Grant Program

Conditions of the TIERR Grant Program are as follows:

1. The rehabilitation or redevelopment of the building or land must result in an increased assessment of the property.
2. Building permit must have a minimum construction value of \$5000 in order for project to qualify.
3. The pre-improved assessed value of the property will be the value of the property on the date of application for the building or demolition permit.
4. The total amount of the Program Assistance shall not exceed the eligible costs specified in this Plan.
5. The Program Assistance will be a floating grant, the amount of which will be a slightly different amount annually over the five-year period, depending on the tax rates adopted by Council each year.
6. Subject to the adoption by the City of a demolition control by-law, issuance of a demolition permit for a property which has participated in the TIERR Grant Program is at the discretion of the City for the five-year period following the project's completion. Furthermore, compliance with the Ontario Heritage Act will be required respecting any designated building which is the subject of this Program.
7. If the property is demolished, in whole or in part, before the expiration of the Program Assistance period, the Program Assistance shall stop and all previously received Program Assistance will be repayable to the City.
8. The program will be available to Owner of property, or their assigns. Program Assistance will only be paid to the registered Owner of the property. The Commitment and Grant Agreement between the City and the Owner shall provide for the Program Assistance to be paid to an assignee of the Owner, as required.
9. Participants of the TIERR Grant Program are eligible to apply to any other financial program applicable to Priority Area 1 of the Community Improvement Project Area. All financial assistance provided under this Plan in respect of sites which are also eligible for financial assistance under the City of Brockville Brownfields Community Improvement Plan must be in accordance with the provisions of the City of Brockville Brownfields Community Improvement Plan with respect to joint access to financial assistance under both Plans.
10. The subject property shall not be in a position of tax arrears.


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11. Outstanding work orders on the property must be completed by the time of completion of the project. If they are not, Program Assistance will be withheld.
12. Improvements made to any buildings or lands will be in accordance with a Building Permit, the Ontario Building Code, all applicable Zoning requirements, and any applicable design guidelines, as established by the City.
13. An Owner can participate in the TIERR Grant Program more than once.
14. The Commitment and Grant Agreement is transferable. Should a subject property be sold before the Program Assistance period lapses, the Program Assistance will continue for the prescribed timeframe, provided that notice from the Owner is given to the City, indicating the details of the transfer of title.
15. The Commitment and Grant Agreement can be registered on title, at the discretion and cost of the Owner, to serve as notice to future purchasers or potential property interests.
16. Construction must be completed within two (2) years after the date of issuance of the building permit. Extensions may be accepted by the Chief Planning Officer at their sole discretion.
17. The date of commencement of Program Assistance will be specified in the municipal by-law which sets out the basis for application of this program to a specific property. The date of commencement is at the discretion of the City, but will not commence prior to reassessment of the property as a result of partial or full redevelopment as relevant in the circumstances.
18. The TIERR Grant Program is not retroactive. Any construction commenced before a Commitment and Grant Agreement is issued by the City is ineligible for the program. However, those construction projects for which a building permit was issued in 2004 and for which approval for use and occupancy has not been issued by the Chief Building Official will be eligible, provided that a Commitment and Grant Agreement is issued by the City prior to the earlier of: approval for use and occupancy, or issuance of a Notice of Reassessment by MPAC respecting assessment changes resulting from the construction, and provided that all other criteria of this Program are met.
19. There is no guarantee that a specific improvement will increase property assessment. Consequently, there are no eligible improvement projects that will guarantee Program Assistance from the TIERR Grant Program. The Program Assistance depends upon the extent of the construction,


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(initial)

and the approach and results of the Municipal Property Assessment Corporation reassessment.

20. All conditions of this program shall be met for the Program Assistance to be received. Final decisions on applications and allocation of funds have been delegated to the City Treasurer. The applicant, however, is afforded an opportunity to appeal the decision of the City Treasurer to Council through the appropriate Standing Committee.

Examples of projects that have the potential to increase property assessment:

- Building extensions or additions
 - Building conversions
 - Restoration of original building façade
 - Structural improvements
 - Major renovations
- 1.27 "WORK" means the collective Works necessary to improve the Land and or building that would result in an increased property assessment and therefore qualify under the CIP-Downtown TIERR Grant Program.
- 1.28 "ZONING BY-LAW" means a municipal by-law passed by Council for the Corporation of the City of Brockville to control the use of land in the City. It outlines the legal requirements a landowner or authorized agent must meet to develop or do construction on all of, or a portion of, its property. The applicable document is titled City of Brockville Comprehensive Zoning By-law 194-94, as amended.

COMMENCEMENT AND TERMINATION

2. The parties agree as follows:
- 2.1. Commencement of this Agreement will occur on the date it is executed by the Parties, and is subject to all conditions, approvals, and obligations contained herein.
- 2.2. Termination of this Agreement will occur at the earlier of:
- (a) payment to the Owner of an amount equal to the maximum Program Assistance permissible under the CIP Downtown – TIERR Grant Program; or
 - (b) the time frame, being a maximum period of five (5) years from the date specified in the site specific by-law governing the implementation of the Program for the Land has been met or the maximum eligible costs have been achieved.


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- (c) the date this Agreement is terminated by the City in the event of the Owner's default under paragraph 20 – Default and Remedies of this Agreement; or
- (d) the date that this Agreement is terminated by mutual agreement of the Parties.

OWNER'S REPRESENTATIONS, ACKNOWLEDGEMENTS AND OBLIGATIONS:

3. The Owner represents that:

- 3.1. it is, or shall be, the Registered Owner of the subject Land;
- 3.2. If a corporation, then
 - (a) it 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 this Agreement;
 - (b) it has the corporate capacity to enter into this Agreement and to perform and meet any and all duties, liabilities and obligations as may be required of it under this Agreement; and
- 3.3. it has not, as of the date of this Agreement, applied for, or received, any other Grant(s) or assistance for Actual Rehabilitation / Redevelopment Costs from any other government, agency or other funding source, including other City programs not described or referred to in this Agreement. If any grants or other assistance for Brownfields Rehabilitation Eligible Costs are applied for and/or received from any third party, the Owner shall immediately disclose same to the City. In the event of such additional funding, the City will reduce the eligible costs by an amount equivalent to the amount received by the Owner from such disclosed third party assistance. This provision shall remain in effect for the duration of this Agreement to include any funding of Brownfields Rehabilitation Eligible Costs which may be approved and received from another source during the term of the Agreement.

4. The Owner acknowledges that:

- 4.1. the onus and responsibility is on the Owner at all times to assume all costs of Rehabilitation/Redevelopment of the Land and to apply for and obtain, at the Owner's expense all approvals required from the City and all other agencies having jurisdiction for the rehabilitation and/or development of the Land;
- 4.2. nothing in this Agreement limits or fetters the City in exercising its statutory jurisdiction under the Planning Act, R.S.O. 1990, c. P 13, as amended, or under any other legislative authority or by-law;


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Owner/Applicant
(initial)

- 4.3. nothing in this Agreement is intended to impose, or shall impose, upon the City any duty or obligation to inspect or examine the Land for compliance or noncompliance or to provide an opinion respecting any condition of Rehabilitation/Redevelopment; and
- 4.4. nothing in this Agreement is intended to be, or shall be, construed to be a representation by the City regarding compliance of the Land with applicable laws, regulations, policies, standards, permits or approvals, or other by-laws and policies of the City.
5. The City and Owner acknowledge that **Schedule "B-1"** represents the proposed TIERR Action Plan for the subject Land. The parties agree that should **Schedule "B-1"** need to be altered, the City will not unreasonably withhold its approval of the necessary alterations.
6. The Owner agrees that the Rehabilitation/Redevelopment Work shall be made in compliance with all required Building Permits, and constructed in accordance with the Building Code Act, S.O. 1991, c.23, as amended, and all applicable Zoning By-law requirements, municipal requirements and other approvals required at law, including without limitation, any Site Plan Control Agreement entered into with the City.
7. The Owner hereby confirms its intention to complete the Rehabilitation/Redevelopment Work upon the Land within two (2) years of the date of issuance of a Building Permit unless an extension is granted by the Chief Planning Officer hereto.
8. The Owner shall provide the City with documentation satisfactory to the City as to the nature of the Work and Actual Rehabilitation/Redevelopment Costs incurred by the Owner and as itemized under **Schedule "B-3"**.
9. The Owner grants to the City and its Agents a license to enter the Land at any reasonable time for the purpose of conducting an inspection of all Rehabilitation/Redevelopment Work being executed and to confirm that the Owner is in compliance with the terms of this Agreement provided that the City representative complies with all necessary Health and Safety requirements.
10. The Owner will provide to the City a report or reports throughout the term of this Agreement of the status of the Work, including, but not limited to:
- 10.1 the status of the TIERR - Action Plan;
 - 10.2 the amount owing to any contractor for unpaid sums relating to the Work , or any part thereof, undertaken by such contractor upon the Land or such portions thereof as applicable;
 - 10.3 the amount of holdbacks/liens currently retained by the Owner under any contract with contractors who have undertaken the Work or any part thereof;


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- 10.4 documentation establishing Actual Rehabilitation/Redevelopment Costs incurred at a minimum of six (6) month intervals, specified as June 30, and December 31 of each year. This documentation will be subject to review and verification by the City.
11. As a condition of commencement of the term of this Agreement, the Owner shall, upon the request of the City, provide the City with a statutory declaration confirming that no construction liens or other claims have been registered and remain registered against title to the Land in respect to the Work. To the extent that liens are registered, the Owner shall be permitted to remove said liens by posting of the appropriate security pursuant to the Construction Lien Act, RSO 1990, c.30, as amended.
12. The Owner shall ensure that during its Ownership of the Land, the Land shall be maintained in its Rehabilitated/Redeveloped condition during the term of the Agreement. For greater certainty, the Owner shall be relieved of any obligation pursuant to this section as a result of the Owner's conveyance of the Land to a subsequent Owner.
13. As a pre-condition to providing any Program Assistance, and without which this Agreement shall be of no force, the Owner shall provide a statutory declaration by the Owner or a director or officer of the Owner certifying to the City that:
- 13.1. the Owner named in this Agreement is or was the registered Owner in fee simple of the Land when the Actual Rehabilitation/Redevelopment Costs were incurred and was in Ownership, possession and control of the Land and that mortgagees have not taken possession of the Land or taken steps to take over the Land;
- 13.2. the Owner is in compliance with the terms of this Agreement;
- 13.3. if a corporation, then
- (a) the Owner is a corporation in good standing;
- (b) the Owner has properly authorized this Agreement and passed all required Resolutions and By-laws for that purpose.
14. The Owner may, at their sole cost, register this Agreement on title to the Land on approval and execution of this Agreement by both parties.
15. The Owner covenants to the City that where the ownership of part or all of the Land ceases for any reason to be in the Owner's name, by virtue of sale, assignment or otherwise, prior to the advance of all of the Program Assistance, the Owner will immediately notify the City in writing of said change.
16. The Owner acknowledges and agrees that the City is required to provide Program Assistance only to the Owner of the Land in accordance with the provisions of section 28(7) of the Planning Act, as disclosed on title or to any person to whom such Owner has assigned the right to receive Program Assistance in conformity with the Community Improvement Plan.


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Owner/Applicant
(initial)

The City acknowledges, confirms and agrees that the Owner shall be entitled to all rights and benefits arising under this Agreement including the right to receive Program Assistance notwithstanding the sale of the Land or any part thereof to a subsequent Owner provided the subsequent Owner has released to the Owner any and all right, title or interest which such subsequent Owner may have to Program Assistance as said right may arise under section 28 of the Planning Act or otherwise by reason only of such subsequent Owner having acquired title to the Land or part thereof.

The City further agrees that an executed acknowledgement by any such subsequent Owner or a statement or acknowledgement contained in any agreement of purchase and sale made between the Owner and any such subsequent Owner or an acknowledgement or covenant registered on title to the Land stating that the acquisition of title to the property being acquired by the registration of the transfer in the transferee's name shall constitute the transferee's deemed assignment of the rights to Program Assistance arising under this Agreement or any similar evidence of assignment or deemed assignment shall be sufficient for the purposes of confirming the release and assignment of any rights which any such subsequent Owner may have to any Program Assistance by reason only of such subsequent Owner having acquired title to the Land or a part thereof. Where the Owner ceases to own the Land for any reason and intends to assign the Program Assistance arising under this Agreement, the Owners shall be responsible to ensure for the proper assignment of said Program Assistance.

CITY'S REPRESENTATIONS / ACKNOWLEDGEMENTS:

17. The City makes no representations as to the condition, environmental or otherwise, of the Land and/or building(s) or the fitness of the Land and or building(s) for the proposed use(s).

CITY'S OBLIGATIONS AND RIGHTS:

18. The parties agree as follows:
- 18.1. The City, in accordance with the Planning Act and the TIERR Grant Program, agrees to provide Program Assistance to the Owner for the purpose of reimbursing the Owner for Actual Rehabilitation/Redevelopment Costs, provided that the Owner is in compliance with this Agreement, is eligible under the current requirements under the Act for receipt of Program Assistance and subject to, and in accordance with, the terms and provisions set out in this Agreement for calculating and paying in accordance with terms of this Agreement. The City cannot guarantee that a specific improvement will increase property assessment.
- 18.2. This Agreement does not diminish in any way the City's right and obligation to collect property taxes promptly under relevant legislation from the Owner of the Land and from all subsequent Owners and transferees of the Land or any part


City (initial)


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(initial)

thereof and all other fees and charges which may be applicable to the Land and for which the City is the responsible service provider.

18.3. For the purposes of administering this Agreement, the parties agree that:

- a) all Actual Rehabilitation/Redevelopment Costs shall be classified as those covered by the provisions of **Schedule "B-2"** of this agreement;
- b) upon receipt by the City of the documentation from the Owner relating to the Actual Rehabilitation/Redevelopment Costs, the City and/or its consultant shall review the Owner's submissions and assess the eligibility of the costs in accordance with subparagraph 18.3(a) hereof. The City shall, within thirty (30) days of receipt of the Owner's submission, give written notice to the Owner wherein the City either accepts, rejects or requests additional information from the Owner. A request for additional information shall detail the type or nature of the information required by the City and a rejection of the submission shall provide reasons and details for the rejection. In the event of a request for additional information, the City shall have a further period of thirty (30) days following the receipt of the additional information to assess the additional submissions as aforesaid and provide the Owner with its written notice of acceptance, rejection or request for additional information;
- c) where there is a dispute in the determination of eligible costs, as determined in subparagraph 18.3(b) hereof, the Owner may apply, in writing, within fifteen (15) days of notification of rejection of eligible costs. The parties shall make all reasonable efforts to resolve the dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate the negotiations. If the parties are unable to resolve the dispute, the matter shall be referred to the City Treasurer with appeal, if necessary, to Council for determination, which decision is final;
- d) the valuation of the Program Assistance shall be governed and determined on the basis of the increase in property assessment value over the Base Assessment resulting from the Work, as determined by MPAC;
- e) where there is a reduction in property assessment value due to reassessment, renovation or demolition, the City shall, in consultation with MPAC, have the right to determine a new incremental assessed value for use in the calculation of Program Assistance.

18.4 The Program Assistance, as applicable to the subject Land, will commence after receipt by the City from the Owner of all required documentation as established elsewhere in this Agreement, including **Schedule "A"** through **Schedule "B-3"**, inclusive, and to the extent that all Tax Liabilities and any other monies, regardless of origin, owed to the City by the Owner are not in arrears.


City (Initial)


Owner/Applicant
(initial)

- 18.5. In the event the Work is not completed, as demonstrated by completion of a final inspection for Building Permit, in accordance with the Action Plan the City shall not be obligated to pay the Program Assistance, or any portion thereof, notwithstanding that there may be an increase in assessed value of the Land until such time as a change to the TIERR Action Plan has been approved by the Chief Planning Officer.
- 18.6. Payments to the Owner, pursuant to this Agreement, shall be remitted within ninety (90) days after calendar year end taking into consideration:
- (a) that all tax liabilities owing have been paid in full;
 - (b) that all monies directly associated with the subject land, regardless of origin, owed to the City by the Owner are not in arrears;
 - (c) any rebates received by the Owner in regard to municipal realty tax; and
 - (d) that total Program Assistance does not exceed total eligible costs.

Should the Owner obtain any reduction in regard to municipal realty tax, including an appeal, after the Owner has received its annual Program Assistance, the Owner shall be liable to repay to the City within forty-five (45) days, the amount equal to the reduction of the Tax Liability.

19. The protocols for the TIERR Grant Program are governed by the Terms and Conditions of this Agreement.

DEFAULT AND REMEDIES:

20. The Owner shall be in default of this Agreement where the Owner fails to materially comply with any of its obligations or requirements as established in this Agreement. Without limiting the generality of the foregoing, the Owner shall be deemed to be in default where the Owner:
- 20.1. fails to pay and keep in good standing all Tax Liabilities which are payable by the Owner;
 - 20.2. misrepresents any fact, representation or warranty made by the Owner or said fact, representation or warranty as stated by the Owner is incorrect in any material respect;
 - 20.3. fails to perform or comply with any of the obligations contained in this Agreement;
 - 20.4. the Owner makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect to their own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of


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(initial)

bankrupt or insolvent debtors, or if a receiving order is made against the Owner, or if the Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Owner under any mortgage or other obligation, or if the Land or interest of the Owner in the Land becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;

- 20.5. willfully defaults in a material way in the payment of monies to any contractor, supplier, or creditor who has undertaken the Work that is subject of this Agreement unless the non payment to such contractor, supplier or creditor results from the breach of the contractor, supplier or creditor's obligation to the Owner or the Owner has a legitimate claim for holdback or set off against such contractor, supplier or creditor;
- 20.6. cannot be contacted by the City over a period of time greater than one (1) calendar year.
21. Where the Owner is in material default of this Agreement, the City shall provide Notice of the Default to the Owner. The Owner shall have sixty (60) days to remedy the default to the satisfaction of the City or to the extent the default cannot be remedied within the said sixty (60) day period, to commence and diligently pursue remedial action. Where the default is not remedied to the satisfaction of the City, the City may exercise any remedy available at law and pursuant to this Agreement. Without limiting the generality of the foregoing, the City may:
- 21.1. delay any Program Assistance;
- 21.2. cancel any or all future Program Assistance;
- 21.3. audit the information provided by the Owner to the City and any other information deemed relevant by the City to investigate the Default and the Owner hereby agrees to provide all requested information in a timely fashion and to pay all costs of the audit;
- 21.4. only in the event of a material misrepresentation require that the Owner repay all or any part of the Program Assistance already provided to the Owner but only to the extent of the amount of the Program Assistance advanced, based upon such material misrepresentation but not otherwise; and
- 21.5. terminate this Agreement.

INDEMNITY:

22. In the event that, as a result of the City exercising any of its remedies pursuant to this Agreement, the Program Assistance ceases or is delayed, the Owner agrees that notwithstanding any costs or expenses incurred by the Owner, the Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the


City (initial)


Owner/Applicant
(initial)

City and that the City is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the lapse of time (if any) where the City is exercising its rights herein.

23. The Owner shall indemnify, save, defend and keep harmless from time to time and at all times, the City and its officers, employees, councilors, 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 any failure by the Owner to fulfill its obligations under this Agreement.
24. The indemnities contained in sections 22 and 23 shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

NOTICES:

25. Any notice required to be given by either party to the other shall be given in writing and delivered in person or prepaid first class mail to:

- a) in the case of the City of Brockville to:

City of Brockville
One King Street
P.O. Box 5000
Brockville, ON K6V 7A5

Attention: City Clerk

- b) in the case of the Owner to:

CONTACT METHOD	
Contact Name:	The Wedgewood Brockville Inc.
Mailing Address:	1634 Landel Drive Ottawa, Ontario K2W 1C2 Attention: Mr. M. Duthie Mrs. S. Duthie
Telephone	613-342-9800
Cell	613-302-7301
Facsimile	613-839-0300
E-Mail	sduthie@retirementresidence.com


City (initial)


Owner/Applicant
(initial)

GENERAL PROVISIONS:

26. As hereinafter set out below, the following Schedules are attached to, and form part of, this Agreement:

Schedule "A" Description of Land:

Schedule "B-1" TIERR - Action Plan:

Schedule "B-2" TIERR - Eligible Costs:

Schedule "B-3" TIERR - Certified Costs:

27. Except where expressly stated in the Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless issued in writing. Where the City elects to waive certain rights under this Agreement it does not by implication give up any other rights and the City expressly reserves any and all such additional rights, notwithstanding any waiver.
28. Words importing the singular shall include the plural and words importing corporations shall include persons. Each obligation of the Owner and the City in this Agreement, although not expressed as a covenant, is considered to be a covenant for all purposes. The Article and Section headings of this Agreement form no part hereof and are inserted for convenience only. If any Section, Article, paragraph, sub-paragraph, clause or sub-clause in this Agreement is held invalid or unenforceable by any court of competent jurisdiction, this Agreement shall be interpreted as if such Section, Article, paragraph, sub-paragraph, clause or sub-clause has not been part of this Agreement.

IN WITNESS WHEREOF the parties duly execute this Agreement:

This Agreement shall be binding upon the parties and their heirs, executors, successors and assigns.

Dated at the City of Brockville this 12th day of November, 2009

S. Duthie V.P. Operations
(Name and Position - PRINT)

The Wedgewood Brockville Inc.
(Owner / Company Name - PRINT AND SEAL)


(Signature of Applicant)


City (Initial)

Owner/Applicant
(Initial)

(Name and Position - PRINT)

(Owner / Company Name – PRINT AND SEAL)

(Signature of Applicant)

I am the Owner / I have authority to bind the Corporation

Dated at the City of Brockville this 21th day of Nov, 2009

David Henderson
Mayor – (PRINT)

David Henderson
Signature of Mayor

Sandra M Seale
Municipal Clerk – (PRINT)

Sandra M Seale
Signature of Municipal Clerk

[Signature]
City (initial)

[Signature]
Owner/Applicant
(initial)

SCHEDULE "A"

(Legal Description, PIN and Municipal Address of Subject Land)

Municipal Address: 15 Market Street East, City of Brockville


Pin No.:

Legal Description:

A Parcel in the City of Brockville, in the County of Leeds, being composed of Lots 8, 9, 99 and 100, and Part Lot 10, Block 10, Compiled Plan No. 67, designated as Parts 1, 2 and 3 on Reference Plan 28R-9693.

Together with a right-of-way over that portion of Lot 10, Block 10, Compiled Plan No. 67, designated as Part 8 on Reference Plan 28R-9693 per Instrument No. 257681.


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(initial)

SCHEDULE "B-1"

TIERR - ACTION PLAN

NATURE / TYPE OF WORK	DETAILED DESCRIPTION OF WORK	ESTIMATED COST
Construction of a new 109 unit retirement residence	Construction of a new 109 unit retirement residence on vacant land, including full municipal servicing and site improvements.	\$18,000,000.00
Subtotal		\$18,000,000.00
TOTAL COSTS, ESTIMATED		\$18,000,000.00

Note: Please attach additional information should the above table be insufficient.


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SCHEDULE "B-2"

TIERR - ELIGIBLE COSTS

The cost to remediate and redevelop the Land may include, but not limited to, the following classes of costs:

Type of Cost	Description	Percentage of Cost Eligible under TIERR Grant Program
Excavation	Excavation of site	100%
Fill and Grading	Placement of clean fill and grading	100%
Demolition	Demolition of existing building(s) or elements thereof	At the discretion of Council
Construction	Materials, supplies, contracted services, labour	100%
Engineering Design (drawings, rendering, structural design, etc.)	Contracted price only	100%
Tipping Fees		100%
Parking improvements		100%
Municipal service connection/replacement		100%
Bell, Hydro, Cable installation, communications hook-up		100%
Landscaping		100%


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(initial)

SCHEDULE "B-3"

TIERR – CERTIFIED COSTS

	DETAILED DESCRIPTION OF WORK	CERTIFIED COST (Receipts, Progress Certificates or Notarized)
BUILDING PERMIT NO. 2006-0251	Construct retirement residence with main floor commercial component.	
Date of Issuance: 08 August 2006		
Estimated Date of Completion September 2007		
BUILDING PERMIT NO. 2007-0247	Install eight (8) maglocks on doors throughout the building.	
Date of Issuance: 18 October 2007		
Estimated Date of Completion November 2007		
Subtotal		\$17,433,384.83
TOTAL COSTS, ACTUAL		\$17,433,384.83
Note: 1. Actual costs for small jobs may be witnessed by Actual receipts or notarized costs. Actual costs for contracted jobs may be in the form of progress certificate(s) issued by a qualified professional. 2. Should more than one Building Permit be issued, information applicable to each Building Permit is to be included in Schedule B-3.		


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(initial)

The Wedgewood Brockville Inc.

Downtown CIP
15 Market Street East
Brockville, Ontario

Roll No. 0802 020 035 07400 0000

Revised November 11, 2009

Eligible Costs under Downtown CIP

\$ 17,433,384.83

Letter of Intent:

24-Oct-06

MPAC Assessment Change Effective Date: 1-Jun-08

Invoice Date	Invoice Number	Supplier	Invoice Total	Construction	Explanation	Value of work performed and products delivered to end of period
13-Oct-06	1002041	Daoust Construction	390,538.57	390,538.57	to period ending Sept 30 06	390,538.57 (a)
17-Nov-06	1002051	Daoust Construction	-	-	to period ending Oct 31 06	826,421.33 (b)
6-Dec-06	1002061	Daoust Construction	-	-	to period ending Nov 30 06	1,617,482.81 (c)
5-Feb-08	1002201	Daoust Construction	-	-	to period ending Dec 31 07	15,772,993.50 (d)
25-Mar-08	1002211	Daoust Construction	-	-	to period ending Jan 31 08	16,843,896.60 (e)
17-Apr-08	1002221	Daoust Construction	-	-	to period ending Feb 28 08	17,589,234.25 (f)
2-May-08	1002231	Daoust Construction	-	-	to period ending Mar 31 08	17,798,533.34 (g)
8-May-08	1002241	Daoust Construction	-	-	holdback release	18,135,268.23 (h)
27-May-08	1002251	Daoust Construction	18,135,268.23	18,135,268.23	to period ending April 30 08	18,135,268.23 (i)

Eligible Costs with Supporting Invoices \$ 17,433,384.83

Calculation Formula : I - b + pro-rate for October 24-31 2006

Pro-rate formula = [(b-a) X est 6 days worked / 21 working days]

Construction costs as per Gordon Armstrong & Associates (May 7, 2008) \$ 17,747,149.00

Less in-eligible expenses:

Soft landscaping costs	5,000.00
Corner guards	4,660.00
Signage	2,899.00
Staff lockers	3,169.00
Mail box fixture	18,959.00
	\$ 17,728,190.00

Estimated Eligible Costs without Supporting Invoices
as per G. Armstrong's Construction Cost Summary --
Report No. 20 May 7, 2008

NOTE: Difference between Eligible Costs with Supporting Invoices and Estimate Eligible Costs with Supporting Invoices as per G. Armstrong's Construction Cost Summary - Report No. 20, May 7, 2008 may pertain to costs incurred prior to the Letter of Intent date

Affidavit of Sarbjit Duthie

In the matter of Tax Increment Equivalent for Rehabilitation and Redevelopment Grant Program (TIERR), the commitment and grant agreement as entered into by the City of Brockville and The Wedgewood Brockville.

I, Sarbjit Duthie, on behalf of The Wedgewood Brockville Inc make the following statements and believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada Evidence Act.

1. The Wedgewood Brockville Inc is a corporation and is in good standing under the Business Corporation Act.
2. The Wedgewood Brockville Inc is the registered owner of the land located within the Downtown Community Improvement Project Area with the municipal address of 15 Market Street East, Brockville, Ontario, K6V 0A6.
3. The Wedgewood Brockville Inc has no construction liens or other claims that have been registered and remain registered against title to the Land.

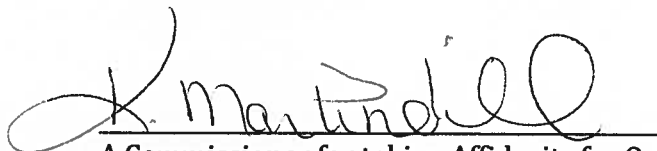
I have read the above statements and I understand and declare that the statements are true. I am a principal of the company and do have authority to bind the corporation.

Sworn before me at the City of Brockville, in the Province of Ontario on on this 12th day of November, 2009



Sarbjit Duthie – Wedgewood Brockville Inc.

I do have authority to bind the corporation



A Commissioner for taking Affidavits for Ontario

Karen Martindill, a Commissioner, etc.,
United Counties of Leeds & Grenville,
for the Corporation of the City of Brockville.
Expires Oct. 10, 2012.

Affidavit of Sarbjit Duthie

In the matter of Tax Increment Equivalent for Rehabilitation and Redevelopment Grant Program (TIERR), the commitment and grant agreement as entered into by the City of Brockville and The Wedgewood Brockville.

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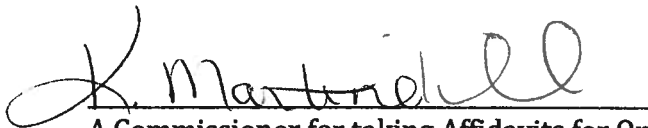
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I have read the above statements and I understand and declare that the statements are true. I am a principal of the company and do have authority to bind the corporation.

Sworn before me at the City of Brockville, in the Province of Ontario on on this 12th day of November, 2009



Sarbjit Duthie - Wedgewood Brockville Inc.
I do have authority to bind the corporation



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