

**THE CORPORATION OF THE CITY OF BROCKVILLE**  
**By-law No. 084-2010**

*By-law to Authorize the Execution of a Brownfields Redevelopment Funding Agreement  
(Tall Ships Landing Developments Inc., 6 Broad Street and 10 Saint Andrew Street, City  
of Brockville)  
(TIERR/BRWFLD-01/07, Report 2007-210-11)*

---

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

WHEREAS the City of Brockville has adopted a Brownfields Community Improvement Plan by By-law 050-2007 pursuant to the Community Improvement provisions of the Planning Act;

WHEREAS the subject lands are located within the amended Brownfields Redevelopment Priority Area "1", as amended by By-law 009-2009, which land is described in Schedule "A" of this Agreement (hereinafter referred to as the "Land");

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 Brownfields Redevelopment Funding Agreement with Tall Ships Landing Developments Inc. respecting lands described as:


A Parcel in the City of Brockville, County of Leeds, being composed of:

- Firstly: Lots 27-30, Block 29, Plan 67, Water Lot in the St. Lawrence River opposite Lt 27 & 28, Block 29, Plan 67; Water Lot in the St. Lawrence River opposite Lot 29, Block 29, Plan 67; Water Lot in the St. Lawrence River opposite Lot 44, Block 29, Plan 67; Water Lot in the St. Lawrence River opposite Lot 45, Block 29, Plan 67; Part of St. Andrews St, Plan 67, Closed by BR21477, as in LR203700, subject to interest in LR203700 [PIN 44163-0094];
- Secondly: Part of the Bed of the St. Lawrence River in Leeds County, designated as Part 1, Plan 28R-5555 [PIN 44163-0124]; and
- Thirdly: Part of the Bed of the St. Lawrence River in Leeds County, designated as Part 1, Plan 28R-12709 [PIN 44163-0136], Brockville (the "Lands")

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 Brownfields Redevelopment Funding Agreement with Tall Ships Landing Developments Inc.
2. THAT the effective date of the Brownfields Redevelopment Funding Agreement with Tall Ships Landing Developments Inc. shall be 27 November 2007
2. THAT Schedule "A", Brownfields Redevelopment Funding Agreement, 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 23<sup>rd</sup> day of November, 2010

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK

SCHEDULE 1 TO REPORT 2007-210-11



**BROCKVILLE**  
**CITY OF THE 1000 ISLANDS**

**BROWNFIELDS REDEVELOPMENT FUNDING  
AGREEMENT  
TALL SHIPS LANDING DEVELOPMENTS INC. REPORT 2007-210-12**

Application No. \_\_\_\_\_

**THIS BROWNFIELDS REDEVELOPMENT FUNDING AGREEMENT** is made at the City of Brockville this 27th day of November, 2007.

**BETWEEN:**

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

And

**TALL SHIPS LANDING DEVELOPMENTS INC.**  
(hereinafter referred to as the "Owner")

**RECITALS:**

**WHEREAS** the City of Brockville has adopted a Brownfields Community Improvement Plan (hereinafter referred to as "CIP Brownfields") pursuant to the Community Improvement provisions of the Planning Act;

**AND 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;

**AND WHEREAS** the Owner is or is about to become the registered Owner of land located within both the Brownfields Redevelopment Priority Area "1" and the Downtown Community Improvement Project Area, which lands are described in Schedule "A" of this Agreement (hereinafter referred to as the "Lands");

A handwritten signature in the bottom right corner of the page, appearing to be 'J. Bar'.

**AND WHEREAS** the City of Brockville has adopted policies requiring the integration of the CIP Brownfields and CIP Downtown as outlined in Sections 3.2 and 7.0 of the Brownfields Community Improvement Plan;

**AND WHEREAS** for purposes of this Agreement these integrated Community Improvement Plans will be referred to as the Blended CIPs;

**AND WHEREAS** the Owner has applied to the City for Program Assistance as provided for in the Blended CIPs;

**AND WHEREAS** as a condition of approval for Program Assistance under the Blended CIPs, the Owner is required by the City to enter into this Agreement;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT**, in consideration of:

- (i) the premises, covenants and Agreements to be observed, fulfilled and performed pursuant to this Agreement; and
- (ii) the Owner's application for Program Assistance 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 Costs" means the actual costs to rehabilitate and develop the Lands, proven by the Owner to have been expended, and which are eligible for Program Assistance which for the purpose of this Agreement shall include the costs incurred by the Owner since the Owner's filing of the Brownfields-Notice of Intent;
  - 1.2. "Base Tax – Education" means the education portion of the tax bill immediately prior to the commencement of the Remediation Works;
  - 1.3. "Base Tax - Municipal" means the municipal portion of the tax bill immediately prior to the commencement of the Remediation Works;
  - 1.4. "Blended CIPs" means the integration of the CIP Brownfields and the CIP Downtown, with the provisions and specified limits of the CIP Brownfields taking precedence over the CIP Downtown except as may otherwise be provided in this Agreement;
  - 1.5. "Brownfields Assistance" means all of the following programs, or any combination thereof, as authorized by the CIP Brownfields or the CIP Downtown: ESA Study Grant, Building Permit Fees Grant, the Brownfields Remediation Tax-Increment Equivalent Grant, and Environmental Remediation Tax Cancellation Grant;



- 1.6. "Brownfields Financial Tax Incentive Program (BFTIP)" means a financing tool established under the authority of section 365.1 of the *Municipal Act, 2001* that allows municipalities to provide property tax assistance to landowners as an incentive for environmental remediation. The Minister of Finance can also approve matching education property tax assistance for eligible properties under this program;
- 1.7. "Brownfields Rehabilitation Eligible Costs" means only the types of costs listed in Schedule "C" for which the Owner may be entitled to Brownfields Assistance from the City pursuant to this Agreement;
- 1.8. "Brownfields Remedial Action Plan" means Remediation Works and any Risk Management Plan developed for the Lands.
- 1.9. "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;
- 1.10. "CIP Downtown" means the Community Improvement Plan for Downtown Brockville approved by City Council and adopted by By-Law No. 052-2007;
- 1.11. "City" means the Corporation of the City of Brockville;
- 1.12. "Downtown Rehabilitation Eligible Costs" means eligible costs under CIP Downtown including costs related to development, redevelopment, construction and reconstruction on lands and buildings and exclude all types of Brownfields Rehabilitation Eligible Costs;
- 1.13. "Lands" means the properties known municipally as 6 Broad Street, 10 St. Andrew Street, Brockville, and as more particularly described in Schedule "A" to this Agreement or the same or such portion thereof as may be configured and result from the declaration of a condominium or condominium corporations in respect thereof;
- 1.14. "Owner" means Tall Ships Landing Developments 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 Lands 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;
- 1.15. "Program Assistance" means financial assistance from any or all of the programs contained in and provided for by the Blended CIPs;
- 1.16. "Program Assistance Term" within each phase of the development means a period of ten (10) years for each separate roll number which has an occupancy permit issued by the City and a new Municipal Property Assessment Corporation (MPAC) assessment reflecting the value of the said condominium unit, computed from the date the MPAC assessment becomes effective;

A handwritten signature in black ink, appearing to read "J. Bak" or similar, located in the bottom right corner of the page.

- 1.17. "Record of Site Condition" means a Record of Site Condition (RSC) as defined in Ontario Regulation 153/04;
- 1.18. "Remediation Works" means the collective works necessary to obtain the Record(s) of Site Condition to permit development of the Lands or portions thereof and to reduce or eliminate the level of contamination on, in or under the Lands (including surface and ground water) relating to the Lands or portions thereof being developed including all works required as a follow up or condition of issuing a Record of Site Condition;
- 1.19. "Risk Assessment" means site investigation and other actions undertaken by a qualified person for risk assessment in accordance with the Ministry of the Environment ("MoE") guideline entitled "Procedures for the use of Risk Assessment under Part XV.1 of the Environmental Protection Act";
- 1.20. "Risk Management Plan" – refers to measures to manage or limit the movement of contaminant or limit the potential for receptors to be exposed to contaminants, as more fully described in section 7.8 of MoE guideline entitled "Records of Site Condition – A Guide on Site Assessment, the Clean-up of Brownfield Sites and the Filing of Records of Site Conditions";
- 1.21. "Subsequent Owner" means a registered owner from time to time of a condominium unit in the Tall Ships Landing development who has acquired title thereto from either the Owner or a Subsequent Owner;
- 1.22. "Tax Assistance" means the cancellation of Tax Increments - Municipal levied on the Lands, and may also include the deferral and cancellation of the Tax Increments - Education portion of property taxes levied on the Lands pursuant to section 365.1 of the Municipal Act;
- 1.23. "Tax Increment – Education" means the increase in education property taxes realized on the Lands, or such portion thereof, that result from the rehabilitation and/or redevelopment of the Lands, or such portion thereof, as the case may be.

The Tax Increment – Education shall be calculated as the difference between the Base Tax – Education and the Tax Liability – Education during each respective year of the Program Assistance term.

The increment will be calculated as being net of any rebates on education property tax resulting from any source whatsoever. This shall include rebates applicable to those portions of a property which are vacant as well as any other applicable rebate such as, but not solely limited to, occupancy of space by charitable and other not-for-profit organizations.

- 1.24. "Tax Increment - Municipal" means the increase in municipal property taxes realized on the Lands or such portion thereof that result from the rehabilitation and/or redevelopment of the Lands or such portion thereof as the case may be.

The Tax Increment – Municipal shall be calculated as the difference between the Base Tax – Municipal and the Tax Liability – Municipal 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 rebates applicable to those portions of a property which are vacant as well as any other applicable rebate such as, but not solely limited to, occupancy of space by charitable and other not-for-profit organizations;

- 1.25. "Tax Liability - Education" means the education portion of the annual real property taxes as levied by the City of Brockville as required by the Province of Ontario. The education rates are set by the Ministry of Finance;
- 1.26. "Tax Liability - Municipal" means the municipal portion of the annual real property taxes as levied by the City of Brockville;

## **COMMENCEMENT AND TERMINATION**

2. The parties agree as follows:
  - 2.1. This Agreement shall commence 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:
    - (i) payment to the Owner of an amount equal to the maximum assistance permissible under the Blended CIPs; or
    - (ii) the date this Agreement is terminated by the City in the event of the Owner's default under paragraph 42 of this Agreement; or
    - (iii) 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 Lands;
  - 3.2. 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;
  - 3.3. 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;
  - 3.4. in the case of accessing Brownfields Assistance under CIP Brownfields, the Lands are contaminated and must be rehabilitated in order to permit redevelopment thereof; and

- 3.5. it has not as of the date of this Agreement applied for or received any other grants or assistance for Actual Rehabilitation Costs from any other government, agency or other funding source, including other City programs not described or referred to in this 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 and/or development of the Lands 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 Lands;
  - 4.2. nothing in this Agreement limits or fetters the City in exercising its statutory jurisdiction under the Planning Act or under any other legislative authority or by-law;
  - 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 Lands for compliance or noncompliance or to provide an opinion respecting any condition of rehabilitation; 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 Lands with applicable environmental laws, regulations, policies, standards, permits or approvals, or other by-laws and policies of the City.
- 5.1. The Owner agrees to file separate Records of Site Condition in respect to each phase of the Owner's development of the Lands prior to proceeding with same and to deliver copies thereof to the City and its subsequent acknowledgement by MoE as a condition precedent to the City issuing a building permit in respect to the phase being developed. Each Record of Site Condition shall demonstrate that the approved use of the relevant portion of the Lands pursuant to MoE requirements is appropriate.
- 5.2. The City and Developer acknowledge that Schedule "D" represents the proposed Brownfields Remedial Action Plan of the subject Lands. The parties agree that should Schedule "D" need to be altered, the City will not unreasonably withhold its approval of the necessary alterations.
- 5.3. The Owner agrees to develop the Lands in conformity with any zoning by-law approved by the City and Site Plan Agreement entered into between the City and the Owner.
6. 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.



7. The provisions of paragraph 6 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.
8. The Owner agrees that the redevelopment, including improvements made to buildings and/or land, shall be made in compliance with all required Building Permits, and constructed in accordance with the Ontario Building Code Act 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.
9. The Owner hereby confirms its intention to commence the Remediation Works upon the Lands upon execution of this Agreement.
10. The Owner shall provide the City with documentation satisfactory to the City as to the amount of the Actual Rehabilitation Costs incurred by the Owner.
11. The Owner grants to the City and its agents a license to enter the Lands at any reasonable time for the purpose of conducting an inspection of all works 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.
12. The Owner will provide to the City a report or reports throughout the term of this Agreement of the status of the rehabilitation and development, including, but not limited to:
  - 12.1. the existing environmental contamination known to be present on the Lands (City hereby confirms receipt thereof);
  - 12.2. the status of the Brownfields Remedial Action Plan;
  - 12.3. the status of the proposed above and below grade development of the site;
  - 12.4. to the extent that the project is eligible for BFTIP, the Owner will confirm that it is the owner of the property entitled to receive the benefit of the BFTIP program;
  - 12.5. the amount owing to any contractor for unpaid sums relating to the Remediation Work or any part thereof undertaken by such contractor upon the Lands or such portions thereof as applicable;
  - 12.6. the amount of holdbacks currently retained by the Owner under any contract with contractors who have undertaken the Remediation Work or any part thereof;
  - 12.7. the status of any actions required under a Risk Management Plan developed as a result of a Risk Assessment which has been conducted by the Owner and accepted by the MoE;
  - 12.8. each annual report shall be provided within ten (10) days of the anniversary of the commencement of work related to Actual Rehabilitation Costs;

A handwritten signature in black ink, appearing to be 'J. Park' or similar, located in the bottom right corner of the page.

- 12.9. an annual statement of financing costs associated with Remediation Works for the Lands, undertaken during the previous twelve (12) month period;
- 12.10. the amount of legal and consultants costs incurred in respect to Remediation Works and filing of materials with the MoE; and
- 12.11. documentation establishing Actual Remediation 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.
13. As a condition of commencement of a Program Assistance Term for each phase of the development, 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 and remain registered against title to the Lands in respect to contracted work to remediate and develop the Lands. To the extent liens are registered, the Owner shall be permitted to remove same by posting of the appropriate security pursuant to the Construction Lien Act of Ontario.
14. The Owner shall ensure that during its ownership of the Lands or such part thereof as may be retained by the Owner from time to time, the Lands shall be maintained in its remediated condition and is not further contaminated during the term of the Agreement. For greater certainty, the Owner shall be relieved of any obligation pursuant to this section subsequent to the Owner's conveyance of the Lands or such portion thereof as applicable to a third party purchaser.
15. 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 a director or officer of the Owner certifying to the City that:
- 15.1. the Owner named in this Agreement is or was the registered owner in fee simple of the Lands when the Actual Rehabilitation Costs were incurred and was in ownership, possession and control of the Lands and that mortgagees have not taken possession of the lands or taken steps to take over the Lands;
- 15.2. the Owner is in compliance with the terms of this Agreement;
- 15.3. the Owner is a corporation in good standing;
- 15.4. the Owner has properly authorized this Agreement and passed all required resolutions and by-laws for that purpose.
16. The Owner shall register this Agreement on title to the Lands on the later of (i) approval and execution of this Agreement by both parties or (ii) following registration of the transfer whereby the Owner acquires the fee simple title to the Lands.
17. The Owner covenants to the City that where the ownership of part or all of the Lands 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.

18. The Owner acknowledges and agrees that the City is required to provide Program Assistance only to the "registered owner" or "assessed owner" of the Lands in accordance with the provisions of section 28(7) of the Planning Act, as disclosed on title and to any person to whom such owner has assigned the right to receive a grant to pay for the whole or any part of the cost of rehabilitating lands and buildings in conformity with a community improvement plan. 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 all Program Assistance notwithstanding the sale of the Lands 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 the 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 Lands 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 Lands 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 the 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 Lands or a part thereof. Where the Owner ceases to own the Lands for any reason and intends to assign the Program Assistance arising under this Agreement, the Owner's shall be responsible to ensure for the proper assignment of said Program Assistance. The City is aware of the Owner's intended development of the Lands in phases and creation of condominium units thereon and the sale of said condominium units to third party purchasers and that notwithstanding such sales or the re-sale by any third party purchaser, it is the intention of the Owner to receive the full benefit of the Program Assistance. Accordingly, the City shall use its best reasonable efforts to make all Program Assistance payments to the Owner unless the City has received an actual notice of an assignment of the Owner's rights arising under this Agreement.
19. Where all or a portion of the Lands are sold by the Owner with the intention that such purchaser shall undertake Remediation Work upon that portion of the Lands sold to such purchaser and enjoy the benefit of the Program Assistance or such portion thereof as the Owner and the purchaser may agree in respect to the Remediation Works and/or Actual Rehabilitation Cost incurred by such purchaser, the Owner agrees to obtain from such purchaser an agreement whereby such purchaser shall assume all of the Owner's obligations pursuant to this Agreement with respect to all or a portion of the Lands being purchased by such purchaser, failing which the Owner shall continue to be bound by this Agreement, notwithstanding that it may not be entitled to receive any Program Assistance in respect to the Lands or that portion of the Lands sold to such purchaser. The Owner further acknowledges that any default of this Agreement by such purchaser, in the absence of a valid assignment of this Agreement to such purchaser, shall entitle the City to seek remedies under this Agreement as against the Owner; provided that should the Owner obtain a valid assignment and assumption agreement, default by such purchaser shall not constitute default by the Owner under this Agreement.

20. Subject to the provisions of paragraph 19 above and/or the provisions set out in the assignment and assumption agreement made between the Owner and a purchaser who will assume the obligation to carry out Remediation Work upon the Lands or that portion of the Lands acquired by such purchaser, the Owner agrees that in the event of a sale of a portion of the Lands and absence of governing provisions set out in the assignment and assumption agreement as aforesaid, the Program Assistance shall be apportioned between the purchaser and the Owner on the basis of the proportion of the Lands sold in relation to the portion of the Lands to be retained. The apportionment shall be as agreed to between the Owner and purchaser. For greater certainty, the provisions of this paragraph 20 do not apply to the sale by the Owner to a Subsequent Owner acquiring title to a residential unit or commercial unit created by the declaration of a condominium corporation in respect to the Lands or such part thereof as applicable and/or in respect of which an acknowledgement and assignment as contemplated by the provisions of paragraph 19 has been obtained nor inhibit the rolling over of unpaid Actual Rehabilitation Costs.

**21. CITY'S REPRESENTATIONS/ACKNOWLEDGEMENTS:**

- 21.1 The City makes no representations as to the environmental condition of the Lands or the fitness of the Lands for the proposed use.
- 21.2 Given that the subject Lands will be rehabilitated/redeveloped in three (3) distinct phases, the City of Brockville will consider each major phase as a separate project. In so doing, the Owner will be eligible for Program Assistance as outlined herein for each of the three (3) phases. Furthermore, but subject to the provisions of clause 44 of this Agreement, any unpaid Brownfields Rehabilitation Eligible Costs from each phase can be transferred from one phase to a subsequent phase. The parties will subsequently agree on appropriate delineation of the geographic boundaries of each Record of Site Condition (RSC) for purposes of implementing the program. There will be no requirement for severance of the Lands for each phase in order to implement and permit the Owner to enjoy the benefits of the Program Assistance.

**22. CITY'S OBLIGATIONS AND RIGHTS:**

- 22.1. The City, in accordance with the Planning Act and the Blended CIPs, agrees to provide Program Assistance to the Owner for the purpose of reimbursing the Owner for Actual Rehabilitation 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 or cancellation in accordance with terms of this Agreement. The City cannot guarantee that the aggregate amount of funding available under this Agreement will be sufficient to pay for all of the Actual Rehabilitation Costs.
- 22.2. 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 Lands and from all subsequent owners and transferees of the Lands or any part thereof and all other fees and charges which may be applicable to the Lands and for which the City is the responsible service provider.

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

- (a) all Actual Rehabilitation Costs may only be classified as one of Brownfields Rehabilitation Eligible Costs or Downtown Rehabilitation Eligible Costs and if a type of Actual Rehabilitation Cost or a portion thereof qualifies and falls within the definition of either Brownfields Rehabilitation Eligible Costs or Downtown Rehabilitation Eligible Costs, it will be deemed to be solely covered by the provisions of Schedule "C" of this Agreement;
- (b) the valuation of the Actual Rehabilitation Costs shall be governed and arrived at on the basis of the valuations set out in Schedule "E" attached;
- (c) upon receipt by the City of the documentation from the Owner relating to the Actual Rehabilitation Costs, the City and/or its consultant shall review the Owner's submissions and assess the eligibility of the costs, appropriateness of classification of the costs in accordance with subparagraph 22.3(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;
- (d) if the City gives notice to the Owner of its rejection or partial rejection of the Owner's request for payment of Actual Rehabilitation Costs (the "Rejection Notice"), the Owner shall be conclusively deemed to have accepted the determination of the City in respect to the elements of cost detailed in the Rejection Notice and have waived and released the City from any claims in respect thereof unless within fifteen (15) days after receipt of the Rejection Notice, the Owner sends a notice in writing of dispute to the City (the "Dispute Notice");
- (e) if the Owner delivers a Dispute Notice, 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 subject matter of the Dispute Notice, the matter shall be referred to the City Treasurer with appeal, if necessary to Council for determination;
- (f) nothing herein shall prevent the Owner from commencing legal proceedings or taking such other steps as it deems appropriate against the City should the Owner be dissatisfied with the City's determination of the matter which has been the subject of a Dispute Notice or the City's

actions or administration of the Program Assistance under this Agreement.

- 22.4. The City may appoint a consultant to inspect the Lands and all work conducted thereon by the Owner at a frequency to be determined by the City and provide the City with a report or reports as to the costs incurred which are eligible for Actual Rehabilitation Costs.
- 22.5. Program Assistance will commence after receipt by the City from the Owner of all required documentation as established elsewhere in this Agreement and only to the extent that Tax Liabilities – Municipal, Education and any other applicable levies are not in arrears.
- 22.6. In the event the Lands are rehabilitated but construction of improvements thereon is not completed; the City shall not be obligated to pay the Tax-Increment Equivalent Grant or any portion thereof, notwithstanding that there may be an increase in assessed value of the Lands.
- 22.7. In the event there is an appeal of an assessment which results in reduction in Tax Liability – Education or Tax Liability - Municipal, the City shall be entitled to make an adjustment to any subsequent payment of the Program Assistance payable to the Owner. Furthermore, to the extent an appeal of an assessment resulting in reduction in Tax Liability – Education or Tax Liability – Municipal is made following the end of the term of this Agreement then the Owner shall be liable to repay to the City within forty five (45) days of the date of demand (supported by sufficient documentation to evidence the Owner's obligation to repay) an amount equal to the reduction of the Tax Liability resulting from such appeal.
- 22.8. The City will provide statements , within 30 days of delivery of tax bills to the Owner of taxes levied against the Lands (including all portions thereof which are the subject of a separate assessment and tax roll) during the term of this Agreement. Payments to the Owner pursuant to this Agreement shall be remitted within sixty (60) days after any tax due date based upon the actual municipal tax monies received to that date, it being agreed that the City shall make additional installments to the Owner should the City be in receipt of substantive municipal tax monies subsequent to the aforesaid payment dates
- 22.9 The parties agree that if there is a conflict between the CIP Brownfields and the CIP Downtown, the CIP Brownfields shall govern save and except as otherwise provided for in this Agreement. Furthermore, if there is a conflict between either the CIP Brownfields and/or CIP Downtown and the provisions of this Agreement, the provisions of this Agreement shall govern.

#### **APPLICATION OF BROWNFIELD FUNDING PROGRAM TO THE LANDS**

- 23. The City confirms that each of the three (3) phases of the Owner's project as outlined in Schedule "B" are eligible without further application for the CIP Brownfields programs as more particularly detailed below.

Handwritten signature and initials, possibly "JER" or "JER" with a flourish.

- 23.1 The total value of Program Assistance shall be reduced by the amount equal to unpaid taxes owing by the Owner during its ownership of the Lands or any portion thereof. For greater certainty, any tax arrears owing by third party purchaser of the residential or commercial units created by the registration of a condominium corporation or condominium corporations upon the Lands shall not reduce the Program Assistance available to the Owner. Upon collection of tax arrears owing by the Owner as aforesaid, the City will provide the Owner with withheld Program Assistance.
- 23.2 The protocols for Program Assistance are governed by the terms and provisions of this Agreement, as illustrated in Schedule "B".

### **CIP BROWNFIELDS PROGRAMS:**

#### **PROGRAM 1: TAX-INCREMENT EQUIVALENT GRANT:**

24. The Provisions of Program 1 – Brownfield – Tax Increment Equivalent Grant are set out in the CIP Brownfields and in this Agreement.
25. The Municipal Tax Increment Grant Program pursuant to Section 28 of the Planning Act and referred to as Program 1 of the CIP Brownfields is subject to the detailed protocols as contained in the CIP Brownfields.
26. The Base Tax - Municipal includes the Municipal portion only and will be fixed and held constant and will not be subject to an escalation over the duration of the term of the program.
27. The parties recognize and anticipate that, as of the commencement of Program 1 assistance, Brownfield Rehabilitation Eligible Costs will have been incurred and the extent of these costs verified and accepted, with or without adjustment, by the City.

#### **PROGRAM 2: TEMPORARY TAX CANCELLATION ASSISTANCE PROGRAM**

28. Provisions of Program 2 – Tax Cancellation ("BFTIP") are set out in the CIP Brownfields and in this Agreement.
29. Program Assistance in the form of Temporary Tax Cancellation Assistance is predicated on the principle that Program 2, involving matching education tax cancellation, shall be the program of first resort where the parties do not anticipate a change in ownership and shall be based upon a maximum term of five (5) years in duration within each Program Assistance Term. For the purposes hereof, but subject to satisfaction of provincial requirements, a change of the land holding interest from that described in Schedule "A" to a condominium unit or units in the condominium corporation to be registered as part of the development shall not disentitle the Owner from receiving Program Assistance in the form of Temporary Tax Cancellation Assistance provided the Owner continues to hold title to condominium units in the condominium corporation registered against title to the Lands

30. The Program Assistance in the form of Temporary Tax Cancellation Assistance terminates in its application to a specific property once matching assistance from the Province terminates in regard to the specific property.
31. The Owner acknowledges that the Education Portion of Tax Assistance is contingent upon approval of the application for assistance submitted to the Minister of Finance.
32. The Owner acknowledges that the Minister of Finance may impose conditions or restrictions, required covenants or other limitations in relation to the provision of matching education property Tax Assistance.
33. The Owner further acknowledges that the actual terms of matching education portion property Tax Assistance and the duration of any such assistance may differ from the estimates of Tax Assistance which have been documented by the City to date.
34. Notwithstanding the extent of Tax Cancellation in each year of the program will include up to 100% of the Tax Increment - Municipal based upon the assumption of equivalent matching of the education portion of the Tax Liability - Education approved by the Minister of Finance. The parties acknowledge that in priority of receiving a cancellation of 100% of the Tax Increment - Municipal, the Owner will receive Program Assistance in the form of the TIERR grant program under the CIP Downtown in the amount of 100% of the Tax Increment-Municipal and such grant will not cause a reduction in the Brownfield Rehabilitation Eligible Costs.
35. The value of the Tax Increment-Education in the defined period of the BFTIP program will be cancelled in advance of the normal installment payment dates for property tax payment to the City. The defined existing property tax is to be paid to the City by the Owner as per the City's normal requirements for payment, except that the Base Tax - Municipal will be known for each year of the program such that there is NO REQUIREMENT for an interim tax billing.
36. As specified in the CIP Brownfields, and under Section 365.1 of the Municipal Act, Program Assistance under Program 2 is limited to the lesser of the actual Remediation Works costs or the funding available under Program 2 (BFTIP).
37. Tax Cancellation is limited to the actual Remediation Works costs incurred in that calendar year plus any roll over of actual Remediation Works costs as contemplated by the provisions of paragraph 38 of this Agreement.
38. The Program Assistance under Program 2 is limited to the available amount of the Tax Cancellation. Roll-over of actual costs can occur, as required, in each year of the program such that the Owner may continue to be reimbursed for actual Remediation Works costs via Program 2 (Tax Cancellation) and, subsequent to that, via the Program 1 (Municipal Tax Increment Equivalent Grant)

#### CIP DOWNTOWN:

39. The City confirms that each of the three (3) phases of the Owners projects as outlined in Schedule "B" are eligible without further application for the CIP Downtown programs as more particularly detailed below.



40. **Tax Increment Equivalent for Rehabilitation and Redevelopment (TIERR) Grant Program**

Pursuant to the TIERR grant program the City will provide a grant to the Owner equal to one hundred percent (100%) of the Tax Increment - Municipal during the first five (5) years of each respective Program Assistance Term. This TIERR grant program runs concurrently with but takes priority over the CIP Brownfields program.

A handwritten signature in black ink, appearing to be 'J. Bar' or similar, located in the bottom right corner of the page.

**41. Building and Plumbing Permit Fee Grant Program**

Notwithstanding anything to the contrary relating to the Program Assistance Term commencement date, the City will provide a grant upon building permit issuance to the Owner equivalent to the fees paid for Building Permits and Plumbing Permits relating to the development of the Lands. The grant represents 100% of equivalent fees paid for building permits and plumbing permits. Irrespective of the provisions of the Blended CIPs, the payment of this grant will be equal to the permit costs.

**DEFAULT AND REMEDIES:**

42. The Owner shall be in default of this Agreement where the Owner fails to materially comply with any of its obligations or requirements established in this Agreement. Without limiting the generality of the foregoing, the Owner shall be deemed to be in default where the Owner:

- 42.1. fails to pay and keep in good standing all property taxes which are payable by the Owner;
- 42.2. 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;
- 42.3. fails to perform or comply with any of the obligations contained in this Agreement;
- 42.4. 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 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 Lands or interest of the Owner in the Lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;
- 42.5. willfully defaults in a material way in the payment of monies to any contractor, supplier, or creditor who has undertaken the Remediation Works that are 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;
- 42.6. causes, permits or allows the Owner's Lands to become contaminated and the Owner fails to remedy the contamination in accordance with applicable legislation (it being acknowledged and agreed that contamination caused by any other party for whom the Owner is not responsible for in law such as, without limitation, a Subsequent Owner or a purchaser of the Lands or a portion of the Lands who acquires the Lands or portion thereof for the purpose of developing same shall not constitute a default by the Owner under this Agreement); or
- 42.7. cannot be contacted by the City over a period of greater than one (1) year.



43. 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:
- 43.1. delay any Program Assistance;
  - 43.2. cancel any or all future Program Assistance;
  - 43.3. 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;
  - 43.4. 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
  - 43.5. terminate this Agreement.

#### **PHASING OF THE OWNER'S DEVELOPMENT**

44. Schedule "B", being an illustration of the protocol for Program Assistance payments in accordance with the terms of this Agreement, sets out the Owner's estimated development schedule and related Program Assistance formula for the development of the Tall Ships Landing project. The Owner covenants that construction of Phase 1 of the Tall Ships Landing Developments project shall commence no later than June 30, 2009 and shall be substantially completed within 24 months of the commencement date. The City agrees that the Owner, by reason of market conditions, a delay or inability in obtaining any of the Records of Site Condition for the project or for any other reasons beyond the Owner's control, shall be entitled to extend the commencement date of any subsequent phases of the project for an aggregate period of six years (the "Extension Period") without prejudice to or jeopardizing the Owner's rights to receive Program Assistance under this Agreement in respect to Phase I and/or the subsequent phases of project provided that the completion date of the last unit qualifying for Program Assistance in the last phase of the project is no later than June 30, 2021. It is further agreed that interest on eligible Rehabilitation Costs shall not accrue during an Extension Period but shall resume upon the re-commencement of rehabilitation activity related to a subsequent phase or phases of the project.

This Agreement provides for a reconsideration of the project schedule as outlined in Schedule "B" following the completion of Phase I to determine the ongoing viability of the schedule as it relates to the provision of Program Assistance.

#### **DEVELOPMENT CHARGES EXEMPTION:**

45. The Owner acknowledges that all of the Development Charges have been waived by the City for the development of the Lands pursuant to provisions of By-Law No. 076-2004. The exemption of these fees is based on the representations contained in this Agreement. Upon expiry of the subject By-Law, the City warrants to extend the Development Charge exemption to include the three (3) Phases of Development in accordance with the Term of this Agreement.

#### **INDEMNITY:**

46. In the event that, as a result of the City exercising any of its remedies pursuant to this Agreement, there is no Program Assistance or 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 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.
47. The Owner shall 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 any failure by the Owner to fulfill its obligations under this Agreement.
48. The indemnities contained in sections 46 and 47 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:**

49. 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:

in the case of the City of Brockville to:

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

in the case of the Owner to:

2700 Queensview Drive  
Ottawa, ON K2B 8H6

#### **GENERAL PROVISIONS:**

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

<u>Schedule "A"</u>	<u>Description of Lands;</u>
<u>Schedule "B"</u>	<u>Projected Project Schedule and Projected Cash Flow</u>
<u>Schedule "C"</u>	<u>Brownfield Rehabilitation Eligible Costs;</u>
<u>Schedule "D"</u>	<u>Projected Remedial Action Plan</u>
<u>Schedule "E"</u>	<u>Valuation of "Brownfields" Rehabilitation Eligible Costs</u>

51. 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 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.
52. Words importing the singular number shall include the plural and words importing firms and corporations shall include persons. Each obligation of the Developer and 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 20 day of December, 2007

Simon A.F. Fuller  
President

[Signature]  
Tall Ships Landing Developments Inc.

I have authority to bind the Corporation

Dated at the City of Brockville this 20 day of December, 2007

David Henderson  
Mayor

[Signature]  
Signature of Mayor

B. Casselman  
Municipal Clerk  
Deputy

[Signature]  
Signature of Municipal Clerk  
Deputy

[Signature]  
BAR

## SCHEDULE "A"

- Firstly: Lots 27-30, Block 29, Plan 67, Water Lot in the St. Lawrence River opposite Lt 27 & 28, Block 29, Plan 67; Water Lot in the St. Lawrence River opposite Lot 29, Block 29, Plan 67; Water Lot in the St. Lawrence River opposite Lot 44, Block 29, Plan 67; Water Lot in the St. Lawrence River opposite Lot 45, Block 29, Plan 67; Part of St. Andrews St, Plan 67, Closed by BR21477, as in LR203700, subject to interest in LR203700 [PIN 44163-0094];
- Secondly: Part of the Bed of the St. Lawrence River in Leeds County, designated as Part 1, Plan 28R-5555 [PIN 44163-0124]; and
- Thirdly: Part of the Bed of the St. Lawrence River in Leeds County, designated as Part 1, Plan 28R-12709 [PIN 44163-0136], Brockville (the "Lands")

A handwritten signature in black ink, appearing to be 'J. J. Bell', located in the bottom right corner of the page.

Current Assessment / Tax Base

Address	Tax Roll #	Current Assessment
6 Broad Street	020 035 13900	CT 71 CU 286
10 Saint Andrew Street	020 035 15300	CT 162 CU 288

Phase 1  
Municipal portion of Tax Rate

Tower  
Residential Assessment  
Note: Assessment value includes \$25,000 per parking spot.

Phase 2

Low Rise

Residential Assessment

Based on 2007 figures see below for actual tax

Phase 3

Low Rise

Residential Assessment (Education)  
Based on 2007 figures see below for actual tax

Commercial - 90% occupied

- 10% vacant

	Municipal	Education
\$	4,010.32	\$ 3,460.08
\$	12,121.30	\$ 10,458.22
\$	16,131.62	\$ 13,919.32

Time line  
MUNICIPAL PROPERTY TAXES

Phase 1  
Construction Start June 2009  
70% sold June 2011  
100% sold January 2012

Base Residential Tax

Phase 2  
2013-2015

60/80/100%

Phase 3  
2015-2016

60/100%

Commercial  
2010

Base Commercial Tax  
Occupied 90% Vacant 10%  
Municipal Portion

Total Taxes Collected

Phase 1

Phase 2

Phase 3

Tax Cancellation (BFTIP)

Education Portion only  
Municipal Portion only

Total CIP - Brownfields

Total CIP - Brownfields (Tax Assistance Municipal Portion)

Total CIP - Downtown

Total Provincial Tax Cancellation (Education portion)

Total Funding Assistance for Tail Ships Landing Project through Incremental Taxes

Revenue to City  
Current City Portion  
Difference

	2026	2027	G/P-D	CIP-B	Prov BFTIP	Taxes	Total
Phase 1						121,213	121,213
Phase 2	395,554	395,554	1,905,043	1,929,285		2,650,212	1,929,285
Phase 3	177,999	177,999	889,997	889,997		783,197	889,997
Commercial	189,866	189,866	949,330	949,330		493,651	949,330
Total Taxes Collected	793,784	793,784	3,876,143	3,900,385	0	4,349,327	12,125,855
Phase 1			1,905,043	1,350,500			1,905,043
Phase 2			889,997	622,998			889,997
Phase 3			949,330	664,531			949,330
Tax Cancellation (BFTIP)			131,774	92,241	113,694		113,694
Total CIP - Brownfields	\$0	\$0		2,638,028			
Total CIP - Brownfields (Tax Assistance Municipal Portion)	\$0	\$0		82,241			
Total CIP - Downtown	\$0	\$0	3,876,143				3,876,143
Total Provincial Tax Cancellation (Education portion)	\$0	\$0			113,694		113,694
Total Funding Assistance for Tail Ships Landing Project through Incremental Taxes	\$0	\$0					
Revenue to City	\$793,784	\$793,784	0	1,170,116		4,349,327	5,619,443
Current City Portion	16,132	16,132					322,632
Difference	\$777,653	\$777,653					5,196,810

*[Handwritten signature]*  
Bar

## SCHEDULE "C"

### Brownfields Rehabilitation Eligible Costs

The cost to remediate and redevelop the Lands shall include the following classes of costs:

Type of Cost	Description	Percentage of Cost Eligible for Brownfields Assistance
Remediation Works	All works to reduce the concentration of contaminants in soil and ground water including the installation of sheet piling to achieve Records of Site Condition.	100%
Fill and grading	Placement of clean fill and grading before and after the Record(s) of Site Condition necessary to restore the Lands to original grade	100%
Demolition	Demolition of existing buildings	At Discretion of Council
Phase II and Phase III ESA's, Risk Assessments and Record(s) of Site Condition (RSC)	All costs related to the preparation and filing of Risk Assessments and Record(s) of Site Condition (RSC)	100%
Legal Fees for review of the site-specific By-Law , Brownfield Site-Specific Agreement, Risk Assessments and Record(s) of Site Condition (RSC)	Reasonable legal fees incurred to review the site-specific By-Law, this Agreement, Risk Assessments and Record(s) of Site Condition (RSC)	100%
Financing Cost on eligible Rehabilitation Costs	Interest and financing fees paid on actual Brownfields Rehabilitation Costs	100%
Insurance premiums for Cost Cap insurance or Pollution Liability Insurance	Only insurance related to rehabilitation or contamination is eligible. Security required by the City to guarantee the installation of public works or construction surety bonds are not eligible Rehabilitation Costs	100%
Monitoring and operation costs for environmental control technologies	Ongoing costs to operate environmental control technologies required by the remediation plan and monitoring costs required by any Risk Assessment or Certificate of Property Use are eligible for funding	100%



## SCHEDULE "D"

### Brownfield Remedial Action Plan

Tall Ships Landing Developments Inc.		
Type of Cost	Eligible Amount	Estimated Cost
Budget Site Preparation Remediation Works	100%	\$57,200.00
Budget Excavation of Hydro Carbon – 555 m <sup>3</sup> ±	100%	\$92,700.00
Budget Excavation of PAH/Metals (or soils determined to be "contaminated" by MoE – 1820 m <sup>3</sup> ±	100%100%	\$304,300.00
Budget Segregate 1500 m <sup>3</sup> Boulders - 1500 m <sup>3</sup> ± from fines	100%	\$123,800.00
Budget Excavate 1500 m <sup>3</sup> Phase II Soft Materials	100%	\$250,800.00
Budget Allowance for Ground Water Treatment	100%	\$88,000.00
Budget Containment Sheet Piling – dredging to remainder of shore line 1200 m <sup>2</sup> ± or dredging "contaminated" silt from/within water lot	100%	\$513,600.00
Budget Environmental Science Consultants Fees and Phase II and Phase III ESA's, Risk Assessments and Record(s) of Site Condition (RSC)	100%	\$127,600.00
Budget Engineering and Grading	100%	\$18,700.00
Budget Backfill and Grading to existing grades prior to <u>or</u> after record of site condition – 5235 m <sup>3</sup>	100%	\$201,500.00
Budget Monitoring and operation costs for environmental control technologies as required under protocols of risk assessment and/or MoE requirements	100%	\$13,200.00
Budget Excavation and Clean Fill Capping of Landscaped Areas Phase II and III - 1500 m <sup>3</sup>	100%	\$308,000.00
Legal Fees for review of the site-specific By-Law , Brownfield Site-Specific Agreement, Risk Assessments and Record(s) of Site Condition (RSC)	100%At Discretion of Council	\$25,000.00
Budget Insurance premiums for Cost Cap insurance or Pollution Liability Insurance	100%	\$20,000.00
<b>Subtotal</b>		<b>\$2,144,400.00</b>
Financing Cost	100%	\$1,089,000.00
<b>ESTIMATED TOTAL ELIGIBLE COSTS</b>		<b>\$3,233,400.00</b>

## SCHEDULE "E"

### Valuation of "Brownfields" Rehabilitation Eligible Costs

It is recognized that Tall Ships Landing Developments Inc intends on utilizing (contracting with) related companies to undertake the "remediation works" for this project (all 3 phases).

More specifically, Thomas G. Fuller & Sons Ltd (civil contractor) and Thomas Fuller Construction Co., (1958) Limited (general contractor) are experienced and capable of executing the work, and by virtue of the unforeseen nature of the scope of work, it is understood that the "in-house" prosecution of the work by the Fuller Group will provide for the greatest flexibility and fairest compensation.

It is agreed that the cost of funding the remediation work and the remediation work of the following categories will be valued as follows:

- 1) Finance Cost: Tall Ships Landing Developments Inc. shall be eligible to receive Interest (as herein defined) computed on all approved eligible costs incurred by Tall Ships Landing Developments Inc. in respect to remediation works (see Schedule D). Interest shall be calculated based upon the prime rate of interest charged from time to time by Toronto-Dominion Bank plus .5%, compounded monthly, for a maximum period of 12 ½ years from the time that the associated costs were incurred by Tall Ships Landing Developments Inc as approved by the City of Brockville.

For purposes of calculating Finance Cost, Program Assistance paid by the City to the Owner shall be applied against the principle sum of eligible remediation works to the extent of 70% of CIP Downtown Assistance and 100% of CIP Brownfield Assistance. The parties acknowledge that there may be financing options that are more fiscally prudent and agree to jointly consider these options as and when they become available.

- 2) Construction Management: for Thomas Fuller Construction's provision of overall construction management services (costs associated with their project manager and head office expenses excluding on-site specific costs, travel, room and board) a fee of 4% against all site specific costs (including the value of all general expenses, subcontractors and consultants, testing, insurance, bonding, postings).
- 3) Subcontractors: Thomas G. Fuller & Sons Ltd will perform under subcontract to supply labour, materials, equipment, permits, fees and sub-subcontracting necessary to execute the remediation works to be valued as follows:
  - a) 6% administration and overhead levied against all Brownfields rehabilitation eligible costs (without duplication) incurred by Thomas G.

Fuller & Sons Ltd., excluding Equipment costs being charged under OPSS;

- b) Labour at rates in accordance with and equivalent to the appropriate Ontario Provincial Trade Union Agreement, (i.e. carpenter, labourer, operators, etc);
- c) Equipment' (unoperated) as per the rates published under the Ontario Provincial Standards Specification (OPSS 127 of April 2007);
- d) Materials at cost F.O.B. site plus all applicable taxes. In the event that materials are utilized from inventory, then "cost" will be taken as a comparable to current, competitive quotations for similar material as if being purchased new for delivery to the site;
- e) Sub sub-contracting (Arms Length Parties): The actual value of the contract paid (prior to the letting of any sub sub-contracts the owner may submit for "pre-review" the terms and value to the City for "pre-acceptance" for the purposes of establishing values in advance of formal cost submissions to the City);
- f) Permits and fees (see materials);
- g) Miscellaneous:
  - 1) Mileage at 40¢/km
  - 2) Room and board for non-hourly staff, as per materials
  - 3) Salaried staff working on site that cannot be compared to Provincial agreements at \$72.00/hr as required to be on site, such rate to include for their associated personal equipment, i.e. cell phone (excluding long distance charges), personal protection equipment, computer, etc, level or measuring instrument; All other items not described above are to be at Fair Market Value.