

THE CORPORATION OF THE
TOWN OF PELHAM

BY-LAW NO. 3394 (2013)

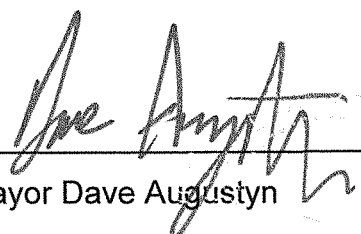
**Being a by-law to authorize the Mayor and Clerk to enter
Into a Commercial Building Façade Improvement Grant
Agreement with 744530 Ontario Inc. for the property known
municipally as 1440 Pelham Street.**

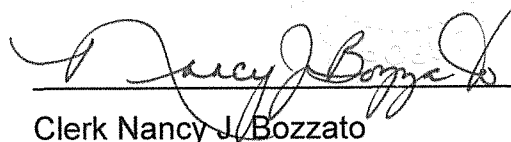
WHEREAS the Council of the Corporation of the Town of Pelham deems it desirable to enter into a Commercial Building Façade Improvement Grant Agreement with 744530 Ontario Inc. with regard to the development of lands located at 1440 Pelham Street.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

- (1) THAT the Commercial Building Façade Improvement Grant Agreement attached hereto and made part of this by-law between the Corporation of the Town of Pelham and 744530 Ontario Inc. be and the same is hereby approved.
- (2) THAT the Mayor and Clerk be and each of them is hereby authorized and instructed on behalf of the Corporation of the Town of Pelham to execute the said Development Agreement and the Clerk is hereby authorized to affix the Corporate Seal thereto.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
24th DAY OF JUNE, 2013 A.D.


Mayor Dave Augustyn


Clerk Nancy J. Bozzato

THIS AGREEMENT made this 24th day of June, 2013

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM

(hereinafter referred to as the "Town")

And

744530 ONTARIO INC.

(hereinafter referred to as the "Applicant")

WHEREAS the Applicant is the registered Owner of, or operates a business on, lands ("the subject lands") described in Schedule "A" attached to this Commercial Building Façade Improvement Grant Agreement ("Agreement") which are situated within the Downtown Fonthill Community Improvement Project Area, and the Applicant has applied to the Town for a Commercial Building Façade Improvement Grant ("Grant") and the Town has agreed to make such a Grant pursuant to Section 28 of the *Planning Act* and under By-Law No. 3394 (2013);

AND WHEREAS as a condition of approval of such a Grant, the Applicant is required by the Town to enter into this Agreement;

NOW THEREFORE IN CONSIDERATION of the Town making this Grant in the maximum amount of \$12,500.00 for Front Façade and Storefront Improvement and in the maximum amount of \$7,500.00 for Side and Rear Façade & Storefront Improvement, the Applicant and the Town hereby agree:

1. INFORMATION ON SUBJECT LANDS

- 1.1 The Grant shall apply to the subject lands as set out in Schedule "A" attached.
- 1.2 The subject lands are not designated under the Ontario Heritage Act.

2. GRANT ELIGIBILITY

- 2.1 To be eligible for the Grant, the works on the subject land shall conform to and fulfill:
 - a) the objectives and Program requirements of the Commercial Building Façade Improvement Grant Program and the Town of Pelham Community Improvement Plan ("CIP");
 - b) the Urban Design Guidelines Downtowns Fenwick & Fonthill; and
 - c) any other requirements as specified by the Town.
- 2.2 The Applicant acknowledges that it has received and read a copy of the Town's Commercial Building Façade Improvement Grant Program Guide (the "Guide") and the Town's CIP, and the Applicant covenants with the Town that the subject lands shall be restored/improved and the Grant provided for in this Agreement shall be applied in accordance with the Town's objectives, policies and program requirements set out in the Program Guide and the Town's CIP.

2.3 The Town shall review all cost estimates submitted in support of the Application ("Application") in evaluating the estimated rehabilitation costs eligible for the Grant, which costs, when designated by the Town shall constitute the maximum amount of the total grant to be paid. In the event the Town is not satisfied with said cost estimates, the Town may substitute their opinion of such amounts for purposes of calculating the eligible rehabilitation costs for the Grant. If the Town is not in receipt of sufficient information satisfactory to the Town to determine rehabilitation costs and the amount of the Grant, the Application will not be processed and the Application file will be closed. The decision of the Town regarding the total amount of rehabilitation costs, the calculation of the total estimated maximum Grant and the calculation of the actual Grant payments is final, absolute and within the Town's sole discretion.

2.4 The Grant will not be advanced by the Town until:

- a) an Agreement has been signed and executed;
- b) the Applicant provides proof that the façade restoration/improvement works are complete, including a final colour photograph(s) of the property and building clearly showing the completed works; and
- c) the building façade has been inspected by Municipal Staff.

3. CORPORATE STATUS

3.1 The Applicant represents to the Town that:

- a) the Applicant has been duly incorporated as a corporation and is in good standing under the *Business Corporations Act* and is in compliance with all laws that may affect it and will remain so throughout the term of this Agreement;
- b) the Applicant 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;
- c) to the best of their knowledge, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Applicant in any court or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Applicant or title to their property or assets; and
- d) the Applicant shall notify the Town immediately of any material change in the conditions set out in paragraphs a) to c), inclusive, above.

4. PROVISIONS RELATING TO THE APPLICANT

4.1 At the time of Application for the Program, the Applicant shall have submitted to the Town for its review and acceptance a colour photograph(s) of the existing façade, architectural drawing/design plans for the façade restoration/improvement noting correct elevations on the drawings, scale, name of designer/Architect, date and location, and any other supporting documentation required by the Town, including but not limited to a colour and material schedule with samples of proposed façade materials to be submitted prior to installation.

4.2 The Applicant will complete all eligible works as specified in the approved Application and in documentation submitted in support of the Application, including but not limited to the architectural/design drawings, specifications,

contracts, and cost estimates. If the information in this Agreement, the associated Application and/or any supporting documentation submitted to the Town is, in the opinion of the Town, incomplete, false, inaccurate or misleading, the Grant may be reduced and/or delayed, and/or cancelled, and where part or all of the Grant has already been paid by the Town, such payments shall be repaid by the Applicant as required by the Town.

- 4.3 The Applicant shall not commence any works that are the subject of an Application prior to receiving approval of the Application, and approval and execution of this Agreement.
- 4.4 The Applicant agrees that the works made to buildings shall be made in compliance with all required Building Permits, constructed in accordance with the *Ontario Building Code*, all applicable Zoning By-law requirements, municipal requirements and other approvals required at law.
- 4.5 The Applicant shall complete construction of all improvements within one (1) year of Grant approval, failing which, unless extended by the Town, this Grant approval shall be at an end, there shall be no Grant and this Agreement shall be terminated. The deadline imposed by this paragraph shall not include delays that are outside the control of the Applicant.
- 4.6 Upon completion of the project, the Applicant shall provide documentation satisfactory to the Town as to the amount of the actual costs of restoration/improvement incurred by the Applicant.
- 4.7 The Applicant shall ensure there are no liens or other claims outstanding with respect to the subject lands and that all accounts for work and materials, which could give rise to any claim for a construction lien against the subject lands have been paid.
- 4.8 The Applicant shall ensure compliance with the *Construction Lien Act*, including its holdback provisions and is not aware of any potential or unresolved Lien claim in respect of the redevelopment.
- 4.9 The Applicant agrees to comply with all outstanding work orders and/or orders or requests to comply from any and all Town Departments prior to or as a condition of Grant approval.
- 4.10 If the Applicant is the Owner, the Applicant covenants to the Town that where the subject lands for any reason cease to be in the Applicant's name by sale, assignment or otherwise, prior to the advance of part or all of the Grant, the Applicant will notify the Town in writing of said pending ownership change at least thirty (30) days prior to the ownership change taking place.
- 4.11 The Applicant acknowledges that without limiting the generality of the other provisions of this Agreement:
 - a) the onus and responsibility is upon the Applicant at all times to assume all costs of facade restoration and improvement and to apply for and obtain, at the Applicant's expense, all approvals required from the Town and all other agencies for said works, including but not limited to all Official Plan Amendments, re-zoning bylaws, minor variances, and site plan approval;
 - b) nothing in this Agreement limits or fetters the Town in exercising its statutory jurisdiction under the *Planning Act* or under any other legislative authority or by-law and that in the event the Town decides to deny or oppose or appeal any such decision, that such action by the Town is not in any manner limited by reason of the Town entering into this Agreement;

- c) the Applicant releases the Town from any liability in respect of the Town's reviews, decisions, inspections or absence of inspections regarding the facade restoration/improvement works and the Applicant agrees that it is its responsibility at all times to prepare and implement its works;
 - d) nothing in this Agreement is intended to impose or shall impose upon the Town any duty or obligation to inspect or examine the land for compliance or non-compliance or to provide an opinion or view respecting any condition of development; and
 - e) nothing in this Agreement is intended to be or shall be construed to be a representation by the Town regarding compliance of the land with: (1) applicable environmental laws, regulations, policies, standards, permits or approvals, or, (2) other by-laws and policies of the Town.
- 4.12 If the Town determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, the Town may at its sole discretion cease or delay payment of the Grant, and the Applicant agrees that notwithstanding any costs or expenses incurred by the Applicant, the Applicant shall not have any claim for compensation or reimbursement of these costs and expenses against the Town and that the Town is not liable to the Applicant for losses, damages, interest, or claims which the Applicant may bear as a result of the lapse of time (if any) where the Town is exercising its rights herein to either delay a Grant payment pending compliance with this Agreement, or to terminate this Agreement.
- 4.13 The Applicant shall indemnify and save harmless from time to time and at all times, the Town 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:
- (a) the Town entering into this Agreement; and
 - (b) any failure by the Applicant to fulfil its obligations under this Agreement. This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

5. PROVISIONS RELATING TO THE TOWN

- 5.1 The Town agrees to provide a Grant to the Applicant estimated as of the date of this agreement in the amount of \$12,500.00 for Front Façade and Storefront Improvement and in the amount of \$7,500.00 for Side and Rear Façade & Storefront Improvement to a maximum of \$20,000.00, subject to and in accordance with the terms and provisions set out in this Agreement.
- 5.2 The Town reserves the right to require a third party review or independent audit, at the Applicant's expense, of all documentation submitted in support of the Application or during the administration of the Grant.
- 5.3 The Town, its employees and agents are entitled to inspect the subject lands and all fixtures and improvements upon the subject lands at any time during usual business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the provisions of this Agreement.
- 5.4 The Town retains the right at all times not to make any or all of Grant payments or to delay payment where the Town deems that there is non-compliance by the Applicant with this Agreement.

- 5.5 Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the Town and may only be waived by the Town. No waiver is effective unless in writing.

6. DEFAULT AND REMEDIES

- 6.1 The Applicant agrees to maintain in good repair the improvements for which the Grant is provided. In the event that the Applicant does not maintain in good repair said improvements, the Town may:
- a) serve on the Applicant a written Notice to Repair detailing the particulars of the failure to maintain and the particulars of needed repairs; and,
 - b) provide the Applicant with at least thirty (30) days to make such repairs.
- 6.2 On the occurrence of Default under this Agreement, the Town shall be entitled to its remedies to enforce this Agreement, including, but not limited to:
- a) delaying or ceasing the release of the Grant;
 - b) requiring repayment of the Grant; and/or
 - c) terminating this Agreement.
- 6.3 Default shall be deemed to occur upon the Applicant's failure to comply with any terms set out in this Agreement, including but not limited to the following:
- a) the 'as constructed' works do not comply with the description of the works as provided in the Application Form and Required Documents;
 - b) the works are not undertaken in conformity with the *Ontario Building Code* and all applicable Zoning requirements and planning approvals;
 - c) the building is damaged by fire or otherwise and repair or reconstruction is not commenced within ninety (90) days;
 - d) the Applicant is in property tax arrears with respect to the property for more than ninety (90) days;
 - e) any representation or warranty made by the Applicant is incorrect in any material respect;
 - f) failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Applicant and the Town;
 - g) the Applicant makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of 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 Applicant, or if the Applicant 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 Applicant under any mortgage or other obligation, or if the subject lands or interest of the Applicant in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;

- h) construction ceases for a period of sixty (60) days due to the Applicant's default (strikes and Acts of God excepted) and/or the Applicant abandons the property or project;
- i) if this Agreement is forfeited or is terminated by any other provision contained in it.

6.4 The Town may at its sole discretion, provide the Applicant with an opportunity to remedy any default.

7. ADDITIONAL PROVISIONS

7.1 The approved architectural/design drawings referred to may be amended by the Applicant and the Town from time to time, as they may agree.

7.2 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.

7.3 Schedule "A" attached to this Agreement forms part of this Agreement.

8. NOTICES

8.1 Where this Agreement requires notice to be delivered by one party to the other, such notice shall be in writing and delivered either personally, by e-mail, by fax or by prepaid registered first class post, by party wishing to give such notice, to the other party at the address noted below:

Such notice shall be deemed to have been given:

- a) in the case of personal delivery, on the date of delivery;
- b) in the case of e-mail or fax, on the date of transmission provided it is received before 4:30 p.m. on a day that is not a holiday, as defined in the *Interpretation Act*, failing which it shall be deemed to have been received the next day, provided the next day is not a holiday; and,
- c) in the case of registered post, on the third day which is not a holiday, following posting.

Notice shall be given:

To the Applicant at:

744530 Ontario Inc.
429 Thorold Road
Welland, ON L3C 3W4
Tel. No. 905.892-9059
Email accursi@iaw.on.ca

To the Town at:

Director of Planning & Development
Town Of Pelham
20 Pelham Town Square, PO Box 400
Fonthill ON. L0S 1E0
Telephone No: 905-892-2607 ext. 323
Fax No: 905-892-5055
E-mail: kgennings@pelham.ca

IN WITNESS WHEREOF the parties hereto have hereunto affixed his hand and corporate seal duly witnessed and attested by the hands of the proper signing officers in that behalf and the said signing officers certify that they have authority to bind their corporation.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Lore Ruzina

) 744530 ONTARIO INC.

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) Mall Accursi

) Title: President

) I have authority to bind the corporation

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) THE CORPORATION OF THE TOWN OF
) PELHAM

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) Mayor, Dave Augustyn

) Clerk, Nancy J. Bozzato