

THIS AGREEMENT made this 13th day of January, 2014.

BETWEEN:

THE TOWN OF PELHAM
(hereinafter referred to as the "Town")

And

ANTONIO NUZIATO
(hereinafter referred to as the "Applicant")

WHEREAS the Applicant is the registered Owner of, or operates a business on, lands described in Schedule "A" attached to this Agreement ("the subject lands") which are situated within the Downtown Fonthill Community Improvement Project Area/Downtown Fenwick Community Improvement Project Area, and the Applicant has applied to the Town for a Residential Intensification 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. 3095 (2010);

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 \$75,000.00 to the Applicant, 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/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 Residential Intensification Grant Program and the Town of Pelham Community Improvement Plan ("CIP"); and
 - b) 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 Residential Intensification 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

- 2.3 in accordance with the Town's objectives, policies and program requirements set out in the Program Guide and the Town's CIP.
- 2.4 The Town shall review all cost estimates submitted in support of the 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) A Grant agreement has been signed and executed;
 - b) The Applicant provides proof that the residential rehabilitation/ construction works are complete, including a final colour photograph(s) of the property and building clearly showing the completed works; and
 - c) The completed works have been inspected by municipal staff.

3. APPLICANT STATUS

- 3.1 The Applicant represents to the Town that:
- a) The Applicant has the 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;
 - b) 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,
 - c) The Applicant shall notify the Town immediately of any material change in the conditions set out in paragraphs (a)-(b) above.

4. PROVISIONS RELATING TO THE APPLICANT

- 4.1 The Applicant will complete all eligible works as specified in the approved Grant application, and in documentation submitted in support of the Grant application, including but not limited to the architectural/design drawings, specifications, contracts, and cost estimates. As the Town is relying upon this information, 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

contracts, and cost estimates. As the Town is relying upon this information, 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.

- 4.2 The Applicant shall not commence any works that are the subject of a Grant Application prior to receiving approval of the Grant Application, and approval and execution of this Agreement.
- 4.3 The Applicant agrees that the works made to buildings shall be made in compliance with all required Building Permits, and constructed in accordance with the Ontario Building Code and all applicable zoning by-law requirements, municipal requirements and other approvals required at law.
- 4.4 The Applicant shall complete construction of all improvements within seven years 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.
- 4.5 Upon completion of the project, the Applicant shall provide the Town with documentation satisfactory to the Town as to the amount of the actual costs of the rehabilitation/construction incurred by the Applicant.
- 4.6 The Applicant shall ensure there are no liens or other claims outstanding in respect of 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.
- 4.7 The Applicant shall ensure that the Applicant is in 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.
- 4.8 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.
- 4.9 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 30 days prior to the ownership change taking place.
- 4.10 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.

4.11 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.

4.12 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 \$75,000.00, 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 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 any default of the Applicant in complying with the 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 90 days;
 - d) The Applicant is in property tax arrears with respect to the property for more than 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 60 days due to the Applicant's default (strikes and Acts of God excepted) and/or the Applicant abandons the property or project; and
 - 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:

Antonio Nuziato
9 Rhodes Court
Fonthill ON
L0S 1E4

Telephone No: 905-941-0346
E-mail: tnuziato@cogeco.ca

to the Town at:

Town of Pelham
20 Pelham Town Square
Fonthill ON
L0S 1E0

Attention: Susan Smyth, Planner

Telephone No: 905-892-2607 ext. 324
Fax No: 905-892-5055
E-mail: ssmyth@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

) THE TOWN OF PELHAM

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

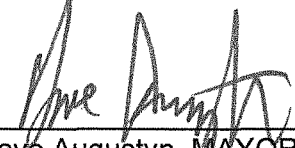
)

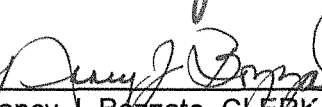
)

)

)

)


Dave Augustyn, MAYOR


Nancy J. Bozzato, CLERK

ANTONIO NUZIATO

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

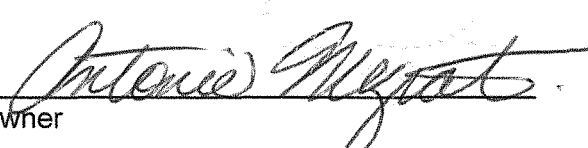
)

)

)

)

)


Owner


Date:

SCHEDULE 'A'

of a Grant Agreement between the Town and the Applicant named in this Agreement.

Legal Description of land

LT 2 W/S NORTH PELHAM ST PL 715 PELHAM

(Municipal Address: 1518 Pelham Street)

THIS AGREEMENT made this 3rd day of January, 2014.

BETWEEN:

THE TOWN OF PELHAM
(hereinafter referred to as the "Town")

And

ANTONIO NUZIATO
(hereinafter referred to as the "Applicant")

WHEREAS the Applicant is the registered Owner of the lands described in Schedule 'A' attached to this Agreement ("the subject lands") which are situated within the Downtown Fonthill Community Improvement Project Area/Downtown Fenwick Community Improvement Project Area, and the Applicant has applied to the Town for a Revitalization ("Grant") and the Town has agreed to make such a Grant pursuant to Section 28 of the *Planning Act* and under By-Law No. 3095 (2010);

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 \$ 11,935 to the Applicant, the Applicant and the Town hereby agree as follows:

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/are not designated under the Ontario Heritage Act.

2. GRANT ELIGIBILITY

- 2.1 To be eligible for the Grant, the subject lands with proposed rehabilitation works, improvements, construction, developments or redevelopments (hereinafter referred to as "rehabilitation"), shall have such rehabilitation conform to and fulfill:
 - a) The objectives and Program requirements of the Revitalization Grant Program and the Town of Pelham Community Improvement Plan ("CIP");
 - b) Town policies and procedures for the Identification and Remediation of Potentially Contaminated Sites under the *Planning Act* Application Review Process; 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 Revitalization Grant Program Guide (the "Guide") and the Town's CIP, and the Applicant covenants with the Town that the subject lands shall be rehabilitated 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 Guide and the CIP.

- 2.3 The Town shall review all cost estimates submitted in support of the 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.

3. GRANT CALCULATION

3.1 Definitions:

"Pre-project assessed value" – The assessed value of the subject lands as determined by the Municipal Property Assessment Corporation ("MPAC") the day before rehabilitation works commence.

"Post-project assessed value" – The assessed value of the subject lands as determined by MPAC when the rehabilitation works are complete.

"Town pre-project property taxes" – Town of Pelham property taxes the day before rehabilitation works commence.

"Regional pre-project property taxes" – Regional Municipality of Niagara property taxes the day before rehabilitation works commence.

"Municipal pre-project property taxes" – The total of Regional and Town of Pelham property taxes the day before rehabilitation works commence.

"Town post-project property taxes" – Town of Pelham property taxes based on the assessed value of the subject lands as determined by MPAC when the rehabilitation works are complete.

"Regional post-project property taxes" – Regional Municipality of Niagara property taxes based on the assessed value of the subject lands as determined by MPAC when the rehabilitation works are complete.

"Municipal post-project property taxes" – The total of Regional and Town of Pelham property taxes based on the assessed value of the subject lands as determined by MPAC when the rehabilitation works are complete.

- 3.2 The annual Grant will be equivalent to 70% of the increase in municipal (Town and Region) property taxes on the subject lands that result from the development. Grant payments will cease on the earlier of:

- a) The date when the total of all annual Grant payments equals the total eligible Revitalization Grant Program costs that have been approved by the Town; or,
- b) 10 years after the date of completion of the rehabilitation of the subject lands.

3.3 The amount of the Grant payments is calculated according to the formulas set out below. Some of the figures set out below are estimates only. The actual Grant payment amounts will be based on the actual post-project assessed value (AV) as determined by MPAC:

Estimated Cost of Rehabilitation: \$ _____ Date: June 12/2014

Pre-project AV: \$ 100,500 Date: June 12/2014

Municipal Pre-project property taxes: \$2045.16 (Provided by Applicant) Date: 10/23/13

Town pre-project property taxes = (Pre-project AV * Town Tax Rate) + Clawback/-Cap + other charges

Regional pre-project property taxes = (Pre-project AV * Regional Tax Rate) + Clawback/-Cap + other charges

Municipal pre-project property taxes = Town pre-project property taxes + Regional pre-project property taxes

Post-project AV (estimated): \$ 990,922 Date: June 12/2014

Post-project AV (actual provided by MPAC): \$ _____ Date: _____

Calculation of Estimated Initial Grant

"Initial Grant" = (Estimated Municipal post-project property taxes – Municipal pre-project property taxes)*0.70

Actual "Initial Grant" after property has been revalued by MPAC, a new or supplemental property tax bill has been issued, and property taxes have been paid in full = (Actual Municipal post-project property taxes – Municipal pre-project property taxes)*0.70

GRANT CALCULATION SCHEDULE

Year (N) (1)	Grant Factor (2)	Municipal Tax Increment (3) = Municipal post-project property taxes in Year N – Municipal pre-project property taxes	Grant (2*3)
1	70%	14,564.02	10,195
2	70%	14,855.30	10,398
3	70%	15,152.41	10,586
4	70%	15,455.45	10,818
5	70%	15,764.56	11,035
6	70%	16,079.85	11,256
7	70%	16,401.45	11,480
8	70%	16,729.48	11,711
9	70%	17,064.07	11,945
10	70%	17,405.35	12,184

- 3.4 The total value of the sum of the annual Grant payments that may be provided under the Revitalization Grant Program shall not exceed the total costs of rehabilitation that have been accepted by the Town, which costs are estimated, as of the date of this agreement, at \$ 1,500,000
- 3.5 Where the actual costs of rehabilitation are, in the opinion of the Town, less than the estimated costs of rehabilitation (\$ _____), the maximum permitted amount of the total annual Grant payments shall be reduced.
- 3.6 Where at any time after the original rehabilitation of the subject lands, new construction is added to the subject lands that is not part of the original Program Application, the Grant payment will be calculated only in respect of the original rehabilitation contained in the original application, based on the property taxes levied in the last year before revaluation by MPAC as a result of the new construction added to the subject lands.
- 3.7 The annual Grant payment shall be calculated by the Town based upon, and provided the Town is satisfied in its discretion that:
- Rehabilitation of the property was completed and took place in accordance with the proposed rehabilitation as specified in the Program Application and this Agreement;
 - There was and remains during each year of the Grant payment, an increase in net municipal property taxes as a result of an increase in the assessed value attributable to the completion of the rehabilitation; and
 - Annual Grant payments after the first Grant payment are adjusted downwards in the event the property tax increase in any subsequent year has been reduced.

- 3.8 The estimated Grant payments calculated as set out in Paragraph 3.3 above in this Agreement are based on preliminary estimates of post-project assessed value and post-project tax rates. Accordingly, the amount of the Grant payment shall be re-calculated by the municipality based on actual assessed value as determined by MPAC and actual post-project tax rates prior to payment of the Grant.

4. GRANT PAYMENT

- 4.1 The Town shall review all cost estimates submitted in support of the application in evaluating the estimated costs eligible for the Grant, which costs, when designated by the Town shall constitute the maximum amount of the total Grant payments to be paid out over a maximum of 10 years. 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.
- 4.2 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.
- 4.3 Payment of the grant is subject to the Town's review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual costs of eligible works. Any and all of these costs may be, where required by the Town, subject to verification, third party review or independent audit, at the expense of the Applicant.
- 4.4 The Applicant shall not be entitled to a grant unless and until they have met all the conditions of this Agreement to the satisfaction of the Town. 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.
- 4.5 The total sum value of the annual grant payments that may be provided to the Applicant shall not exceed the total eligible Revitalization Grant Program costs that have been accepted by the Town.
- 4.6 Any and all grant payments that have been provided to the Applicant will become payable upon notice in writing from the Town that one or more of the conditions set out in the application, this Agreement, or the Revitalization Grant Program have not been met.
- 4.7 The Grant is not payable by the Town until such time as additional assessment eligible for a Grant has been added to the assessment roll by MPAC, all taxes eligible for a Grant have been billed by the Town, and taxes have been paid in full for at least one year. The Grant will not be issued if there is an outstanding tax payment. If at any time after the execution of this Agreement, property taxes

are owing on a property for more than one full year, the Town will have the option, upon notice to the Applicant and at its sole discretion, to terminate all future Grant payments.

- 4.8 The Grant is not payable by the Town until such time as all assessment appeals relating to the value of the subject lands before the additional assessment or as to the additional assessment have been filed and finally determined.
- 4.9 The Applicant shall not commence any works that are the subject of a Grant Application prior to receiving approval of the Grant Application and execution of this Agreement.
- 4.10 In the event that construction and completion of the rehabilitation in the original Program Application is not commenced within five (5) years and completed within seven (7) years of the signing of this agreement, this Grant approval shall be at an end, no Grant payments shall be paid to the Applicant and this Agreement shall be terminated. The Town's decision as to when such rehabilitation is commenced and completed is final and absolute.
- 4.11 Annual Grant payments are not payable by the Town until the Applicant has satisfied the Town that:
 - a) The rehabilitation of the subject lands has been fully completed in accordance with the rehabilitation as described in the application;
 - b) The Applicant has supplied the Town with the actual amount of the eligible Revitalization Grant Program costs incurred by the Applicant;
 - c) The total eligible costs incurred have been paid in full and that there are no liens, claims or litigation in respect of the Applicant's obligation to pay these costs;
 - d) There are no outstanding work orders and/or orders or requests to comply from any Town or Regional Departments or other regulatory authority with respect to the subject lands, the property and the business of the Applicant conducted on the subject lands;
 - e) As of the date of the proposed first Grant payment, the Applicant, its rehabilitation project and property are in full compliance with:
 - i) Any agreement(s) relating to the property in favour of the Town or Region, including any agreement(s) relating to: subdivision(s), modified subdivision(s), service(s), site plan approval(s), encroachment(s), joint sewer and water use(s), easement(s) or other Agreement(s); and
 - ii) By-laws of the Town, Region, provincial or federal legislation and their regulations.
 - f) The post-project assessed value of the subject property has increased as a result of the said rehabilitation;
 - g) The Applicant has not appealed the post-project assessed value and there exists no other pending appeal which has not been finally determined in respect of the post-project assessed value;

- h) The property taxes for the year during which property taxes were calculated pursuant the said increased assessment and for each of the preceding years, have been paid in full, have not been deferred and there are, at the time of payment of the annual Grant, no instalments of property taxes for the current year remaining to be paid; and
- i) There are no unpaid charges (where applicable) against the subject lands in favour of the Town or the Region, including but not limited to: development charges, park land dedication fees, special assessments, building permit fees and local improvement charges.

5. APPLICANT STATUS

5.1 The Applicant represents to the Town that:

- a) The Applicant has the 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;
- b) 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,
- c) The Applicant shall notify the Town immediately of any material change in the conditions set out in paragraphs (a)-(b) above.

6. PROVISIONS RELATING TO THE APPLICANT

- 6.1 At the time the Applicant signs this Agreement, the Applicant will provide the Town with a certified true copy of a resolution of the Board of Directors of the Applicant (certified by an officer of the corporation) that authorizes the Applicant to enter into this Agreement with the Town.
- 6.2 At the time of application for the Program, the Applicant shall have submitted to the Town for its review and acceptance, the Applicant's plans for the rehabilitation and supporting documentation, including the Applicant's proposed residential and non-residential uses for the redevelopment.
- 6.3 The Applicant will complete all eligible works as specified in the approved Grant application, and in documentation submitted in support of the Grant 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.

- 6.3 The Applicant will complete all eligible works as specified in the approved Grant application, and in documentation submitted in support of the Grant 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.
- 6.4 Upon request, the Applicant shall supply to the satisfaction of the Town prior to issuance of any and all Grant payments, environmental reports and documentation showing that the subject lands have been remediated to the appropriate levels for the proposed use. This includes, where required by the Town, proof of acknowledgement of a signed Record of Site Condition (RSC) by the Ministry of Environment (MOE) for the subject lands.
- 6.5 The Applicant shall not commence any works that are the subject of a Grant Application prior to receiving from the Town approval of the Grant Application, approval and execution of this Agreement.
- 6.6 The Applicant agrees that the rehabilitation shall be made in compliance with all required Building Permits, and constructed in accordance with the Ontario Building Code and all applicable Zoning By-law requirements, municipal requirements and other approvals required at law.
- 6.7 The Applicant agrees and covenants to the Town that if the building(s) and improvements that are the subject of this Agreement are demolished, in whole or in part, or any of the heritage features of the property are altered in any way that would compromise the reasons for designation, prior to the expiration of the term of this Agreement, all subsequent Grant payments shall cease, and all Grant payments already paid by the Town to the Applicant shall be repaid to the Town.
- 6.8 Upon completion of the project, the Applicant shall provide the Town with documentation satisfactory to the Town as to the amount of the actual costs of rehabilitation incurred by the Applicant and the Town shall, in its discretion designate this cost as the total maximum amount of the Grant.
- 6.9 The Applicant will provide to the Town, upon request, a rehabilitation status report signed by the Applicant to confirm the status and completion of the approved rehabilitation; a detailed progress report of the status of the rehabilitation, including, but not limited to, the rehabilitation schedule, the existence and extent of any faults or defects, the value of the work done under any contract, the amount owing to any contractor and the amounts paid or retained by the Applicants on any contract.
- 6.10 The Applicant shall ensure there are no liens or other claims outstanding in respect of the subject lands, including its re-development, and all accounts for work and materials which could give rise to any claim for a construction lien against the subject lands have been paid.

- 6.11 The Applicant shall ensure that the Applicant is in 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.
- 6.12 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.
- 6.13 The Applicant shall ensure that the property is maintained in its rehabilitated condition during the term of the Grant.
- 6.14 The Applicant covenants to the Town that where the ownership of part or all of the subject lands ceases for any reason to be in the Applicant's name by sale, assignment or otherwise, prior to the advance of all of the Grant payments, the Applicant will notify the Town in writing of said pending ownership change at least 30 days prior to the ownership change taking place.
- 6.15 If ownership of the subject lands does not change, the Applicant may assign the Grant approved under this Agreement to an assignee, provided that the Applicant is not in default of any of the terms and conditions of this Agreement.
- 6.16 In the event that after this Agreement is executed, the ownership of part or all of the subject lands ceases for any reason to be in the Applicant's name by sale, assignment or otherwise while Grant payments remain to be paid, the Grant ceases completely, unless:
- a) Where the Applicant wishes to retain the remaining Grant payments, (to continue receiving the Grant payments while the Applicant is no longer on title as an owner), the Applicant notifies the Town of a pending ownership change at least 30 days prior to that ownership change taking place and the Town, entirely at its own discretion and to its satisfaction, may require or may enter into an agreement with the new owner that permits the Town to continue to provide Grant payments to the Applicant, subject to the new owner:
 - i) Paying property taxes; and
 - ii) Assuming any of the Applicant's obligations and maintenance conditions under this Agreement that have not been fulfilled;
 - b) Where the Applicant wishes to assign the remaining Grant payments to the new owner or an assignee, the Applicant notifies the Town of a pending ownership change at least 30 days prior to that ownership change taking place and the Town, entirely at its own discretion and to its satisfaction, may require or may enter into an agreement with the Applicant and the new owner/assignee that permits the Applicant to assign the remaining Grant payments to the new owner/assignee, provided the new owner/ assignee:
 - i) Receives the right to receive the remaining Grant payments; and
 - ii) Assumes any of the Applicant's obligations and maintenance conditions under this Agreement that have not been fulfilled.

- 6.17 The Applicant will be responsible for ensuring that they can be contacted by the Town for the purpose of delivering Grant cheques.
- 6.18 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 rehabilitation of the subject lands and to apply for and obtain, at the Applicant's expense, all approvals required from the Town, the Region, and all other agencies for the rehabilitation of the subject lands, including but not limited to all Official Plan Amendments, Zoning By-law Amendments, Minor Variances, and Site Plan Approvals;
 - b) Nothing in this Agreement limits or fetters the Town or the Region 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 or Region decides to deny or oppose or appeal any such decision, that such action by the Town or Region 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 this rehabilitation and the Applicant agrees that it is its responsibility at all times to prepare and implement its rehabilitation as would a careful and prudent land owner;
 - 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.
- 6.19 The Applicant agrees that if after it has received a Grant payment(s) from the Town, it or any new owner successfully appeals the post-project assessed value on which that Grant payment(s) is based, and as a result, there is a retroactive decrease in the assessed value, the Town may deduct the amount of any resulting Grant overpayment from future Grant payments and/or add any Grant overpayment to municipal property taxes payable on the property.
- 6.20 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 the Grant payments, and/or require repayment. Grant payments already made to the Applicant, and/or terminate this Agreement, and 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 cease, delay, require repayment of a Grant payment or terminate this Agreement.

- 6.21 The Applicant shall indemnify and save harmless from time to time and at all times, the Town, its officers, employees, 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.
- 6.22 The Applicant is bound by this Agreement, unless, prior to the Applicant receiving the Initial Grant payment, the Applicant gives notice in writing to the Town, that the Applicant has decided not to accept the Grant contemplated by this Agreement, in which case, the Agreement is terminated.

7. PROVISIONS RELATING TO THE TOWN

- 7.1 The Town agrees to provide a Grant to the Applicant to be paid out over a maximum of 10 years, to be used towards the costs of rehabilitation of the subject lands, subject to and in accordance with the terms and conditions set out in this Agreement, provided that the total of such Grants shall not exceed the total costs of rehabilitation designated and accepted by the Town, estimated as of the date of this agreement, in the amount of \$_____.
- 7.2 Upon revaluation of the subject lands by MPAC, the Town shall calculate the actual post-project municipal property taxes and the initial Grant.
- 7.3 On an annual basis, the Town, upon being satisfied that the Applicant is in compliance with this Agreement and has met all and any other requirements of the Town, shall pay the annual Grant payment.
- 7.4 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 initial or subsequent annual Grant payments, including, but not limited to:
- a) Estimates and actual costs of all rehabilitation works; and
 - b) Environmental reports and documentation.
- 7.5 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.
- 7.6 If the Applicant cannot be reached over a protracted period (more than 2 years), the Town will have the option, without notice and at its own discretion, of terminating all future Grant payments to the Applicant.
- 7.7 If in the opinion of the Town the subject lands are not maintained in their rehabilitated condition, the Town may at its own discretion, terminate all future

Grant payments and require repayment of all Grant payments already paid out by the Town to the Applicant.

- 7.8 The Town retains the right at all times not to make any or all Grant payments or to delay payment where the Town deems that there is non-compliance by the Applicant with this Agreement. In particular, without limiting the generality of the foregoing, the Grant is conditional upon periodic reviews satisfactory to the Town to there being no adverse change in the rehabilitation and to there being compliance on the part of the Applicant with all other requirements contained in this Agreement.
- 7.9 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.

8. DEFAULT AND REMEDIES

- 8.1 On the occurrence of default under this Agreement, the Town shall be entitled to its remedies to enforce the terms of this Agreement, including:
- a) Delaying or ceasing payment of the Grant;
 - b) Requiring repayment of the Grant; and/or
 - c) Terminating this Agreement.
- 8.2 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 By-law requirements and planning approvals;
 - c) The Applicant sells, transfers or otherwise disposes of the property without advising the Town;
 - d) The building for which a Grant was provided is demolished or designated heritage features of that building are altered during the term of the Grant;
 - e) The building is damaged by fire or otherwise, and repair or reconstruction is not commenced within 90 days;
 - f) The Applicant is in property tax arrears with respect to the property for more than 90 days;
 - g) Any representation or warranty made by the Applicant is incorrect in any material respect;
 - h) 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;
 - i) 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;

- j) Construction ceases for a period of 60 days due to the Applicant's default (strikes and Acts of God excepted) and/or the Applicant abandons the property or project;
- k) The Applicant is in default of the terms and conditions of the construction financing secured by the first mortgage; and
- l) This Agreement is forfeited or is terminated by any other provision contained in it.

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

9. ADDITIONAL PROVISIONS

9.1 This Agreement shall remain in effect from the date of its registration on title to the earlier of:

- a) The Applicant informing the Town in writing prior to the initial Grant payment, that the Applicant has decided not to accept the Grant;
- b) The Town informs the Applicant in writing that due to the non-fulfilment or non-compliance with a required condition or due to default, this Agreement is at an end;
- c) The total amount of the Grant paid out to the Applicant equals the total costs of rehabilitation; and
- d) Ten (10) years from the date of completion of the rehabilitation.

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

9.3 Schedule 'A' attached to this Agreement forms part of this Agreement.

10. NOTICES

10.1 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:

Antonio Nuziato
9 Rhodes Court
Fonthill ON
L0S 1E4

Telephone No: 905-941-0346
E-mail: tnuziato@cogeco.ca

to the Town at:

Town of Pelham
20 Pelham Town Square
Fonthill ON
L0S 1E0

Attention: Susan Smyth, Planner

Telephone No: 905-892-2607 ext. 324
Fax No: 905-892-5055
E-mail: ssmyth@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

) THE TOWN OF PELHAM

)

)

)

)

)

) Dave Augustyn, MAYOR

)

)

)

) Nancy J. Bozzato, CLERK

)

)

) ANTONIO NUZIATO

)

)

)

) Owner

)

)

)

)

) Date:

SCHEDULE 'A'

of a Grant Agreement between the Town and the Owner named in this Agreement.

Legal Description of Owner's land

LT 2 W/S NORTH PELHAM ST PL 715 PELHAM

(Municipal Address: 1518 Pelham Street)