

THIS AGREEMENT made this 30th day of June, 2016.

BETWEEN:

THE TOWN OF PELHAM

(hereinafter referred to as the "Town")

And

LOUIE DEANGELIS

(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 for the subject lands (the "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 Commercial Building Facade Improvement Grant (the "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 up to a maximum amount of \$ 17 147.38 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 not designated under the Ontario Heritage Act.

2. GRANT ELIGIBILITY

- 2.1 To be eligible for the Grant, the proposed works (the "Works") as approved by the Town and as may be identified on Schedule "A" on the Lands shall conform to and fulfill:
 - a) The objectives of the Town of Pelham Community Improvement Plan (the "CIP") and the program requirements of the Commercial Building Facade Improvement Grant Program ; and,
 - b) Any other requirements as specified by the Town.

- 2.2 The Applicant acknowledges that they have received and read a copy of the Town's CIP and the Commercial Building Facade Improvement Grant Program Guide (the "Program Guide") and the Applicant covenants with the Town that the Lands shall be restored/improved and the Grant provided for in this Agreement shall be applied in accordance with the objectives, program requirements, and eligibility criteria as set out in the CIP and the Program Guide.2.3The Town shall review all required cost estimates submitted in support of the Application in evaluating the eligible costs for the Grant, which costs, when designated by the Town, shall constitute the maximum amount of the total grant eligible to be paid. In the event the Town is not satisfied with the cost estimates provided by the Applicant, the Town reserves the right to contact contractors for clarification of estimates or may also choose to seek additional estimates for the defined work.

The decision of the Town regarding the total amount of eligible costs, the calculation of the total estimated maximum Grant and the calculation of the actual Grant payment(s) is final, absolute, and within the Town's sole discretion.

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

- a) A Grant agreement has been signed and executed; and,
- b) The Applicant provides proof that the Works are complete, including:

- Final colour photographs (good quality digital) of the property and building clearly showing the completed Works; and,
- Proof all contractors have been paid in full (those contractors being the same and matching accepted estimates from outset); and,

c) Confirmation from the Building Division that all Works have received final inspections, where required and Works have been completed in accordance with all requirements.

3. CORPORATE STATUS (If Applicable)

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 them 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 its 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) 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 facade, architectural drawing/design plans for the facade Works and/or any other supporting documentation required by the Town.

4.2 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 any requested 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 cancelled, and where a 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 a Grant Application prior to receiving approval of the Grant 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, and constructed in accordance with the Ontario Building Code, and all applicable Zoning By-law requirements, municipal requirements and other approvals required at law.

4.5 The Applicant shall complete construction of all improvements within one (1) year of this Agreement's execution, failing which, unless extended by the Town, this Grant approval shall be at an end, there shall be no Grant, and this Agreement may be terminated at the discretion of the Town. The Applicant is advised that any request for an extension will only be considered under extreme circumstances. It shall be the position of the Town to not extend any approval date in the interest of other Applicants seeking access to Grant funding.

4.6 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 Works incurred by the Applicant. This extends to not only the costs relating to the Works subject of the

Grant amount, but all costs of construction/improvement, the purpose of which intends to measure full value of private sector investment in the CIP area for reporting purposes.

- 4.7 The Applicant shall ensure there are no liens or other claims outstanding in respect of the Lands, and that all accounts for work and materials which could give rise to any claim for a construction lien against the 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 Works.

- 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. This extends to any situation arising out of the planned Works that had otherwise not been foreseen. Furthermore, any such instance where unforeseen circumstances expand the scope of work or place the Applicant into a position obtaining additional approvals or permits from the Town, such instances will be the sole responsibility of the Applicant in meeting the expectations of project completion within the allotted timeframe.

- 4.10 If the Applicant is the Owner, the Applicant covenants to the Town that where the Lands for any reason cease to be in the Applicant's name by sale, assignment or otherwise, prior to the advance 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. Any approval granted may be transferred to the beneficial owner or party subject to full disclosure of this Agreement and the defined Works agreed to through the application process. If the beneficial owner does not accept assumption of this Agreement, this Agreement will be deemed terminated as of the day before the transfer of ownership.

- 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 Works 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, zoning by-law amendments, minor variances, and site plan control if applicable ;
 - 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;
 - c) The Applicant releases the Town from any liability in respect of the Town's reviews, decisions, inspections or absence of inspections regarding the planned 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 or shall be construed to be a representation by the Town regarding compliance of the Lands 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 in its sole discretion cease or delay payment of the Grant, and the Applicant agrees that notwithstanding any costs or expenses incurred by the Applicant, they 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 or expiry 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 up to \$ 17 147.38, subject to and in accordance with the terms and provisions set out in this Agreement.
- 5.2 The Town shall request on behalf of the Applicant, the Regional Municipality of Niagara's Smarter Niagara Incentive (SNIP) Building and Façade Improvement Grant, subject to the Grant criteria being met, and subject to Regional funding availability.
- 5.3 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.
- 5.4 The Town, its employees and agents are entitled to inspect the Lands and all Works upon the 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 otherwise 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 Works 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 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 (where required) and all applicable zoning requirements and planning approvals;
 - c) The building is damaged by fire or otherwise and repair or reconstruction is not commenced with 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 Lands or interest of the Applicant in the 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; or,
 - 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 Any approved architectural/design drawings required in order to gain permits may only be amended in the event that the Building Code forces modifications after the project has commenced. In the event that any such change results in a lower cost of the Works, the Town shall retain the right to reduce the approved grant amounts. The Applicant may also be requested to submit revised cost estimates. Under no circumstances will the amount of grant funding be increased as a result of mandatory design changes.

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

- 7.3 The Applicant acknowledges that the Town and the Regional Municipality of Niagara (the "Region") may choose to make use of photographs depicting improvements made to the lands/buildings as a direct or indirect result of having provided a grant incentive to the Applicant. The Applicant agrees to not make any claim against the Town and/or the Region for broadcasting, printing, royalty or other rights and shall have no claim against the Town and/or the Region for infringement of privacy rights, infringement of copyright, or otherwise by reason of the publication in any medium, the purpose of which, is to promote the Community Improvement Programs to potential applicants and provide information about the Programs to the broader general public.

- 7.4 The Applicant shall only use contractors carrying current WSIB coverage and are to provide the contractor's WSIB number to the Town prior to the Works commencing.

- 7.5 The Applicant shall submit a Temporary Obstruction/Road Occupancy Plan and sketch relating to construction equipment and materials temporarily occupying the municipal sidewalk/roadway during construction/re-construction of the façade, to the satisfaction of the Town. The Applicant shall obtain a Temporary Works Permit from the Department of Public Works, if required.

- 7.6 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;

SCHEDULE "A"

(the "Lands")

PROPERTY IDENTIFICATION

Assessment Roll Number:

273202000300200

Municipal Address:

1507 Pelham Street

Legal Information:

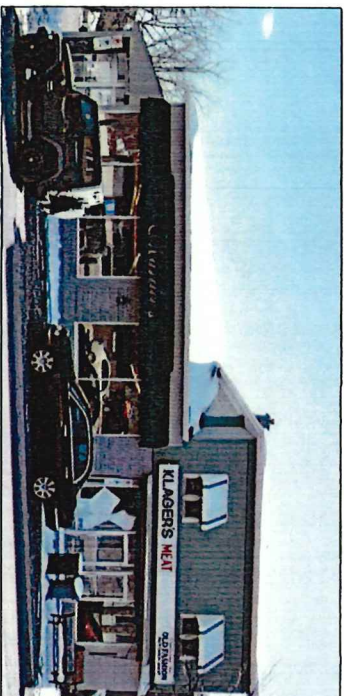
Plan 25 now Plan 717 Lots 45-47

PIN:

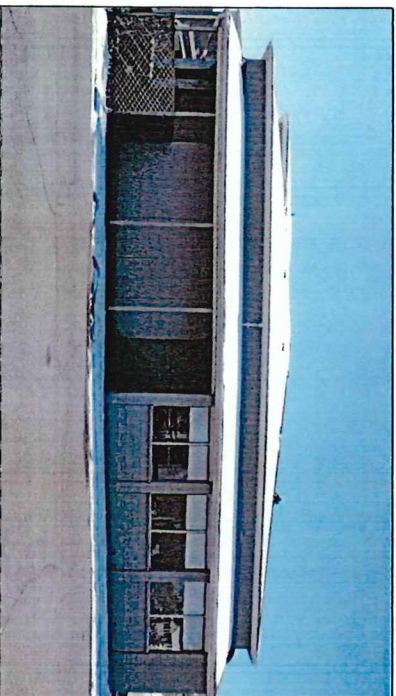
64064-0138

Photos of Existing Building

Front Façade (West Elevation)



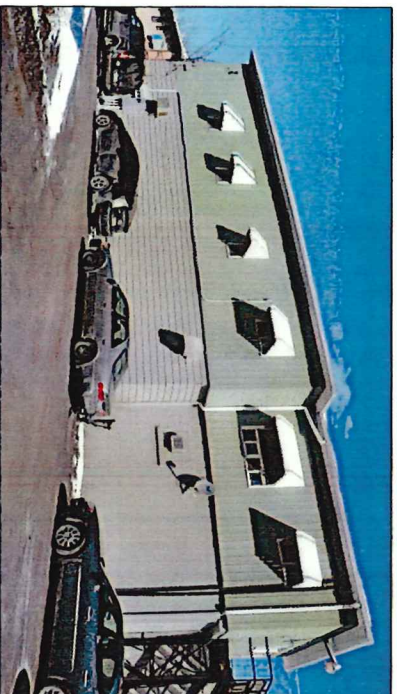
Side Façade (North Elevation)



Rear Façade (East Elevation)

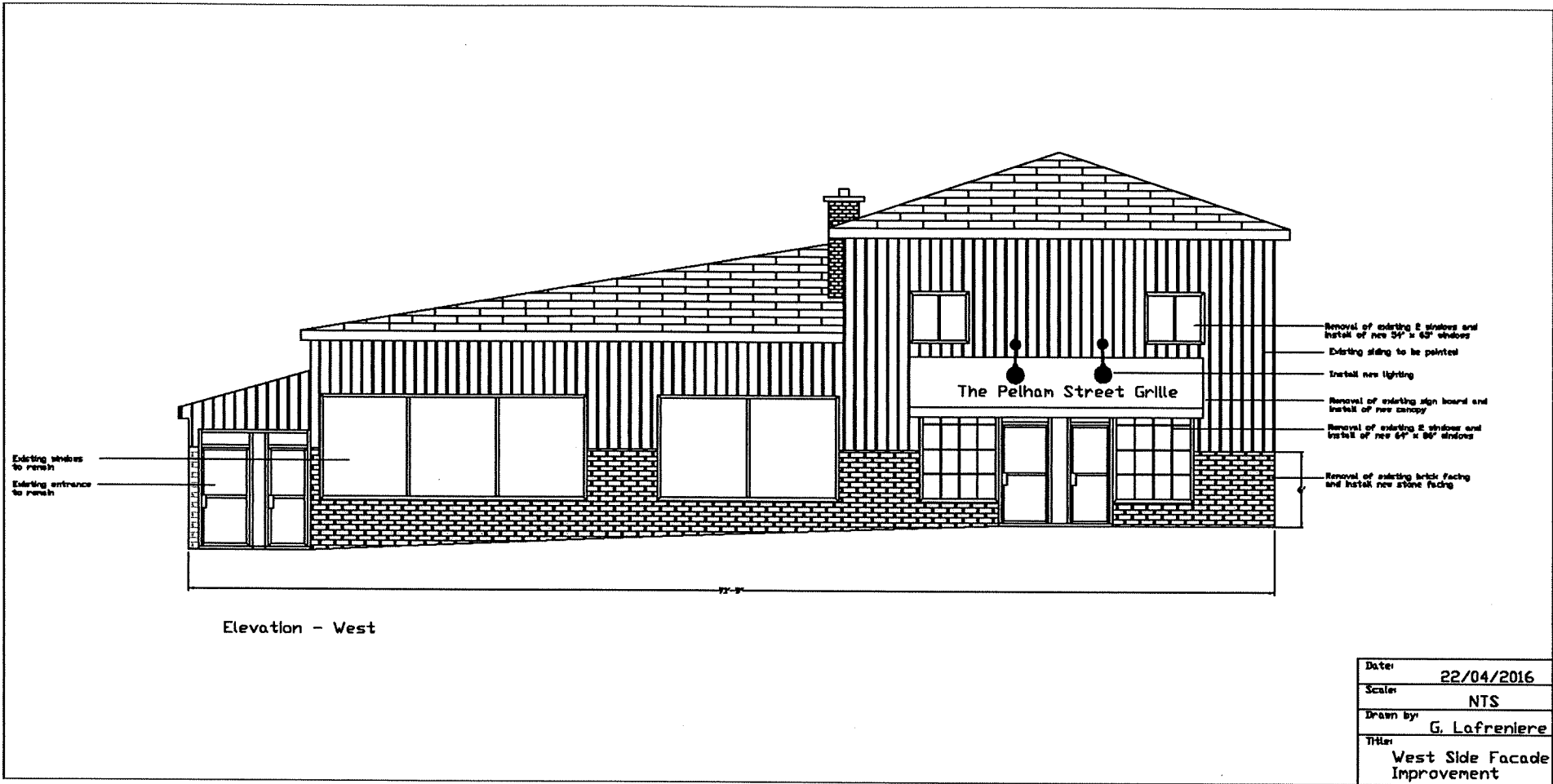


Side Façade (South Elevation)

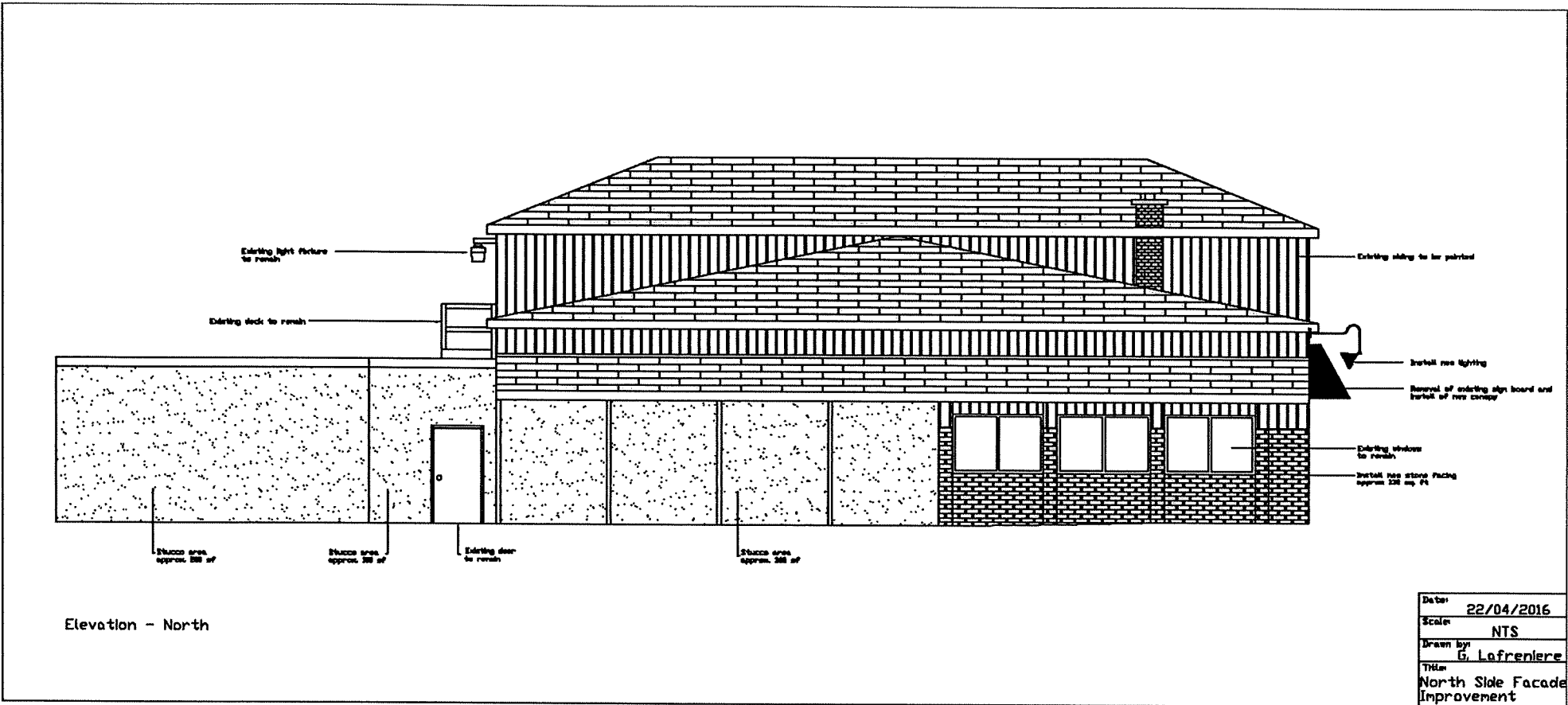


(the "Works")

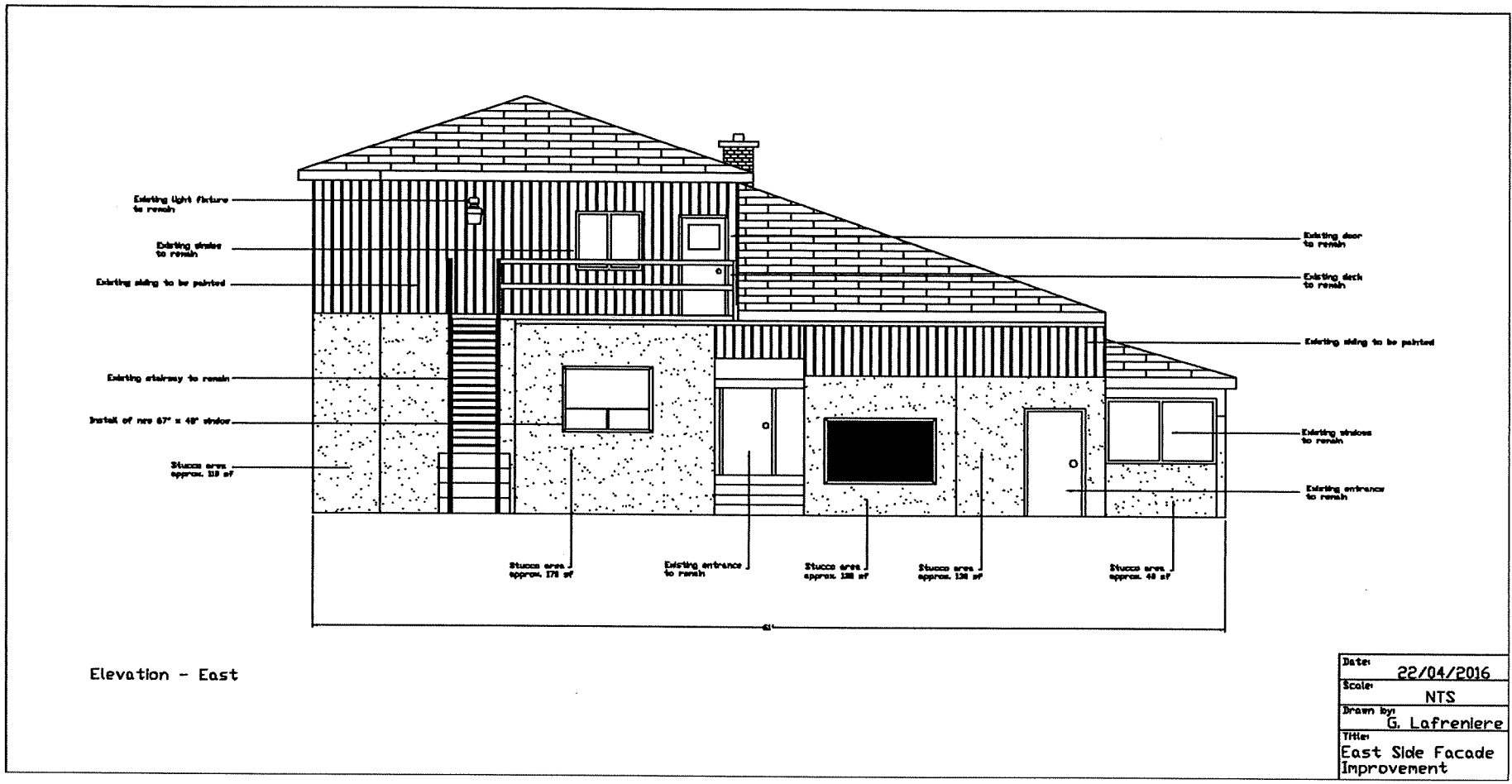
Front Façade (West Elevation)



Side Façade (North Elevation)



Rear Façade (East Elevation)



Side Façade (South Elevation)

