

THIS AGREEMENT made this 21st day of SEPTEMBER 2018.

BETWEEN:

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

And

Lume Investments Inc.
(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, and the Applicant has applied to the Town for a Commercial Building Facade Improvement Grant; a Planning Fees Grant; a Residential Intensification Grant; and, a Revitalization Grant (the "Grants") and the Town has agreed to make such Grants pursuant to Section 28 of the *Planning Act* and under By-Law No. 3095 (2010); and,

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

NOW THEREFORE IN CONSIDERATION of the Town making this Commercial Building Facade Improvement Grant up to a maximum amount of \$ 20,000.00 to the Applicant; this Planning Fees Grant of \$ 10,780.00 to the Applicant; this Residential Intensification Grant of \$ 75,000.00 to the Applicant; and, this Revitalization Grant up to a maximum amount of \$ 326,422.80, the Applicant and the Town hereby agree:

1. INFORMATION ON SUBJECT LANDS

1.1 The Grants shall apply to the Lands as set out in Schedule "A" attached.

1.2 The Lands are not designated under the Ontario Heritage Act.

2. GRANTS ELIGIBILITY

2.1 To be eligible for the Grants, 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, the Residential Intensification Grant Program, and the Revitalization Grant Program; and,
- 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 they have received and read a copy of the Town's CIP and the Commercial Building Facade Improvement Grant Program Guide; the Planning Fees Grant Guide; the Residential Intensification Grant Program Guide; and the Revitalization Grant Program Guide (the "Program Guides") and the Applicant covenants with the Town that the Lands shall be restored/improved and/or rehabilitated and the Grants 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 Guides.

2.3 The Town shall review all required cost estimates submitted in support of the Applications in evaluating the eligible costs for the Grants, which costs, when designated by the Town, shall constitute the maximum amount of the total Grants eligible to be paid. In the event the Town is not satisfied with 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.

Commercial Building Facade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

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

2.4 Revitalization Grant Calculation and Payments

2.4.1 Definitions:

Pre-project assessed value	The assessed value of the 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 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 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 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 Lands as determined by MPAC when the rehabilitation works are complete.

- 2.4.2 The annual Revitalization 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. Revitalization Grant payments will cease on the earlier of:
- a) the date when the total of all annual Revitalization 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 Lands.

- 2.4.3 The amount of the Revitalization Grant payments is calculated according to the formulas set out below. Some of the figures set out below are estimates only. The

actual Revitalization Grant payment amounts will be based on the actual post-project assessed value (AV) as determined by MPAC:

Estimated Cost of Rehabilitation	\$3 661 682.23	
Pre-project AV:	\$275,000	
Municipal Pre-project property taxes: (as shown below)	\$5,286.88	
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		
Total Estimated Post-project AV	\$3,295,514	Date: June 28, 2018
Less Ineligible Portion Relating to 788 Welland (8,745 Square Feet)	-\$900,321	Date: June 28, 2018
Estimated Post-project AV Eligible for Grant	\$2,395,193	Date: June 28, 2018
Post-project AV (actual provided by MPAC)	\$	Date:
Calculation of Estimated Initial Allowance		
"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	Grant Factor	Municipal Tax Increment (3) = Municipal post-project property taxes in Year N – Municipal pre-project property taxes	Grant (2 *3)
(1)	(2)		
1	70%	\$40,677.18	\$28,474.03
2	70%	\$41,897.50	\$29,328.25
3	70%	\$43,154.42	\$30,208.09
4	70%	\$44,449.05	\$31,114.34
5	70%	\$45,782.52	\$32,047.77
6	70%	\$47,156.00	\$33,009.20
7	70%	\$48,570.68	\$33,999.48
8	70%	\$50,027.80	\$35,019.46
9	70%	\$51,528.63	\$36,070.04
10	70%	\$53,074.49	\$37,152.15

2.4.4 The total value of the sum of the annual Revitalization 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 \$3 661 682.23.

2.4.5 Where the actual costs of rehabilitation are, in the opinion of the Town, less than the estimated costs of rehabilitation (\$3 661 682.23), the maximum permitted amount of the total annual Revitalization Grant payments shall be reduced.

Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

2.4.6 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 Revitalization 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.

2.4.7 The annual Revitalization Grant payment shall be calculated by the Town based upon, and provided the Town is satisfied in its discretion that:

- a) rehabilitation of the property was completed and took place in accordance with the proposed rehabilitation as specified in the Program Application and this Agreement;
- b) there was and remains during each year of the Revitalization 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;
- c) annual Revitalization Grant payments after the first Revitalization Grant payment are adjusted downwards in the event the property tax increase in any subsequent year has been reduced.

2.4.8 The estimated Revitalization Grant payments calculated as set out in Paragraph 2.4.3 above in this Agreement are based on preliminary estimates of post-project assessed value and post-project tax rates. Accordingly, the amount of the Revitalization 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 Revitalization Grant.

2.4.9 Revitalization Grant Payment

2.4.9.1 The Town shall review all cost estimates submitted in support of the application in evaluating the estimated costs eligible for the Revitalization Grant, which costs, when designated by the Town shall constitute the maximum amount of the total Revitalization 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 Revitalization Grant.

2.4.9.2 If the Town is not in receipt of sufficient information satisfactory to the Town to determine rehabilitation costs and the amount of the Revitalization 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 Revitalization Grant and the calculation of the actual Revitalization Grant payments is final, absolute and within the Town's sole discretion.

2.4.9.3 Payment of the Revitalization 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.

2.4.9.4 The Applicant shall not be entitled to a Revitalization 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.

- 2.4.9.5 The total sum value of the annual Revitalization 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.
- 2.4.9.6 Any and all Revitalization 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.
- 2.4.9.7 The Revitalization Grant is not payable by the Town until such time as additional assessment eligible for a Revitalization Grant has been added to the assessment roll by MPAC, all taxes eligible for a Revitalization Grant have been billed by the Town, and taxes have been paid in full for at least one year. The Revitalization 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 Revitalization Grant payments.
- 2.4.9.8 The Revitalization 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.
- 2.4.9.9 The Applicant shall not commence any works that are the subject of a Revitalization Grant Application prior to receiving approval of the Revitalization Grant Application and execution of this Agreement.
- 2.4.9.10 Annual Revitalization Grant payments are not payable by the Town until the Town is satisfied 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 Applicant has supplied the Town with documentation of 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 Revitalization 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 & 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 to 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 Revitalization Grant, no instalments of property taxes for the current year remaining to be paid;
 - 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.
 - j) the Town has received payment from the Region for the Region's portion of the property taxes. It should be noted that Regional funding is not guaranteed and is subject to budget approval.
- 2.5 The Commercial Building Façade Improvement Grant and Residential Intensification Grant will not be earmarked or advanced by the Town until:
- a) The 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) The Applicant is a resident of Canada as of the date of this Agreement and that in the event the Applicant ceases to be a resident of Canada, the Applicant shall immediately notify the Town, and it is agreed, the Town may deduct for any or all annual Revitalization Grant payments, such sum(s) as may be required by the Canada Customs and Revenue Agency in order to meet the Town's obligations as a payor and the Applicant's obligations under the *Income Tax Act (Canada)* and other applicable laws;
- d) 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,
- e) The Applicant shall notify the Town immediately of any material change in the conditions set out in paragraphs (a) to (d) above.

- 3.2 At the time the Applicant signs this Agreement, the Applicant will provide the Town with a copy of the Corporate papers.

4. PROVISIONS RELATING TO THE APPLICANT

- 4.1 At the time of application for the Commercial Building Façade Improvement Grant 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 At the time of application for the Revitalization Grant 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.
- 4.3 The Applicant will complete all eligible Works as specified in the approved Grant Applications, and in documentation submitted in support of the Grant Applications, 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 Grants 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.
- 4.4 Upon request, the Applicant shall supply to the satisfaction of the Town prior to issuance of any and all Revitalization 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.
- 4.5 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.
- 4.6 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.
- 4.7 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, if designated, are altered in any way that would compromise the reasons for designation, prior to the expiration of the term of this Agreement, all subsequent Revitalization Grant payments shall cease, and all Revitalization Grant payments already paid by the Town to the Applicant shall be repaid to the Town.
- 4.8 The Applicant shall complete construction of all improvements within **one (1) year** of this Agreement's execution, unless extended by the Director of Community Planning and Development, the Grants approval shall be at an end, there shall be no Grants, 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 Town staff not to extend any approval date in the interest of other Applicants seeking access to Grant funding.
- 4.9 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 Grants amounts, 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.

- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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 the Grants 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.
- 4.14 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 Grants, 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 and subject to the beneficial owner or party entering into an Agreement with the Town. 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.
- 4.15 If ownership of the subject lands does not change, the Applicant may assign the Grants 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.
- 4.16 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 Grants cease completely, unless:
- a) where the Applicant wishes to retain the remaining Grant payments, (to continue receiving the Grants 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 Grants 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 Grants 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 Grants payments to the new owner/assignee, provided the new owner/ assignee:
 - (i) receives the right to receive the remaining Revitalization Grant payments; and,

- (ii) assumes any of the Applicant's obligations and maintenance conditions under this Agreement that have not been fulfilled.

4.17 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.

4.18 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 Grants, and in the case of Revitalization Grant may/may not require repayment 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 Grants payment pending compliance with this Agreement, or to terminate this Agreement.

4.19 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.

4.20 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 Grants contemplated by this Agreement, in which case, the Agreement is terminated.

5. PROVISIONS RELATING TO THE TOWN

5.1 The Town agrees to provide a Commercial Building Façade Improvement Grant to the Applicant estimated as of the date of this Agreement in the amount of up to \$ 20 000.00, subject to and in accordance with the terms and provisions set out in this Agreement.

5.2 The Town agrees to provide a Planning Fees Grant to the Applicant in the amount of \$ 10 780.00.

5.3 The Town agrees to provide a Residential Intensification 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.

Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

5.4 The Town agrees to provide a Revitalization 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 maximum amount of \$ 3 661 682.23.

Upon revaluation of the subject lands by MPAC, the Town shall calculate the actual post-project municipal property taxes and the initial Revitalization Grant.

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 Revitalization Grant payment.

5.5 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 Grants.

During the administration of the initial or subsequent annual Revitalization Grant payments, documentation includes, but is not limited to:

- a) Estimates and actual costs of all rehabilitation works; and,
- b) Environmental reports and documentation.

5.6 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 and all fixtures and improvements upon the subject lands at any time during usual business hours for the purpose of verifying compliance with the provisions of this Agreement.

5.7 The Town retains the right at all times not to make any or all of the Grants payments or to delay payment where the Town deems that there is non-compliance by the Applicant with this Agreement.

5.8 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 Revitalization Grant payments to the Applicant.

5.9 If in the opinion of the Town the 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.

5.10 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 Revitalization 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.

5.11 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 Grants are 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:

Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

- a) Delaying or ceasing the release of the Grants;
- b) Requiring repayment of the Grants; 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 for which the Grants were provided is demolished or designated heritage features of that building are altered during the term of the Grants;
- d) The building is damaged by fire or otherwise and repair or reconstruction is not commenced within 90 days;
- e) The Applicant is in property tax arrears with respect to the property for more than 90 days;
- f) The Applicant sells, transfers or otherwise disposes of the property without advising the Town;
- 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 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;
- 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; or,
- l) 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 grants amounts. The Applicant may also be requested to submit revised cost estimates. Under no circumstances will the amount of the grants funding be increased as a result of mandatory design changes.

7.2 This Agreement shall remain in effect from the date of its execution to the earlier of:

Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

- a) the Applicant informing the Town; in writing prior to the initial Revitalization Grant payment; that the Applicant has decided not to accept the Revitalization 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 Revitalization Grant paid out to the Applicant equals the total costs of rehabilitation;
- d) ten (10) years from the date of completion of the rehabilitation.

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

7.4 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.

7.5 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.

7.6 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.

7.7 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:

Lume Investments Inc.
402 Rice Road
Welland, ON
L3C 2V8

To the Town at:

Town Of Pelham

Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

SCHEDULE "A"

(the "Lands")

Assessment Roll Number: 273201001510800

Municipal Address: 792 Welland Road

Legal Information:

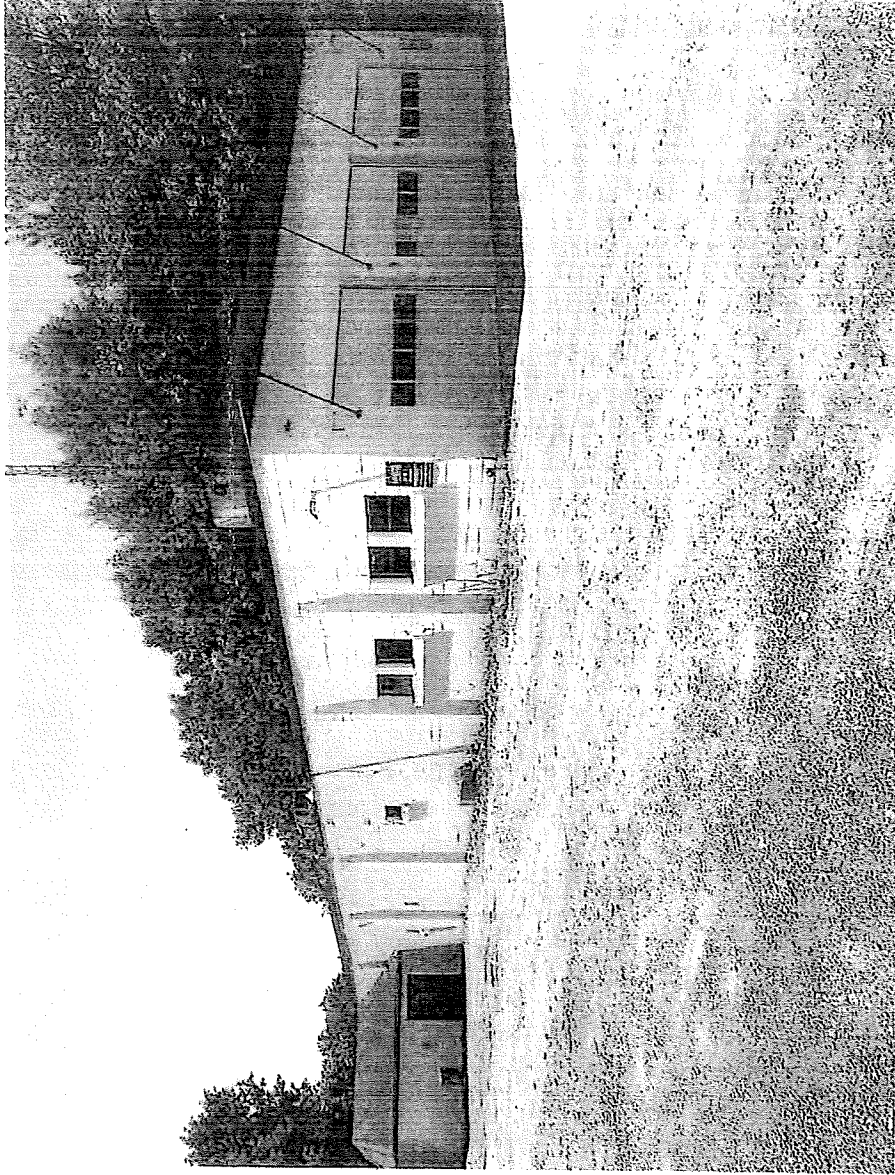
Part Lot 2 S/S Welland Street; Plan 703; Pelham; Being Parts 1 & 2, Plan 59R-3702; Pelham

PIN: 64029-0225 (LT)

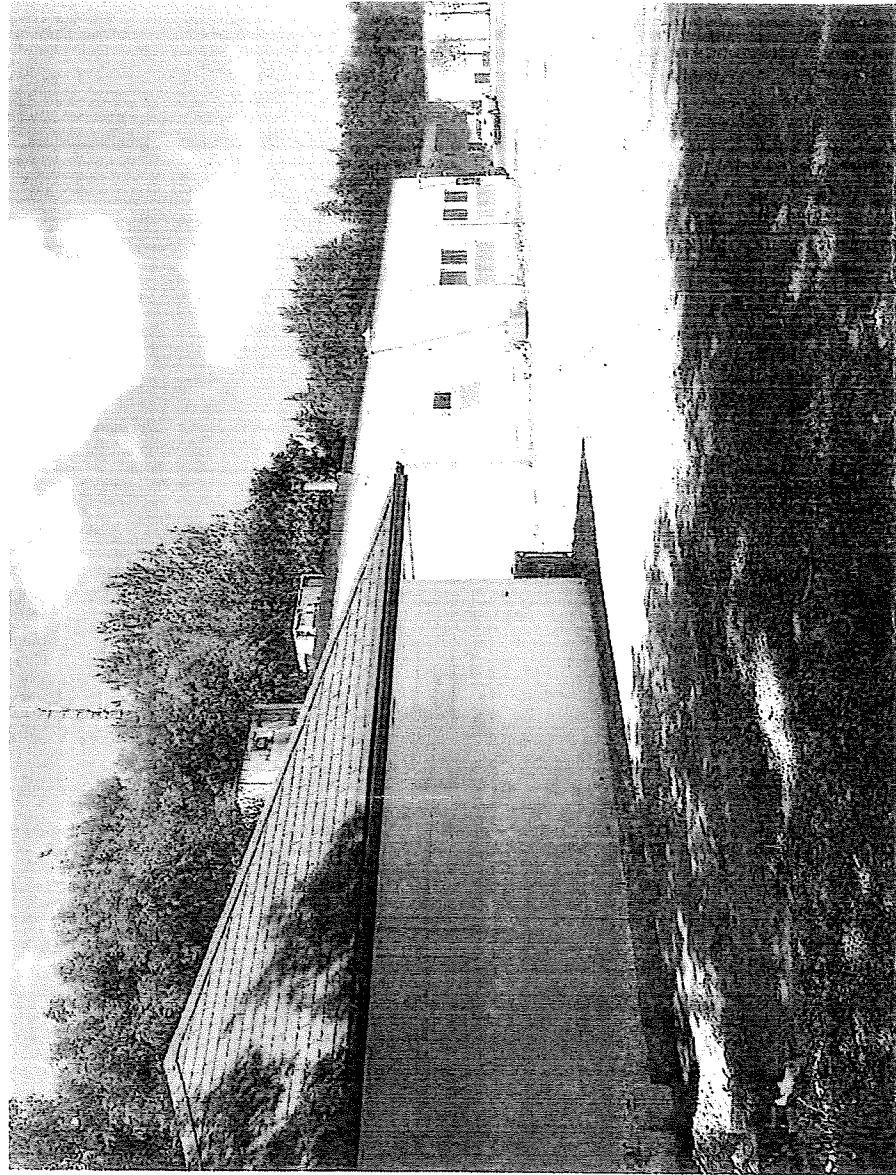
Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

Current Images

Front /Side Façade (North East Elevation)



Side Façade (East Elevation)

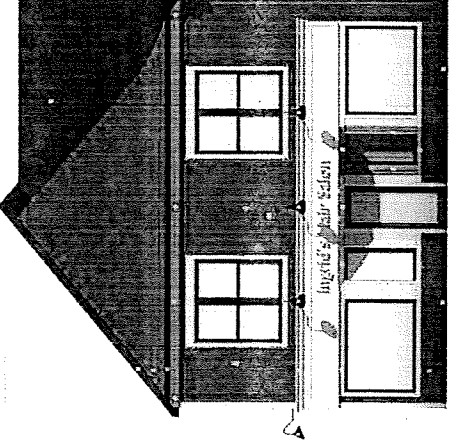
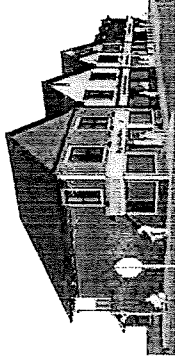


Side Façade (West Elevation)

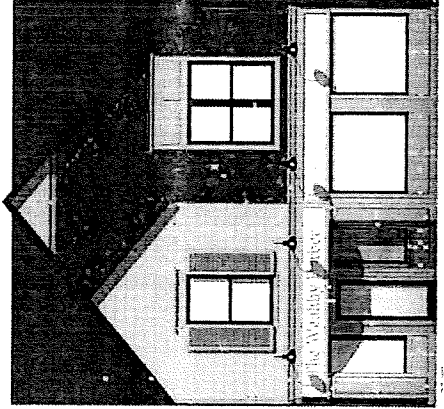
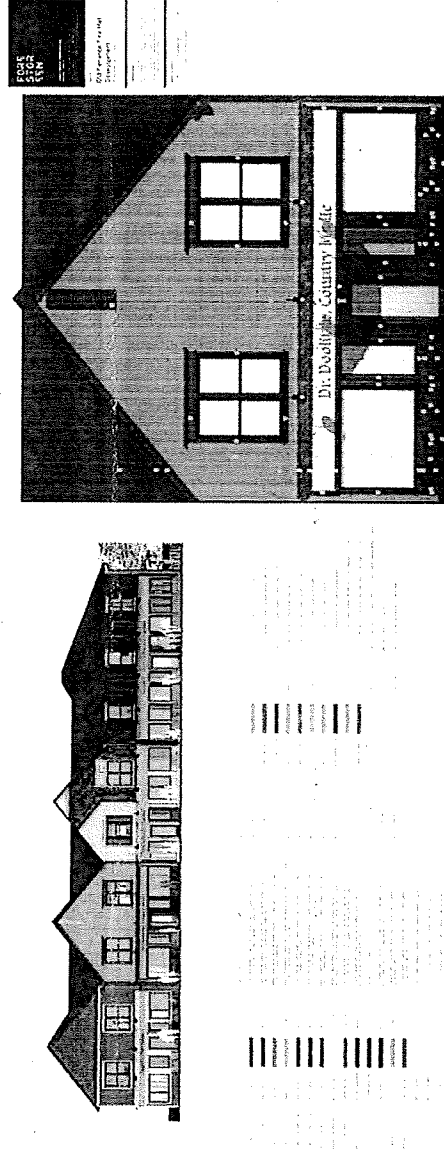


Commercial Building Façade Improvement Grant
Planning Fees Grant
Residential Intensification Grant
Revitalization Grant

(the "Works")



A3.2



A3.3

