To: Mayor & Members  
Committee of the Whole

From: Roberto Rossini  
General Manager  
Finance and Corporate Services  
Telephone:  
Facsimile:  
E-mail: 
905 540-6150  
(905) 546-2584  
Rob.Rossini@hamilton.ca

Date: June 22, 2009

Re: Grant Payment to Hamilton Artists Inc. (HAI) - $722,500  
(FCS07034(b)) (City Wide)

Council Direction:

On September 27, 2006, with approval of Committee of the Whole report 06-019 (Item 6.1), Council approved a grant from the Hamilton Future Fund in the amount of $750,000 to Hamilton Artists Inc. (HAI) for a building purchase / renovation project subject to the following conditions:

i. Confirmation that other funds have been secured for this project (i.e., Provincial/Federal funding);

ii. That if, for whatever reason, Hamilton Artists Inc. dissolves, the building purchased be returned to the City of Hamilton;

iii. That the Future Fund Board of Governors be provided regular updates on the progress of this initiative; and

iv. That an appraisal be undertaken for the building to the satisfaction of the City of Hamilton.

The amount of $27,500 to fund a Feasibility Study was advanced to HAI in 2007 as approved by Council March 28, 2007, with approval of March 26, 2007, COW Report 07-011 (Item 4.), leaving a grant balance of $722,500.

This information report FCS07034(b) “Grant Payment to Hamilton Artists Inc. (HAI)” is to provide information on how the grant conditions have been met. Staff will remit the remaining grant amount of $722,500 to HAI’s solicitor in trust for the execution of the property purchase, once Council has received this information report FCS07034(b).
Information:

The information below provides details as to how each of the grant conditions have been satisfied.

1. **Confirmation that other funds have been secured for this project (i.e., Provincial/Federal funding).**

Appendix A to this report FCS07034(b) provides copies of letters from outside organizations, including the Province (The Ontario Trillium Foundation), the Federal Government (Department of Canadian Heritage), the Hamilton Community Foundation and the Edith H. Turner Foundation Fund showing commitment to funding HAI’s project.

Below is a summary of the funds either committed or already received by HAI:

- The Ontario Trillium Foundation $ 66,000 (with invitation to apply for an additional $75,000)
- Hamilton Community Foundation $ 41,093
- Edith H. Turner Foundation Fund $ 15,000

**Canadian Heritage**

HAI has applied for $23,580 in funding for the purchase of specialized equipment. Once HAI takes title to the property, HAI will be eligible to apply for additional funding from Canadian Heritage for renovation costs. (Refer to the May 15, 2009, letter from Canadian Heritage on Page 4 of Appendix A to report FCS07034(b))

2. **That if, for whatever reason, Hamilton Artists Inc. dissolves, the building purchased be returned to the City of Hamilton.**

The City has executed a Loan Agreement (Appendix B to report FCS07034(b)) in the amount of $722,500 with HAI that will be secured by a first mortgage on the property purchased by HAI. This will ensure the City has first rights to the property should Hamilton Artists Inc. dissolve.

The grant payment will be made payable to HAI’s solicitor, in trust, for the purchase of the property at 155 – 161 James St. N. The mortgage will be registered on the property when title passes to HAI.

3. **That the Future Fund Board of Governors be provided regular updates on the progress of this initiative.**

HAI has committed to providing regular updates to the Hamilton Future Fund Board of Governors.
4. That an appraisal be undertaken for the building to the satisfaction of the City of Hamilton.

An Information Report was presented at the March 26, 2007 Committee of the Whole (Agenda Item 7.2(b)) that provided property appraisal information on the property to be purchased by HAI at 155 – 161 James St. N, based on information provided by the City’s Real Estate Division. The report indicated the estimated market value of the property is in the range of $300,000 to $370,000. Also included in the report was a copy of the Building Inspection Report from Threshold School of Building that indicated improvements of $479,000 are required for the building to be functional for HAI's specific use.

Hamilton Artists Inc. has a signed Agreement of Purchase and Sale with the current owner of the property for the amount of $470,277. The difference between the agreed upon purchase price and the 2007 appraised value previously reported reflect costs covered by the current owner since purchasing the property which include:
- demolition of the middle building (157 James)
- removal of trees
- survey costs
- boarding construction
- brick & masonry work
- engineering costs
- asbestos removal & environmental assessment costs

_______________________
Roberto Rossini
General Manager
Finance and Corporate Services
June 9, 2008

City of Hamilton
Joe Rinaldo
Director of Finance
Hamilton, Ontario

Dear Mr. Rinaldo,

The Ontario Trillium Foundation is pleased to be participating as a funder towards Hamilton Artists Inc.'s Building Project at the northwest corner of James and Cannon Streets in downtown Hamilton. The Foundation has awarded a $66,000 grant to the organization and has invited them to re-apply upon their acquisition of the renovated building up to a maximum of $150,000 for a further $75,000 grant for the design and landscaping of their courtyard.

We see the addition of this courtyard in the downtown core as a significant contribution in terms of developing a new public space for a variety of programming while encouraging partnering with various not for profit groups in the area.

If you have any questions, please do not hesitate to contact me at 905-523-1789.

Sincerely,

Susan West
Regional Program Manager
Ontario Trillium Foundation
Hamilton office
436 Aberdeen Avenue, Hamilton, ON
L8P 2S2
swest@trilliumfoundation.org
July 16, 2007

Ms. Donna Lee Macdonald
Administrative Director
Hamilton Artists Inc.
3 Colbourn Street
P.O. Box 37047 Janesville
Hamilton, ON L8R 3P1

Dear Ms. Macdonald:

RE: Grant Award - Ready to Work
  Tackling Poverty Together - Community Fund, 2007-08

Enclosed is our cheque in the amount of $41,093 in accordance with the Agreement between our
two organizations which outlines the use of these funds, reporting requirements and publicity
details.

I would like to draw your attention to two (2) conditions in this grant Agreement. The first is a
request that, whenever possible, photographs relating to the initiative being supported be
included as part of your report on the use of grant monies. Photographs will help our Board
appreciate the results of their grantmaking and may be considered for use (with permission) in
our Annual Report and other publicity materials.

The second condition involves your agreement to provide appropriate publicity for Hamilton
Community Foundation related to your award. We request this because such public
acknowledgement raises awareness not only about your organization and its great project but
also about the Foundation and its work.

Our experience shows that it is these examples that attract donors to consider gifts to the
Hamilton Community Foundation. As the asset base grows, more funds become available to
support good projects such as yours which enhance the quality of life in our community - a goal
we share with your organization.

We are pleased to be able to provide financial assistance for your project and look forward to its
significant outcomes.

Yours sincerely,

Sheree Meredith
Vice President Grants & Community Initiatives

Carolyn A. Miller
President

SMith
Enclosure
December 19, 2007

Ms. Donna Lee Macdonald
Executive Director
Hamilton Artists Inc.
3 Colbourne Street
P. O. Box 37047 Jamesville
Hamilton, ON L8R 3P1

Dear Ms. Macdonald:

Re: Grant Award – Edith H. Turner Foundation Fund, 2007-08

Congratulations are in order! A grant from the Edith H. Turner Foundation Fund has been approved as follows:

$15,000 - “Ready to Work Youth Renovation Project”

Please find enclosed two copies of an Agreement which need to be signed by two authorized officers of your organization. We ask that you return one signed copy of the Agreement to our office by Wednesday, January 3, 2008.

You may wish to fax a copy of the signed Agreement, and follow this with the signed original sent by mail. Once we receive the signed Agreement, the first payment cheque will be issued as per the terms outlined.

You will note that the Agreement includes the payment schedule and reporting deadlines. Adherence to the reporting deadlines will ensure that payments are made as stated. Should there be any change in circumstances that require this Agreement to be amended, please advise our office. Reporting guidelines for both interim and final reports are posted on the Foundation’s website www.hcf.on.ca

We are pleased to support your community work and wish you continued success.

Should you have any questions or require additional information, please contact Sharon Charters, Manager of Grants, at (905) 523-5600 x 242. On behalf of the Board of Hamilton Community Foundation, please accept our very best wishes to you and your organization.

Yours sincerely,

J. Benjamin Simpson, Q.C.
Chair, Advisory Committee
Edith H. Turner Foundation Fund

Sheree Meredith
Vice President,
Grants & Community Initiatives
Chris Murray, City Manager  
77 James St. N., Suite 400,  
Hamilton, ON  
L8R 2K3

Mr. Murray,

Thank you for the details about the City of Hamilton's conditional funding for Hamilton Artists Inc.

The Department of Canadian Heritage has been in communication with Hamilton Artists Inc since November of 2008. While we were not able to support their original application which encompassed all aspects of their building project, we have received a second application for the purchase of specialized equipment. The total amount requested is $23,580.00. We have recently received the last pieces of information needed to move the file forward for the Minister's consideration. While a decision will not be made by May 22, we will attempt to secure a timely decision. Rest assured we are working towards a successful outcome.

Hamilton Artists Inc intends to make another application for building renovation, should they be successful in securing the funding from the City to purchase the building. No commitment can be made at this time with reference to future applications to CSC.

I trust this is satisfactory for the City to release funds to Hamilton Artists Inc, and that some flexibility can be exercised with regards to the condition of federal funding.

Regards,

Valerie Hopper,  
A/ Director of Programs  
Department of Canadian Heritage, Ontario Region

CC: Todd Scarfone
LOAN AGREEMENT

THIS AGREEMENT is made this 2nd day of June, 2009.

BETWEEN:

CITY OF HAMILTON

(the “City”)

- and -

HAMLTON ARTISTS INC. (HAI)

(the “Borrower”)

Loan

Subject to Section 9, the City agrees to lend to the Borrower and the Borrower agrees to borrow from the City the sum of Seven hundred and Twenty-two thousand, Five hundred Dollars ($722,500.00) of lawful money of Canada (the “Principal Sum”).

Purpose

The Borrower shall use the Principal Sum only to finance the Borrower’s purchase and renovation of the buildings and property at 155 – 161 James Street, N, Hamilton, Ontario, (the “HAI Property”). The HAI Property will provide the Borrower with a permanent presence in the James Street North neighborhood as well as subsidized housing for artists and store fronts for incubating cultural organizations.

Advance

The City shall advance the Principal Sum to the Borrower’s solicitor, in trust, acting on behalf of the Borrower with respect to the closing of the purchase by the Borrower of the HAI Property (the “Closing”).

Repayment

The Borrower agrees to repay the Principal Sum, together with any other monies which may, from time to time, be owing hereunder, to the City on the twentieth (20th)
annual anniversary date of the advance of the Principal Sum at Hamilton City Hall, Hamilton, Ontario or at any other place in Canada that the City may direct; provided, however, that if no Event of Default or other event giving rise to the acceleration of the Principal Sum has occurred and is continuing on such Anniversary Date, the Principal Sum shall be automatically forgiven.

Security

As continuing collateral security for the advance of the Principal Sum and any amount payable in respect of capital appreciation, the Borrower shall execute and/or deliver to the City, the following:

a first mortgage/charge of land given by the Borrower, in form and content satisfactory to the City, which shall be registered against title to the HAI Property (the “Mortgage”) on the closing of the purchase by the Borrower of the HAI Property;

Assignment of any proceeds of Insurance required pursuant to Section 6; and

any and all such other and further documents, agreements and other instruments, and do such other and further things, as the City may require to give effect to this Agreement and cause the City to hold valid and enforceable security for the Principal Sum advanced together with any amount payable in respect of capital appreciation.

Insurance

The Borrower shall obtain and maintain property insurance all risk to insure the building, on a replacement cost basis with limits equal to the value of the building. The City shall be named as a loss payee as their interest may appear. The Borrower shall provide a certificate of Insurance to the City prior to the advance being made in accordance with Section 3 and thereafter, throughout the term of the agreement, the Borrower shall provide a certificate of insurance no later than 20 Business Days prior to the renewal date of the policy. The certificate shall provide that at least 30 days prior written notice shall be given to the City by the Insurer before the Insurer or Borrower takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof.

The certificate holder shall be addressed as the City Of Hamilton, Corporate Services Department, Budgets & Finance Division, 21 King St. W., 12th Floor, Hamilton, ON L8P 4W7, Attention: Manager, Capital Budgets & Development.

Preconditions to Advance.

The obligation of the City to advance the Principal Sum under this Agreement is subject to and conditional upon:

receipt by the City of a copy of the executed agreement of purchase and sale for the HAI Property in accordance with section 8;
confirmation that the Borrower has retained a lawyer, who shall be a Member, in good standing, with the Law Society of Upper Canada, with respect to the closing of the purchase by the Borrower of the HAI Property;

confirmation that the title to the HAI Property is taken only in the name of the Borrower who is a party hereto;

each representation, statement, declaration and all information provided to the City by the Borrower in connection with this credit facility being true and accurate at the time it was given or made;

receipt by the City of the Mortgage registered against title to the HAI Property, together with any other security as may be required by section 5 hereof;

confirmation that there are no restrictions, liens or encumbrances registered against the title to the HAI Property at the time of the advance of the Principal Sum other than (i) any mortgage/charge of land securing financing obtained solely for the purchase of the HAI Property; (ii) a declaration and description under the Condominium Act; (iii) any minor easements for the supply of domestic utility or telephone services to the HAI Property or adjacent properties; (iv) any minor easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property; (v) any registered municipal agreement and registered agreement with publicly regulated utilities providing such have been complied with; and (vi) any registered restrictions that run with the land providing such are complied with; and

any and all further conditions as the City, acting reasonably, may deem necessary.

**Agreement of Purchase and Sale**

If the Borrower has not already done so, the Borrower shall provide the City with a copy of the executed agreement of purchase and sale pertaining to the HAI Property within fifteen (15) days of entering into this Agreement. Any personal information collected by or on behalf of the City under this provision is collected under the provisions of the Municipal Freedom and Information and Privacy Act. The information in the agreement of purchase and sale will be used to confirm certain information provided in the Borrower’s application for this credit facility and in preparing the Mortgage. The Borrower consents to such collection and use of the information. The Borrower acknowledges that the information contained in the agreement of purchase and sale may become public and consents to the release of that information. Any questions regarding the collection, use, or disclosure of the information should be directed to Freedom of Information Office, 77 James St. North, Suite 220, Hamilton, Ontario

**Events of Default**

The occurrence of any one or more of the following events (each, an "Event of Default") shall constitute a default under this Agreement:
use of the Principal Sum for a purpose other than for the purchase and renovation of the HAI Property as described in Section 2 of this Agreement;

the Borrower becomes bankrupt or insolvent or the Borrower becomes subject to the provisions of the Bankruptcy and Insolvency Act, R.S.C. 1985 c. B-13 or any other Act for the benefit of creditors or the Borrower makes a general assignment for the benefit of its creditors or otherwise acknowledges insolvency;

a writ of execution against the Borrower is or becomes binding against the HAI Property;

a disposal, including a lease, by the Borrower of any part of the HAI Property, without the prior written consent of the City which may be arbitrarily withheld by the City;

any representation, statement, declaration or information provided to the City by the Borrower in connection with this credit facility is false or erroneous in any material respect as of the time it was made or given.

the Borrower's certificate of incorporation is cancelled and/or the Borrower is wound up or dissolved pursuant to the provisions of the Business Corporations Act, R.S.O. 1990 c.B.16 as amended or any other applicable legislation;

use of the HAI Property for a purpose other than as set out in Section 2 of this Agreement; or

the Borrower breaches any of the terms of this Agreement.

Upon the occurrence of an Event of Default, and for so long as the Event of Default shall continue, the City may by notice to the Borrower, declare the Principal Sum to be due and owing and repayment of the Principal Sum in accordance with section 12 of this Agreement shall occur. If the Principal Sum cannot be paid in accordance with section 12 of this Agreement the ownership of the HAI property shall be immediately transferred to the City of Hamilton.

Resale

If, during the period in which the Principal Sum is outstanding, (i) the HAI Property is resold, transferred or disposed of, (ii) the Borrower leases the HAI Property or part thereof or (iii) the Borrower ceases to occupy the whole HAI Property, without the prior written consent of the City which may be arbitrarily withheld, the Principal Sum plus any additional amounts as set out in section 11 of this Agreement, shall be immediately due and payable together with any Capital Appreciation Amount that may be due and payable hereunder.

Capital Appreciation Amount

If, during the period in which the Principal Sum is outstanding, the HAI Property is resold, transferred or disposed of for more than the price at which it was acquired by the Borrower, the Borrower shall pay to the City an amount that is equal to the
original Principal Sum advanced plus five percent (5%) of the realized appreciation amount being the difference between the fair market value of the HAI Property as of the date on which the HAI Property is resold, transferred or disposed of and the original purchase price of the HAI Property. The fair market value of the HAI Property shall be determined by the City, at the City's discretion, based on (i) the price at which the HAI Property was resold transferred or disposed of, if such transaction was an arm's length transaction, (ii) an independent appraisal commissioned by the City at the City's expense, or (iii) the current municipally assessed value of the HAI Property.

If, during the period in which the Principal Sum is outstanding, the HAI Property is resold, transferred or disposed of for less than the price at which it was acquired by the Borrower and the City notifies the Borrower in writing that it is not satisfied that the sale was at fair market value, the Borrower shall pay to the City an amount that is equal to the percentage that the Principal Sum is of the original purchase price of the HAI Property as applied to any positive differential between the current fair market value of the HAI Property and the original purchase price of the HAI Property. The fair market value of the HAI Property shall be determined by the City, at the City's discretion, based on either an independent appraisal commissioned by the City at the City's expense or the current municipally assessed value of the HAI Property.

If, during the period in which the Principal Sum is outstanding, the Borrower leases the HAI Property or part thereof or ceases to occupy the whole HAI Property, without the City's prior written consent in accordance with Section 9(d) hereof, the Borrower shall pay to the City an amount that is equal to the original Principal Sum advanced plus five percent (5%) of the realized appreciation amount being the difference between the fair market value of the HAI Property as of the date on which the Borrower leases the HAI Property or part thereof or ceases to occupy the whole HAI Property as his or her sole and principal residence. The fair market value of the HAI Property shall be determined by the City, at the City's discretion, based on either an independent appraisal commissioned by the City at the City's expense or the current municipally assessed value of the HAI Property.

12. Repayment In Event Of Default

If, during the period in which the Principal Sum is outstanding, an Event of Default occurs and the City has declared the Principal Sum immediately due and owing, the Borrower shall pay to the City an amount that is equal to the original Principal Sum advanced plus five percent (5%) of the realized appreciation amount being the difference between the fair market value of the HAI Property as of the date on which the Event of Default occurs and the City has declared the Principal Sum immediately due and owing. The fair market value of the HAI Property shall be determined by the City, at the City's discretion, based on either an independent appraisal commissioned by the City at the City's expense or the current municipally assessed value of the HAI Property, whichever is greater.

13. Prepayment

The Borrower may repay all of the Principal Sum upon payment of an amount that is equal to the percentage that the Principal Sum is of the original purchase price of the
HAI Property as applied to any positive differential between the current fair market value of the HAI Property and the original purchase price of the HAI Property. The fair market value of the HAI Property shall be determined by the City, at the City's discretion, based on either an independent appraisal commissioned by the City at the City's expense or the current municipally assessed value of the HAI Property.

The Borrower shall not be permitted to prepay only part of the Principal Sum.

14. **Calculations**

Notwithstanding anything to the contrary contained in this Agreement, amounts payable under this Agreement with respect to capital appreciation shall not exceed the maximum amount of interest that does not violate applicable laws.

Where an amount payable in respect of capital appreciation is considered interest, the rate of interest in respect of a period less than one year shall be the applicable annual rate of interest multiplied by the number of days in the calendar year in respect of which the calculation is made divided by 365.

15. **Renovations**

(a) Renovations to the HAI Property to which the Principal Sum shall be applied shall be completed within 24 months of the purchase of the HAI Property by the Borrower or within such further period of time the General Manager, Finance and Corporate Services of the City deems, in his sole discretion, appropriate.

(b) Within 6 months of the completion of the renovations to the HAI Property the Borrower shall provide, to the satisfaction of the General Manager, Finance and Corporate Services of the City, a complete accounting of how the Principal Sum was applied to the cost of the renovations.

16. **Notice**

Any notice or other communication required, desired or permitted under this Agreement shall be in writing and shall be effectively given if:

- delivered personally;
- sent by prepaid courier service;
- sent by registered mail; or
- sent by facsimile

...to the following address:

in the case of the City to:

City of Hamilton
Corporate Services Department,
77 James Street North, Suite 400
In the case of the Borrower to:

Hamilton Artists Inc.
155 – 161 James Street North
P.O. Box 37047
Hamilton, ON L8R 3P1

or at such other address as the party to whom such notice or other communication is to be given shall have advised the party giving the same in the manner provided in this section. Any notice or other communication shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a business day such notice or other communication shall be deemed to have been given and received on the next following business day. Any notice or other communication transmitted by facsimile shall be deemed to have been given and received on the day of its transmission, provided that such day is a business day and such transmission is completed before 4:30 pm on such day, failing which such notice or other communication shall be deemed to have been given and received on the first business day after its transmission.

17. **Amending Articles of Incorporation**

The Borrower shall not amend its articles of incorporation without the consent of the City and such consent shall not be unreasonably withheld.

18. **Title Restrictions**

The Borrower shall not permit any liens, restrictions or encumbrances to be registered against title to the HAI Property without the consent of the City and such consent shall not be unreasonably withheld.

19. **Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions of this Agreement and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

20. **Whole Agreement**

This Agreement constitutes the whole agreement between the City and the Borrower relating to the subject matter of this Agreement, and cancels and supersedes any prior agreements, undertakings, declarations, commitments and representations,
written or oral, in respect thereof.

21. **Amendment & Waiver**

No provisions of this Agreement shall be amended or altered except by further written agreement between the City and the Borrower. No Event of Default shall be deemed waived or consented to by the City, unless such waiver or consent is in writing and signed by an authorized representative of the City. No waiver of a provision of this Agreement shall operate as a waiver of any other provision or of the same provision on a future occasion.

22. **Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

23. **Time**

Time shall be of the essence in this Agreement.

24. **Gender and Number**

This Agreement shall be read with all changes of gender and number required by the context.

25. **Successors and Assigns**

This Agreement shall be binding upon and shall enure to the benefit of the City and the Borrower and their respective successors and assigns. The Borrower may not assign or transfer its rights and obligations under this Agreement without the prior written consent of the City. The City may assign or transfer its rights and obligations under this Agreement without the Borrower's consent.

26. **Governing Law**

This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of Canada and the laws of Ontario applicable therein.

27. **Notice of Closing**

The Borrower will provide the City with twenty (20) days' advance written notice of the Closing.
28. **Independent Legal Advice**

The Borrower acknowledges and agrees that it has been advised by the City or its appointed representative to consult a lawyer before executing this Agreement. The Borrower further acknowledges and agrees that they have either obtained independent legal advice from their own lawyer with respect to the terms of this Agreement prior to execution or declined seeking such independent legal advice. Nevertheless, the Borrower herein acknowledges that they have read this Agreement, understand the terms and conditions and the Borrower's rights and obligations under this Agreement and agree to be bound by same. The Borrower acknowledges and agrees that this Agreement is being executed voluntarily.

**IN WITNESS WHEREOF** the parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective proper signing officers in that behalf duly authorized.

**CITY OF HAMILTON**
Signed for and on behalf of the City of Hamilton by:

Signed: [Signature]
Name: Fred Eisenberger
Title: Mayor
Date: June 5, 2009

Signed: [Signature]
Name: Kevin C. Christenson
Title: City Clerk
Date: June 5, 2009

**HAMILTON ARTISTS INC.**
Signed for and on behalf of Hamilton Artists Inc. by:

Signed: [Signature]
Name: Wendy Crawford
Title: Secretary
Date: Tues. June 2, 2009

"I have the authority to bind the Corporation"

"I have the authority to bind the Corporation"

---

**FINANCIAL CONTENT APPROVED BY**

[Signature]
FINANCE

**APPROVED AS TO FORM**

[Signature]
LEGAL SERVICES