

AGREEMENT

Dated this _____ day of _____, 2024 (the “Effective Date”)

BETWEEN:

THE CORPORATION OF THE CITY OF ELLIOT LAKE

(the “City”)

OF THE FIRST PART

- and –

THE ARTS AND CULTURE ROUNDTABLE IN ELLIOT LAKE

(“ARIEL”)

OF THE SECOND PART

RECITALS:

- A. The City is a municipal corporation under the *Municipal Act, 2001*, S.O. 2001, c. 25, that owns the property at 14-16 Elizabeth Walk, Elliot Lake, ON, (the “Property”) and otherwise referred to as the Elliot Lake Arts and Heritage Centre (“ELAHC”);
- B. ARIEL is a not-for-profit corporation overseen by a Board of Directors that seeks to facilitate the collaboration between artists, organizations and businesses, and strives to support the economic well-being of Elliot Lake and to contribute to the quality of life of its residents;
- C. ARIEL, in co-operation with the Elliot Lake Arts Club and The Model Railroad Club, intends to establish and operate an art gallery at the ELAHC and to manage the ground-level (first level) floor of the Property;
- D. In furtherance of the foregoing, the City and ARIEL have indicated their desire to enter into this Agreement to set out the general terms upon which they will work together and collaborate with one another to ensure the successful operation of the art gallery.

1. DEFINITIONS AND INTERPRETATION OF AGREEMENT

1.1 Definitions

In this Agreement, the following definitions shall apply:

- (a) “**Agreement**” means this agreement, as same may be amended from time to time by written agreement of the Parties.

- (b) “**Art Gallery**” means the Art Gallery that ARIEL intends to operate out of ELAHC.
- (c) “**ARIEL Staff**” means the staff employed by ARIEL to manage the Property.
- (d) “**Business Hours**” means 8:00 am to 9:00 pm, inclusive.
- (e) “**Business Operations**” means the business operations of ARIEL to operate an art gallery and showcase the works of visual artists, musicians, and writers.
- (f) “**Capital Project**” means any maintenance that exceeds the scope of regular maintenance and affects the operations of the building on the Property.
- (g) “**City Staff**” means the staff of the City.
- (h) “**Claims**” means all claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a substantial indemnity basis, interest, demands and actions of any nature and kind whatsoever.
- (i) “**Default**” has the meaning ascribed thereto in Section 6.3.
- (j) “**Notice**” has the meaning ascribed thereto in Section 7.
- (k) “**Party**” or “**Parties**” means individually, either ARIEL or the City, or each collectively, as the case may be.
- (l) “**Substantial Changes**” means any modifications to the Property that may result in Property improvements, addition or removal of features, changes to the configuration, or installation of any fixtures, structures, or landscaping.
- (m) “**Tenant**” or “**Tenants**” means Elliot Lake Arts Club and the Model Railroad Club, or either of them, as the case may be, or any additional tenants at the Property that are not commercial enterprises.
- (n) “**Term**” has the meaning ascribed thereto in Section 5 and may, depending on context, mean the initial term of five year or the extended term.

1.2 Exercise and Enforcement of Rights

Each of the Parties shall perform its obligations under this Agreement and shall, except as otherwise expressly provided, act reasonably in the exercise and the enforcement of its rights under this Agreement. Each right shall, except as otherwise expressly provided, be exercisable and enforceable from time to time.

1.3 Headings, Divisions, Recitals, and Schedules

The headings of any Article or Section are inserted for convenience only and do not form part of this Agreement. All references in this Agreement to Articles and Sections are to those in this Agreement. The Recitals form an integral part of this Agreement and the Parties attest that they are true in substance and in fact. The Schedules to this Agreement form a part hereof.

1.4 Relationship of the Parties

Nothing in this Agreement shall be deemed to create or be construed as creating the relationship of principal and agent or a partnership or a joint venture between the City and ARIEL. Neither the City nor ARIEL, as a result of this Agreement, have any fiduciary obligations to each other.

1.5 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. Each of the Parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

1.6 Gender and Number

Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender and neuter gender, and words importing persons shall include firms and corporations, and vice versa.

1.7 Amendments

No amendment or modification of this Agreement shall be binding unless in writing and signed by each of the Parties.

1.8 Waiver

No delay or omission by any party hereto to exercise any right accruing upon a Default by the other party will impair any such right or be construed as a waiver thereof, and no waiver by any party of any of the covenants, conditions, or agreements hereof to be performed by the other party will be construed as a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement.

1.9 No Fettering of Discretion

The Parties agree that notwithstanding any other provisions in this Agreement, none of the provisions of this Agreement shall operate or have the effect of operating to, in any way, fetter the discretion of the City or its Council with respect to any discretionary powers, duties, or authorities it may have as a municipal corporation at law.

2. ARIEL'S OBLIGATIONS

2.1 Collaboration and Cooperation

ARIEL agrees that it will work collaboratively and cooperatively with the City to facilitate the operation of the ELAHC. Without limiting the generality of the foregoing, ARIEL shall:

- (a) allow access to and use of the Art Gallery to the general public;
- (b) ensure ARIEL Staff monitors the front entrance of the ELAHC and operates a public reception area;
- (c) sort, distribute, and accept mail and delivered parcels on behalf of the Tenants;
- (d) engage a daily cleaning schedule/service to maintain the cleanliness of the Property, at its sole cost and responsibility;
- (e) ensure promotional material and advertising is not discriminatory or derogatory in nature, from the view of race, sex, colour, creed, political affiliation or other social factors, and does not convey a secondary negative or offensive connotation, any sexual overtones, inappropriate humour, or slang, and does not in any anyway portray the City in a negative manner;
- (f) provide annual financial reports and an annual operating budget, which shall set forth both anticipated revenues and expenses on an accrual basis, including details of anticipated expenses for maintenance and supporting documentation relating to the administration and operation of the Art Gallery, as may be requested by the City;
- (g) ensure any and all volunteers of ARIEL receive provincially regulated, approved health and safety training, and completed criminal and vulnerable sector record checks at the sole cost and expense of ARIEL;
- (h) engage a professional to install a hanging system to showcase the art;
- (i) maintain the tourism literature rack in the foyer of the ELAHC;
- (j) sell the City-branded merchandise at the Art Gallery;
- (k) not change Tenants, without the City's prior written consent;

- (l) not charge Tenants a fee for rent;
- (m) provide to the City, for the City's review and approval, any contracts or leases entered into as between ARIEL and any Tenants;
- (n) ensure that Tenants are notified there will be an energy meter installed with the kilns and that the Tenant's contract or lease will obligate the Tenant to pay the City for the additional electricity used from the kilns based on the meter readings;
- (o) ensure that any contract or lease between ARIEL and the Tenant is approved by the City and shall include an indemnification clause in favour of the City. The insurance as required of ARIEL in Section 2.7 shall apply in the same manner to any Tenant as it would to ARIEL. Further, it is ARIEL's obligation to ensure that the Tenant is notified of these obligations and shall provide to the City annually a certificate of insurance as confirmation of the Tenant's insurance upon the placement, renewal, amendment or extension of all or any part of the Tenant's insurance;
- (p) not distribute or duplicate keys, without the City's prior authorization;
- (q) ensure art is insured by ARIEL or the artist and that the City is not responsible for damage or theft of the art;
- (r) works on a schedule with tenants to offer open programming to the public at minimum once a month;
- (s) ensure facility is in good state of repair and adheres to health, safety, rental, and maintenance standards as set out in municipal by-laws and provincial maintenance standards. Address all necessary maintenance tasks except those involving structural, electrical, plumbing, heating systems, and mechanical repair;
- (t) ensure tenants, the public, and members of ARIEL are not utilizing or accessing the second floor of the ELAHC without authorization of the City.

2.2 Maintenance Obligations

In addition to Section 2.1 and for clarity, the repair and maintenance of the Property by ARIEL shall include, but is not limited to, the following:

- (a) to keep and maintain the Property to reasonable commercial property standards at all times, at its sole cost and expense, and do not make any Substantial Changes or Capital Projects to the Property, without the City's prior written consent;

- (b) to provide the City with monthly reports of their maintenance logs, in the form provided by the City, of the condition of the Property to identify any requirement for Capital Projects;
- (c) to report any major issues with the building that require attention, repair or are hazardous;
- (d) to conduct an annual inspection of the Property with the City to identify any required Capital Projects or Substantial Changes;
- (e) to clear the snow in front of the ELAHC and its emergency exits during the winter months;
- (f) to clear debris and litter on and around the Property;
- (g) to regular removal and disposal of garbage from all refuse containers located on the Property;
- (h) to do anything else reasonably required by the City in order to ensure the Property is kept in proper repair and good condition.

2.3 Sole Responsibility for Repair and Maintenance

Subject to Sections 2.1 and 2.2, ARIEL agrees that it is solely responsible for the repair and maintenance of the Property and shall be solely responsible for the cost and expense relating to the repair and maintenance of the Property in accordance with the budget submitted to the City in accordance with Section 2.1(f).

2.4 City Permission for Capital Project or Substantial Changes

ARIEL agrees that it shall not undertake any Capital Projects or Substantial Changes to the Property, without express prior written permission from the City.

2.5 Good Faith Negotiations

ARIEL agrees that it will negotiate in good faith and seek approval from its Board of Directors for authorization to enter into and execute such further agreements or documents with the City, as may be reasonably required in order to fulfil its obligations under this Agreement.

2.6 Indemnification of City

ARIEL agrees to defend, hold completely harmless, and fully indemnify the City and its agents, employees, officials, servants, contractors, representatives, elected and appointed officials, successors, and assigns (collectively, the “**Related Parties**”), from and against any Claims, suffered or incurred by the City and/or Related Parties arising from Claims involving this Agreement or the use of the Property.

2.7 Insurance

ARIEL shall provide and maintain the following insurance coverage throughout the term of this Agreement and any renewal thereof:

- (a) Commercial General Liability insurance, with an insurer satisfactory to the City, in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. Coverage shall include but not be limited to bodily injury, personal injury, property damage including loss of use thereof, contractual liability, tenant's legal liability, non-owned automobile liability, and contain a cross liability, severability of insured clause. If applicable, the policy shall include host liquor liability up to the full policy limits. The City shall be added as an additional insured but only with respect to liability arising out of the operations of ARIEL.
- (b) "Broad Form" All Risk Property Insurance in an amount equal to the full replacement cost of property of every description and kind owned by ARIEL or for which ARIEL is legally responsible, and which is located on or about the ELAHC and the Property, including, without limitation, anything in the nature of a leasehold improvement. Coverage shall include business interruption for a period of no less than 12 months. The policy shall not allow subrogation claims by the Insurer against the City.
- (c) General Conditions:
 - (i) to achieve the desired limit, umbrella or excess liability insurance may be used,
 - (ii) all policies shall be endorsed to provide the City with not less than 30 day's written notice of cancellation,
 - (iii) all policies shall be with insurers licensed to underwrite insurance in the Province of Ontario,
 - (iv) prior to the occupancy of the ELAHC and the Property and upon the placement, renewal, amendment, or extension of all or any part of the insurance, ARIEL shall promptly provide the City with confirmation of coverage and, if required, certified true copies of the policy(s) certified by an authorized representative of the insurer with copies of any amending endorsements applicable to this Agreement,
 - (v) ARIEL's policies shall be primary coverage and not additional to and shall not seek contribution from any other insurance policies available to the City, and
 - (vi) the City reserves the right to request ARIEL hold additional coverage or higher limits as the City may require with respect to this Agreement.

3. THE CITY'S OBLIGATIONS

3.1 Collaboration and Cooperation

The City agrees that it will work collaboratively and cooperatively with ARIEL to facilitate the continued operation of the Art Gallery. Without limiting the generality of the foregoing, the City shall:

- (a) provide the use of the Property to ARIEL without fee or charge;
- (b) subject to the Council's direction, availability of municipal budget funding, and on a project by project basis, realize and fund improvements to the Art Gallery, including but not limited to, a security system and versatile track lighting system;
- (c) conduct an annual inspection of the Property with ARIEL to identify any required Capital Projects or Substantial Changes, which the City may approve or reject, in their sole and absolute discretion and which shall be the sole cost and expense of the City;
- (d) conduct an annual review of any policies and procedures that impact the operation of the Art Gallery with ARIEL;
- (e) review any Substantial Changes to the Property proposed by ARIEL, which the City may approve or reject, in their sole and absolute discretion;
- (f) install a tourism literature rack in the foyer of the ELAHC, at its sole cost and expense;
- (g) create an internet hot spot in the foyer of the ELAHC, at its sole cost and expense;
- (h) provide City branded merchandise to sell at the Art Gallery;
- (i) manage and address any tasks involving electrical, plumbing, structural, heating systems, and mechanical repairs;
- (j) install energy meters on kilns to measure the extra electricity generated from the use of the kiln;
- (k) pay the water and electrical bills for the facility except for the additional electricity that is generated from the use of the kilns;
- (l) charge Tenant(s) for additional electrical charges generated by the kilns, measured by the installed energy meters.

3.2 Good Faith Negotiations

The City covenants and agrees that it will negotiate in good faith and seek approval from Council for authorization to enter into and execute such further agreements or documents with ARIEL, as may be reasonably required in order to fulfil its obligations under this Agreement.

3.3 Art Gallery Benefits to City

The City acknowledges that the Art Gallery may provide benefits to the City, including improving the economic climate and providing recreational facilities to the City's residents and visitors.

4. STAFFING

4.1 ARIEL Staff

ARIEL will provide an adequate number of ARIEL Staff to perform their duties, which include but are not limited to opening, closing, reporting issues to the City, maintaining day-to-day operations of the Property and the Art Gallery, acting as the property manager for the Tenants at the Property, offering arts programming to the public and collaborating with the Tenants to offer public programming and events. ARIEL will also act as the property managers for the other tenants of the Property. ARIEL will inform the City of any issues with tenants or the Property in order to ensure the successful Business Operations, pursuant to the following:

- (a) ARIEL shall have the discretion on the days and times the Art Gallery operates, so long as the Art Gallery is operating within Business Hours and the general public can only access the Property during Business Hours. Notwithstanding the foregoing, the Parties agree and acknowledge that members of ARIEL, Elliot Lake Arts Club, and the Model Railroad Club are able to access the Property at their own discretion outside of Business Hours;
- (b) ARIEL is responsible for all ARIEL Staff compensation and benefits and at no point shall ARIEL Staff be considered, by virtue of this Agreement or any other agreement, City Staff, nor are ARIEL Staff entitled to any benefits or salaries as provided to City Staff;
- (c) ARIEL shall pursue employment grants to ensure ARIEL Staff are compensated in accordance with provincial standards;
- (d) ARIEL may engage local volunteers to assist with the Business Operation, contingent on the volunteers receiving adequate training in accordance with provincial and ARIEL standards. Volunteers must be subject to criminal and vulnerable sector record checks.

5. TERM

5.1 Initial Term

The Term of this Agreement shall be effective from and after the date of this Agreement for a period of five (5) years.

5.2 Extension of Term

The Parties may, by mutual written agreement, extend the Term for an additional period of one (1) year (the “**Renewal Option**”) provided that the Parties agree to do so no later than 120 days prior to the expiry of the Term.

6. TERMINATION

6.1 Termination on Consent

The Parties may terminate this Agreement before the expiry of the Term by mutual written consent of both Parties.

6.2 Termination by Either Party

This Agreement may be terminated by either Party for any reason whatsoever upon sixty (60) days written notice to the other Party.

6.3 Termination on Default

This Agreement may be terminated by the City upon thirty (30) days written notice to ARIEL upon the occurrence of any of the following event which shall constitute a “**Default**”:

- (a) ARIEL ceases Business Operations or materially changing the nature of the Business Operations;
- (b) ARIEL fails to perform its obligations under this Agreement or fails to comply with any provision under this Agreement;
- (c) ARIEL assigns this Agreement or any right or obligation under this Agreement, without the City’s prior written consent, which consent may be withheld by the City in its sole discretion or given subject to such conditions as the City may impose;
- (d) a change in control or management of ARIEL that is unacceptable to the City, in their sole and absolute discretion;
- (e) a change in tenants of the ELAHC that is unacceptable to the City, in their sole and absolute discretion;

- (f) ARIEL commits any dishonest, negligent, tortuous, fraudulent, or criminal act or omission in the performance of its obligations under this Agreement;
- (g) a material breach of ARIEL's obligations under this Agreement that would reasonably be expected to cause material reputational harm to the City.

6.4 Remediating Default

Upon Default by ARIEL, the City may, in its sole and absolute discretion, provide ARIEL with an opportunity to cure the Default within fifteen (15) days from the date ARIEL receives written notice from the City specifying the Default in reasonable detail, or within such longer time as, in the City's sole and exclusive determination, may be reasonably necessary to remedy such Default, provided that the Default is one that is capable of being remedied or rectified, ARIEL is acting in good faith and with all reasonable diligence to cure such Default.

7. ARBITRATION

7.1 Arbitration – General

If the Parties are unable for a period of thirty (30) days to agree on any matter upon which they are required by the terms of this Agreement to agree or which is necessary for them to agree upon in order to conduct their respective business then, the matters shall be submitted to an arbitration panel. Arbitration proceedings shall be started by the Party desiring arbitration (hereinafter called the "**Initiating Party**") giving Notice to the other Party (hereinafter called the "**Responding Party**") specifying briefly the matter to be arbitrated and designating an arbitrator, and the Responding Party shall be entitled to designate a second arbitrator by giving Notice thereof to the Initiating Party within ten (10) days after receipt of the Initiating Party's Notice. If the Responding Party shall elect to designate a second arbitrator and deliver Notice thereof within the time limited above, the two arbitrators so designated shall within ten (10) days following the receipt of the Notice designating the Responding Party's arbitrator designate a third arbitrator to act jointly with them. If the arbitrators shall be unable to agree in the selection of the third arbitrator (who shall be the Chair of the arbitration panel hereunder), the third arbitrator shall be designated by the Court upon proper application by the Initiating Party pursuant to the provisions of the *Arbitration Act*. The arbitration panel shall then promptly proceed to hear the evidence and submissions of the Initiating Party and the Responding Party and shall render a written decision within thirty (30) days after the designation of the third arbitrator. The decision of the majority of the arbitration panel shall be deemed to be the decision of the arbitration panel, both in respect of the procedure and conduct of the Parties during the arbitration and the final determination of the matter to be arbitrated, and such decision shall be final and binding upon the Parties and shall not be subject to appeal and may be made an order of the Court pursuant to the *Arbitration Act*. Submission to arbitration as provided in this Section shall be a condition precedent to the bringing of any legal action with respect to any matter expressly required or

permitted to be arbitrated pursuant to the provisions of this Agreement. The arbitration panel shall have the authority to assess the costs of the arbitration panel against either or both the Initiating Party or the Responding Party but each party, however, shall bear its own evidence, witness, and legal counsel fees. It is agreed that the arbitration shall take place in the City of Elliot Lake, Ontario and that such arbitration shall be held for the purpose of hearing such evidence and representations as either the Initiating Party or Responding Party may present at a time and place in the City of Elliot Lake, Ontario to be agreed upon at the time by the Parties or, failing such agreement, by the arbitrators. Furthermore, the Party in whose favour the arbitration decision is rendered shall be entitled to specific performance to ensure that such decision is properly carried out.

7.2 Failure to Designate Arbitrator

If the Responding Party shall fail to designate an arbitrator and deliver Notice thereof to the Initiating Party within the time limit in Section 7.1 hereof, then the arbitrator appointed by the Initiating Party shall be entitled to arbitrate the matter to be arbitrated as if appointed a single arbitrator pursuant to the provisions of the Arbitration Act, (Ontario).

8. NOTICE

8.1 Written Notice

Any written notice given pursuant to this Agreement must be addressed to the City as follows:

- (a) The Corporation of the City of Elliot Lake
45 Hillside Drive North,
Elliot Lake, ON P5A 1X5
Attention: Chief Administrative Officer

- (b) The Arts and Culture Roundtable in Elliot Lake
1 Washington Crescent, 704
Elliot Lake, ON P5A 2W9
Attention: Chair – Prisca Campbell

8.2 Effective Date of Delivery

If hand delivered, the notice is effective on the date of delivery; if sent by electronic mail, the notice is effective on the date sent; and if mailed, the notice is deemed to be effective on the fifth business day following the day of mailing.

[Signature page follows]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

SIGNED, SEALED & DELIVERED

**THE CORPORATION OF THE CITY OF
ELLIOT LAKE**

By: _____
Andrew Wannan
Mayor

By: _____
Natalie Bray
Clerk

I/We have authority to bind the corporation.

**THE ARTS AND CULTURE
ROUNDTABLE IN ELLIOT LAKE**

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.