

**AGREEMENT**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”)

BETWEEN:

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

(the “City”)

OF THE FIRST PART

—and—

**THE ELLIOT LAKE ARTS CLUB**

(“ELAC”)

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 “Premises) and otherwise referred to as the Elliot Lake Arts and Heritage Centre (“ELAHC”);
- B. The Elliot Lake Arts Club (“ELAC”) is a not-for-profit club overseen by a Board of Directors that seeks to encourage active participation in and an appreciation of, the fine arts and crafts in Elliot Lake and vicinity, by supporting artists in a wide variety of disciplines;
- C. ELAC, in co-operation with the Arts and Culture Roundtable in Elliot Lake (“ARIEL”) and The Elliot Lake Model Railroad Club (“ELMRC”), intends to operate four studios on the Premises to allow club members to practice fine arts and crafting;
- D. In furtherance of the foregoing, the City and ELAC 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 ELAHC and public programming.

**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) **“Business Hours”** means 8:00 am to 9:00 pm, inclusive.
- c) **“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.
- d) **“Club Members”** means people that have paid in full the annual membership fee as determined and confirmed by the Elliot Lake Arts Club.
- e) **“Common Areas and Facilities”** mean:
  - i. those portions of the Premises areas, building, improvements, facilities, utilities, equipment and installations in or forming part of the Premises which from time to time are not designated or intended by the City to be occupied by the Occupants of the Premises including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and areas, storage, mechanical and electrical rooms, areas above and below occupiable Premises and not included within occupiable Premises, security and alarm equipment, grassed and landscaped areas, retaining walls, and maintenance, cleaning and operating equipment serving the Premises; and
  - ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installation which serve or are for the useful benefit of the building, the occupants of the Premises or the City and those having business with them, whether located within, adjacent to or near the building and which are designated from time to time by the City as part of the Common Areas and Facilities.
- f) **“Key Captain”** or **“Key Captains”** means any individual(s) designated by the Occupant, who is authorized by the Property Manager to receive, hold, and manage keys for access to specific areas of the Premises.
- g) **“Occupant”** or **“Occupants”** means Elliot Lake Arts Club and the Elliot Lake Model Railroad Club (“ELMRC”), or either of them, as the case may be, or any additional occupants at the Premises that are not commercial enterprises.
- h) **“Occupant Committee”** is comprised of one designated member each of ELAC, the ELMRC, and ARIEL. The purpose of the committee is to identify occupant concerns and challenges and collaboratively solve them, as well as develop concepts for the obligatory monthly public programming.

- i) **"Party"** or **"Parties"** means individually, either ELAC or the City, or each collectively, as the case may be.
- j) **"Premises"** means 14 Elizabeth Walk, Elliot Lake, Ontario, P5A 1Z3, and otherwise referred to as the Elliot Lake Arts and Heritage Centre ("ELAHC").
- k) **"Portion of the Premises"** means the four rooms designated as Painting and Printmaking Room, Pottery Room with Kiln Room, Weaving Room, and Stained Glass and Enameling Room as shown in Schedule "A" and all improvements, equipment, fixtures, property and facilities from time to time associated with the rooms, located at 14 Elizabeth Walk, Elliot Lake, Ontario, expanded or reduced by the City in its sole discretion (the "Premises"). The Premises will be used for only the following permitted uses (the "Permitted Use"):
  - i. arts studios;
  - ii. classrooms;
  - iii. demonstrations rooms; and
  - iv. meeting rooms in which to conduct ELAC activities.
- l) **"Property Manager"** means the Arts and Culture Roundtable in Elliot Lake ("ARIEL").
- m) **"Service Animal"** means an animal for a person with a disability,
  - i. if it is readily apparent that the animal is used by the person for reasons relating to his or her disability; or
  - ii. if the person provides a letter from a physician or nurse confirming that the person requires the animal for reasons relating to the disability.
  - iii. The Blind Person's Rights Act only applies to persons who have vision disability and who use a guide dog.
  - iv. Guide dogs are defined as a dog trained as a guide for a blind person and having qualifications set out in regulations made under the Act.
- n) **"Substantial Changes"** means any modifications to the Premises that may result in Premises improvements, addition or removal of features, changes to the configuration, or installation of any fixtures, structures, or landscaping.
- o) **"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 ELAC. Neither the City nor ELAC, 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. ELAC'S OBLIGATIONS**

### **2.1 Collaboration and Cooperation**

ELAC agrees that it will work collaboratively and cooperatively with the City, Property Manager, and the Occupant Committee to successfully run its regular operations, workshops, and programs in the ELAHC. Without limiting the generality of the foregoing, ELAC shall:

- a) assign one representative to participate in Occupant Committee meetings to be held at a minimum of once a month;
- b) schedule and deliver public programming in collaboration with the Occupant Committee at a minimum of once a month;
- c) allow supervised access to, and use of the Occupant's Portion of the Premises, to the public during scheduled events;
- d) provide qualified members to monitor the front entrance of the ELAHC as scheduled by the Property Manager;
- e) update and maintain the visitor and maintenance logs per published standard operating procedure;
- f) obey all the rules and regulations posted by the Property Manager regarding the use and care of the Common Areas and Facilities that are provided for the use of the Occupants on the Premises;
- g) enter into a separate agreement with the Property Manager to share the costs associated with cleaning services, internet and any other mutually agreed-upon shared expenses related to the maintenance and operation of the Premises;
- h) 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;
- i) ensure that any ELAC executives, members, volunteers, or those working on behalf of ELAC, who are in a position of trust or authority and involved in public programming, workshops, and generally dealing with the public in a face to face capacity, will receive provincially regulated, approved health and safety training, and completed criminal and vulnerable sector record checks at the sole cost and expense of the individuals, as further explained in Section 2.2 e);

- j) distribute keys limited to designated Key Captains , as further described in Section 2.10;
- k) ensure that any art, equipment, and supplies stored within ELAC's Portion of the Premises is insured by ELAC or the artist (further explained in Section 2.8) and agree that the City and the Property Manager are not responsible for any damage, loss or theft to any item or property owned by or for which ELAC is legally responsible;
- l) ensure that all ELAC property including, but not limited to art, equipment, supplies, and personal belongings, remain within ELAC's designated Portion of the Premises and under no circumstances be placed or stored in any Common Areas or Facilities without the express written permission from the Property Manager;
- m) ensure the safe operation of all ELAC equipment, including regular inspection and maintenance in compliance with any applicable building code or fire safety standards including the placement of working fire extinguishers and any other required emergency equipment or systems required;
- n) pay for the additional electricity that is generated from the use of the kilns, as determined by the energy meters on the kilns, upon invoice from the City;
- o) ensure Club Members and the public are not using or accessing the second floor of the ELAHC without authorization of the City;
- p) agree that except for service animals, no pets or animals are allowed to be kept in or about the Premises;
- q) maintain their designated Portion of the Premises in a clean, orderly, and sanitary condition at all times and ensure that all areas are accessible and free from any obstructions that could hinder maintenance activities or pose safety risks;
- r) report any issues with the building that require attention, repair, or are hazardous to ARIEL, the Property Manager, immediately.

## 2.2 Public Programming

Subject to Section 2.1, ELAC will work collaboratively with the Occupant Committee to plan, advertise, and execute a variety of public programming, workshops or open houses, pursuant to the following:

- a) ELAC shall provide public programming, workshops, or open houses in accordance with a schedule determined by the Occupant Committee.

- b) All programming and workshops shall be accessible and inclusive to individuals of all abilities. Reasonable accommodations will be provided upon request to facilitate attendance.
- c) ELAC shall have the discretion to determine the number of participants for each workshop, provided that such numbers comply with the notice of occupancy established by the municipal Fire Chief. The Occupant is responsible for ensuring that the occupancy limits are adhered to at all times to maintain safety standards during events.
- d) ELAC shall have the discretion to determine the fees associated with programming and workshops. Pro-rated fees for Club Members is allowable.
- e) ELAC executives, members, volunteers, or those working on behalf of ELAC, who are in a position of trust or authority and involved in public programming, workshops, and generally dealing with the public in a face to face capacity, must complete provincially regulated, approved health and safety training, and provide completed criminal and vulnerable sector record checks at the sole cost and expense of the individuals, with the following provisions:
  - i. Should ELAC intend to have any third-party involved in the provision of public programming and workshops, they must at all times be accompanied by an ELAC representative who meets the standards above. They must at no time have the opportunity to be unsupervised with any participants.
  - ii. Any ELAC executives, members, volunteers, or those working on behalf of ELAC who provides a valid criminal record check, including a vulnerable sector check, will have their record accepted, provided the check was issued within the last six (6) months from the date of submission. The City reserves the right to verify the authenticity of the provided documentation.
  - iii. All criminal and vulnerable sector checks are to be submitted to the Property Manager for review and secure storage, and made available upon request by the City's Human Resources department.
  - iv. All applicable members are required to sign an annual declaration confirming that they do not have any criminal convictions, pending charges, or offenses that would affect their eligibility to volunteer with the City. This self-declaration may be subject to verification at the discretion of the City.
- f) ELAC shall be solely responsible for all costs, expenses, and resources associated with the planning, execution, and promotion of public arts programming and workshops. This includes, but is not limited to, materials, supplies, staffing, and any necessary permits. The Occupant shall ensure that all financial obligations are met in a timely manner and shall indemnify the City from any claims related to such costs.

## 2.3 Maintenance Obligations

In addition to Section 2.1 and for clarity, ELAC's responsibilities for the repair and maintenance of their Portion of the Premises shall include, but is not limited to, the following:

- a) to keep and maintain their Portion of the Premises 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 Premises, without the City's prior written consent;
- b) to pay, directly to the Property Manager, monthly fees for a professional cleaning service that will clean to a commercial standard all public spaces, including washrooms in the building, but not including ELAC's Portion of the Premises, at a cost negotiated with the Property Manager;
- c) to report any major issues with the building that require attention, repair or are hazardous to the Property Manager, ARIEL, immediately;
- d) to inspect and maintain their equipment, and any other fixtures and chattels, at their sole responsibility, and agree that any labour or fees associated with repairs or replacement is at the sole arrangement, cost, and expense of the Occupant;
- e) to agree that installation of any electric equipment will be handled by licensed electricians and that all provincial and municipal safety standards and health and fire codes are being met and maintained.

#### 2.4 Sole Responsibility for Repair and Maintenance

Subject to Sections 2.1 and 2.3, ELAC agrees that it is solely responsible for the repair and maintenance of their equipment, fixtures, chattel, and supplies and shall be solely responsible for the cost and expense relating to the repair and maintenance.

#### 2.5 City Permission for Capital Project or Substantial Changes

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

The Premises are provided to the Occupant without any fixtures or chattels except for the plumbed sinks and cabinets. Any fixtures or chattels the Occupant is permitted by the City to add to the Premises must be taken out at the end of the lease and the Premises will be returned to its original state.

#### 2.6 Good Faith Negotiations

ELAC 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.

## 2.7 Indemnification of City

ELAC 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 and all Claims, demands, actions, causes of action, damages, losses, costs or expenses (including legal fees and disbursements) arising out of or relating to:

- a) any breach or alleged breach by ELAC of its obligations, representations, or warranties under this Agreement; and
- b) any injury to persons, including death, or damage to property resulting from the negligence or willful misconduct of ELAC or its employees, volunteers, agents, contractors or subcontractors.

## 2.8 Insurance

ELAC 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, abuse 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 ELAC.
- 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 ELAC or for which ELAC is legally responsible, and which is located on or about the ELAHC and the Premises, 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 Premises and upon the placement, renewal, amendment, or extension of all or any part of the insurance, ELAC shall promptly provide the City with confirmation of coverage in the form of a certificate of insurance 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. ELAC'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 ELAC hold additional coverage or higher limits as the City may require with respect to this Agreement.

## 2.9 Use and Occupation

The Occupant will use and occupy the Premises only for the Permitted Use and for no other purpose whatsoever. The Occupant will carry on business under the name Elliot Lake Arts Club and will not change such name without the prior written consent of the City, such consent not to be unreasonably withheld.

The Occupant acknowledges and agrees that their designated Portion of the Premises, as defined in this agreement, is provided to them at no cost. This includes the use of the space for its intended purposes, subject to the terms and conditions of this agreement. The Occupant shall remain responsible for any other costs or obligations explicitly outlined in this agreement.

The Occupant covenants that the Occupant will carry on and conduct its business from time to time carried on upon the Premises in such a manner as to comply with all statutes, bylaws, rules and regulations of any federal, provincial, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.

## 2.10 Premises Security and Access Control

In addition to Section 2.1 and for clarity, the security and access control of the Premises by ELAC shall include, but is not limited to, the following:

- a) ELAC shall designate individuals as "Key Captains" who are authorized to receive keys for access to specific areas of the Premises. ELAC agrees to provide the Property Manager with a list of the Key Captains, including their full names, contact information, and schedules for access, prior to receiving any keys.

- b) Keys shall be distributed only to the designated Key Captains. ELAC agrees that no keys shall be duplicated, lent, or transferred to any other person without the prior written consent of the Property Manager.
- c) The keys provided to the Key Captains shall grant access to certain areas of the Premises, including but not limited to any Common Areas and Facilities and the designated Portion of the Premises for each Occupant. ELAC is responsible for ensuring that its Key Captains and authorized individuals respect the spaces occupied by the other Occupants and the Property Manager of the Premises and refrain from infringing upon or disrupting the use of any areas not expressly authorized for their use. Any unauthorized entry into, or interference with, the spaces of other Occupants will be considered a breach of this Agreement.
- d) ELAC is responsible for maintaining the security of all issued keys. In the event that a key is lost, stolen, or otherwise compromised, ELAC must immediately notify the Property Manager. The City reserves the right to change locks or reissue keys at the Occupant's expense if necessary to maintain the security of the Premises.
- e) Upon the termination of this Agreement or whenever requested by the Property Manager, ELAC shall immediately return all issued keys. Failure to return keys may result in charges for rekeying the Premises and any associated costs.
- f) ELAC shall not store personal belongings, supplies, or equipment on-site at the Premises, unless specifically authorized in writing by the Property Manager. The City shall not be held responsible or liable for any loss, theft, or damage to any items stored on-site, whether authorized or unauthorized. ELAC assumes full responsibility for any items brought into the Premises and agrees to indemnify the City against any claims arising from the loss, theft, or damage to such items.

### **3. THE CITY'S OBLIGATIONS**

#### **3.1 Collaboration and Cooperation**

The City agrees that it will work collaboratively and cooperatively with ELAC to facilitate the operation of the club's arts and crafting studios and public programming and workshops. Without limiting the generality of the foregoing, the City shall:

- a) provide the use of the Portion of the Premises to ELAC without fee or charge;
- b) advertise the details of public programming and workshops planned by the Occupant Committee through the City's social media, website, and public bulletin boards;

- c) conduct an annual inspection of the Premises 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) review any Substantial Changes to the Premises proposed by ARIEL, which the City may approve or reject, in their sole and absolute discretion;
- e) install a tourism literature rack in the foyer of the ELAHC, at its sole cost and expense;
- f) create an internet hot spot in the foyer of the ELAHC, at its sole cost and expense;
- g) manage and address any tasks involving electrical, plumbing, structural, heating systems, and mechanical repairs;
- h) install energy meters on kilns to measure the extra electricity generated from the use of the kiln;
- i) pay the water and electrical bills for the facility except for the additional electricity that is generated from the use of the kilns;
- j) charge Occupant(s) for additional electrical charges generated by the kilns, measured by the installed energy meters.

### 3.2 Maintenance Obligations

The City is responsible to routinely inspect the Premises and to perform all necessary maintenance tasks involving structural, electrical, plumbing, heating systems, and mechanical repair, and will be notified of any such issues directly from the Property Manager.

It is the Property Manager's responsibility to keep and maintain the Premises to reasonable commercial property standards at all times, at its sole cost and expense. Further, ARIEL is responsible to shovel and keep clear all snow and ice at the front entrance, walkway, and emergency exits of the ELAHC during the winter months, to clear debris and litter on and around the Premises, to regular removal and disposal of garbage from all refuse containers located on the Premises, and to do anything else reasonably required by the City in order to ensure the Premises is kept in proper repair and good condition.

### 3.3 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 ELAC, as may be reasonably required in order to fulfil its obligations under this Agreement.

### 3.4 ELAC Benefits to City

The City acknowledges that the ELAC's operation of its studios and public arts programming and workshops may provide benefits to the City, including improving the economic climate and providing recreational facilities to the City's residents and visitors.

## 4. OCCUPANT COMMITTEE'S OBLIGATIONS

### 4.1 Collaboration and Cooperation

Subject to Sections 2.1 and 2.2, the Occupant Committee will be comprised of one designated member each of ELAC, the ELMRC, and ARIEL. The committee shall meet on a regular basis, and additionally as needed, to discuss, evaluate, and develop solutions for any operational issues, feedback from the community, or other matters pertinent to the effective management of the premises, as well as develop concepts for the obligatory monthly public programming, pursuant to the following:

- a) The Occupant Committee will be responsible for planning and approving the schedule of public programs, workshops, or open houses hosted at the Premises.
  - i. Between the three groups, there must be a minimum of one public program, workshop, or open house per month.
- b) The Occupant Committee shall prepare and distribute to the Occupants and the City the finalized schedule of events at least three (3) months in advance to each event to allow adequate time for preparation, equipment and supply procurement, and marketing.
- c) All programming, workshops, and open houses shall be accessible and inclusive to individuals of all abilities. Reasonable accommodations will be provided upon request to facilitate attendance.
- d) During each 12-month term, the Occupant Committee shall ensure that a minimum of one public program or workshop includes specific initiatives targeted at each of the following demographics: youth, teens, adults, and seniors.
- e) The Occupant Committee shall provide an annual report detailing their public events, including participation rates and feedback.

## 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 ELAC upon the occurrence of any of the following event which shall constitute a "Default":

- a) ELAC ceases operations or materially changing the nature of their operations in opposition to the Permitted Use of their Portion of the Premises;
- b) ELAC fails to perform its obligations under this Agreement or fails to comply with any provision under this Agreement;
- c) ELAC 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 ELAC that is unacceptable to the City, in their sole and absolute discretion;
- e) ELAC commits any dishonest, negligent, tortuous, fraudulent, or criminal act or omission in the performance of its obligations under this Agreement;
- f) a material breach of ELAC'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 ELAC, the City may, in its sole and absolute discretion, provide ELAC with an opportunity to cure the Default within fifteen (15) days from the date ELAC 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, ELAC 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 Elliot Lake Arts Club  
14 Elizabeth Walk,  
Elliot Lake, ON P5A 1Z3  
Attention: President – Kathy Robitaille

### 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.

**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.

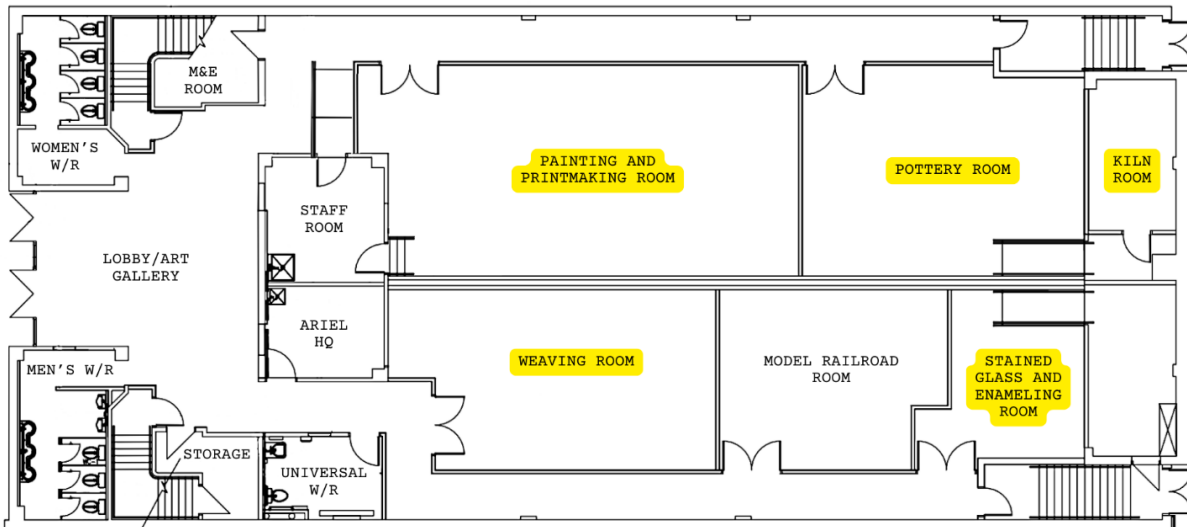
**THE ELLIOT LAKE ARTS CLUB**

By: Kathy Jones  
Name: KATHY JONES  
Title: PRESIDENT

By: William Asquith  
Name: WILLIAM ASQUITH  
Title: VICE PRESIDENT

I/We have authority to bind the corporation.

**SCHEDULE A**



**ELLIOT LAKE ARTS & HERITAGE CENTRE  
LAYOUT - MAIN FLOOR**