

Attachment (A)

THIS AGREEMENT made the day of August, 2016,

BETWEEN:

THE CORPORATION OF THE CITY OF OWEN SOUND

Hereinafter called the "Landlord"

of the First Part,

- and -

Hereinafter called the "Tenant"

of the Second Part

WHEREAS the Landlord is the owner of the lands and premises described in Schedule "A", including the building and improvements located thereon (the "Premises");

AND WHEREAS the Landlord has agreed to lease the Premises to the Tenant to carry on an art gallery and such other activities as are incidental thereto.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the Landlord and the Tenant). The Landlord does demise and lease unto the Tenant the Premises described and defined above.

TO HAVE AND TO HOLD the said Premises for and during the term of twenty-five (25) years.

1. THE TENANT COVENANTS WITH THE LANDLORD AS FOLLOWS:

- (a) To pay as rent to the Landlord the sum of ONE (\$1.00) DOLLAR yearly ("Rent"), in advance, on the first day of each and every year during the term of this lease and any renewal thereof. Tenant may, at its options, prepay its Rent for the initial term and in the event of renewal, any renewal term or terms.
- (b) To pay the following expenses related to the Premises as Rent:
 - (i) business taxes and licenses, if any;
 - (ii) services supplied to the Premises, provided that this does not in any way oblige the Landlord to provide any services, unless otherwise agreed in this Lease;
 - (iii) property taxes and rates, duties and assessments, if any;

- (iv) maintenance to the City's current standards; maintenance does not include capital or structural repairs;
- (v) insurance premiums as required in this lease;
- (vi) HST and any other taxes imposed on the Landlord respecting the Rent;
- (vii) all other changes, impositions, costs and expenses of every nature kind whatsoever;

and if any of the foregoing charges are invoiced directly to the Tenant, the Tenant shall pay same as and when they become due and shall produce proof of payment to the Landlord immediately if requested to do so, but the Tenant may contest or appeal any such charges at the Tenant's own expense; and the Tenant hereby agrees to indemnify and protect the Landlord from any liability accruing to the Landlord in respect of the expenses payable by the Tenant as provided for herein; and if the Tenant fails to make any of the payments required by this Lease then the Landlord may make such payments and charge to the Tenant a Rent the amounts paid by the Landlord and if such charges are not paid by the Tenant on demand the Landlord shall be entitled to the same remedies and may take the same steps for recovery of the unpaid charges as in the event of Rent in arrears. All Rent in arrears and all sums paid by the Landlord for expenses incurred which should have been paid by the Tenant shall bear interest from the date payment was due, or made, or expense incurred at a rate per annum equal to the prime commercial lending rate of the Landlord's bank plus two (2) per cent. The Tenant acknowledges and agrees that the payments of Rent and Additional Rent provided for in this Lease shall be made without any deduction for any reason whatsoever unless expressly allowed by the terms of this Lease or agreed to by the Landlord in writing; and no partial payment by the Tenant which is accepted by the Landlord shall be considered as other than a partial payment on account of Rent owing and shall not prejudice the Landlord's right to recover any Rent owing.

- (c) To not assign or sublet or encumber the lands and Premises without consent of the Landlord, and such consent may be unreasonably withheld
- (d) Subject to the Tenant's rights as granted hereunder, to permit use of portions of the building at various times at no cost (other than the variable costs and expenses associated with, and other than costs incurred as a result of such usage) for community based cultural activities. The Tenant shall work with the Landlord's Community Services Department (or such department's successor, as the case may require) in co-ordinating such use; however, any such use:
 - (i) shall be subject to the availability of space in the building;
 - (ii) shall not conflict with the Tenant's requirements for use of the building or the relevant space and, in particular, shall not necessitate the disruption of movement of the Tenant's exhibits or displays.

If the Tenant shows a need to occupy and use all relevant locations within the building at all material times, such community cultural usage shall cease.

- (e) To only construct additions or make structural changes to the building and only improve the Premises after such improvements, changes and additions have been approved in writing by the Landlord, such approval not to be unreasonably withheld.
- (f) To deliver up vacant possession of the Premises if the building ceases to be used (for other than a transitory or intermittent period) to house the Tenant's art gallery or such other use as the Landlord consents to in writing, or if the Premises is not kept free and clear of liens, charges and encumbrances (other than liens, charges or encumbrances arising or existing as a result of the acts or omissions of the Landlord, its predecessors in title, or those persons for whose acts the Landlord is responsible). Provided that the foregoing covenants to deliver up vacant possession shall only apply if the Landlord has delivered written notice to the Tenant of the occurrence of an event requiring the Tenant to deliver up vacant possession, and an approved use has not been recommenced within 90 days of receipt by the Tenant of such notice, or the relevant lien, charge or encumbrance has not been vacated or discharged within 120 days of receipt by the Tenant of such notice, as the case may require.
- (g) To comply with all federal, provincial and municipal laws relating to the maintenance and operation of the Premises. The Tenant assumes no responsibility for compliance with statutes or laws designed to protect the environment to the extent that compliance with such statutes or laws is required as a result of conditions or events predating the Tenant's occupancy of the Premises.
- (h) At the expiration of the lease, to transfer all buildings, structures, improvements and additions of a permanent nature made on the Premises by the Tenant at its own expense, at the option of the Landlord, to the Landlord without liability on its part to pay for them; provided that in the event that the Landlord does not exercise its option to retain such additions, the Tenant shall remove same at its expense and further provided the Tenant may at any time during the term hereof remove or add fixtures from or to the building and Premises provided it first obtains the Landlord's written consent. Fixtures so removed shall not become the property of the Landlord.
- (i) To indemnify and save harmless the Landlord of and from any and all manner of claims, damages, loss, costs, charges and liability whatsoever occasioned to, or suffered by, or imposed upon the Landlord or its property, either directly or indirectly in respect of any matter or thing in consequence of or in connection with, or arising out of the Tenant's occupancy or use of the building as hereby demised or out of any construction, maintenance or operation in connection therewith, or in respect of any accident, damage or injury to any person, animal or thing by, from or on account of the Tenant's occupancy. This covenant and indemnity shall not apply in respect of claims, damages, loss, costs, charges and liabilities related to or arising as a direct result of the acts or omissions of the Landlord or those persons for whose acts the Landlord is legally responsible.

- (j) To pay for all operating costs of the building and Premises including electricity, janitorial services, security services and systems, gas, water and all required insurance. All relevant insurance policies shall name both Tenant and Landlord as named insured.
- (k) To obtain and maintain throughout the term of this lease and any renewal thereof, Comprehensive General Liability Insurance on an occurrence basis and shall include coverage for, but is not limited to, bodily injury, personal injury, death, property damage including loss of use thereof, contractual liability, tenant's legal liability, owners and contractors' protective liability, contingent employers' liability, products and completed operations, non-owned automobile and contain a cross liability/severability of interest clause. Such policies shall be written for an inclusive limit of not less than Five Million Dollars (\$5,000,000) per occurrence and the Landlord shall be added as an Additional Insured.

The policy is to be issued by an insurance company authorized by law to carry on business in the Province of Ontario.

The Tenant shall obtain and maintain for the duration of the lease the insurance on all property owned by or for which the Tenant is legally liable in an amount contemplated by the Art Gallery Loan Agreement between the parties.

The Tenant shall maintain for the duration of the lease Automobile Liability insurance in the amount of at least Two Million Dollars (\$2,000,000), for any business vehicles, including those of hired sub-contractors. Personal vehicles are exempt from the clause.

The insurance shall be non-contributing with and apply as primary and not as excess of any insurance available to the Landlord.

The Tenant shall provide the Landlord within ten (10) days of signing the lease and annually thereafter on no later than one week prior to the policy expiry date, confirmation of the ensuing year's insurance and if requested by the Landlord, the Tenant shall provide copies of the insurance policies. The certificate of insurance shall provide evidence that the Tenant's insurance policy contains the terms and conditions set out in this lease.

The insurance will not be cancelled, permitted to lapse or materially change unless the insurer for the Tenant notifies the Landlord in writing at least thirty (30) days prior to the effective date of cancellation, expiry or change.

- (l) To cause the Landlord to be named as an additional insured to the Tenant's Comprehensive General Liability policy with respect to the operations of the Tenant.
- (m) To maintain and repair the mechanical and electrical systems of the building including all heating, cooling, plumbing and elevator equipment.

- (n) To pay for all service connections and hookups of all utility services including sewage, hydro, gas and water.

2. THE LANDLORD COVENANTS WITH THE TENANT AS FOLLOWS:

- (a) That it has lawful title to the lands hereby demised and to every part thereof and it shall allow the Tenant quiet enjoyment pursuant to the terms of this lease.

3. THE PARTIES COVENANT AND AGREE AS FOLLOWS:

- (a) That the Tenant shall lease the Premises and building on an “as is” condition, subject to this lease;
- (b) If the Premises or the building in which the Premises are located, are damaged or destroyed, in whole or in part, by fire or other peril, then the following provisions shall apply:
 - a. if the damage or destruction renders the Premises unfit for occupancy and impossible to repair or rebuild using reasonable diligence within 120 clear days from the happening of such damage or destruction, then the Term hereby granted shall cease from the date the damage or destruction occurred, and the Tenant shall immediately surrender the remainder of the Term and give possession of the Premises to the Landlord, and the Rent from the time of the surrender shall abate;
 - b. if the Premises can with reasonable diligence be repaired and rendered fit for occupancy within 120 days from the happening of the damage or destruction, but the damage renders the Premises wholly unfit for occupancy, then the rent hereby reserved shall not accrue after the day that such damage occurred, or while the process of repair is going on, and the Landlord shall repair the Premises with all reasonable speed, and the Tenant’s obligation to pay Rent shall resume immediately after the necessary repairs have been completed;
 - c. if the leased Premises can be repaired within 120 days as aforesaid, but the damage is such that the leased Premises are capable of being partially used, then until such damage has been repaired, the Tenant shall continue in possession and the Rent shall abate proportionately.
 - d. Any question as to the degree of damage or destruction or the period of time required to repair or rebuild shall be determined by an architect retained by the Landlord.
- (c) An Act of Default has occurred when:
 - a. the Tenant has failed to pay Rent for a period of 15 consecutive days, regardless of whether demand for payment has been made or not;
 - b. the Tenant has breached its covenants or failed to perform any of its obligations under this Lease; and the Landlord has given not less than 30

days' notice specifying the nature of the default and the steps required to correct it; and the Tenant has failed to correct the default within 60 days as required by the notice;

c. the Tenant:

- i. has become bankrupt or insolvent or made an assignment for the benefit of Creditors;
- ii. had its property seized or attached in satisfaction of a judgment;
- iii. had a receiver appointed;
- iv. has committed any act or neglected to do anything with the result that a Construction Lien or other encumbrance is registered against the Landlord's property and fails to cause removal of same within 60 days following written notice thereof and demand to cure;
- v. has without the consent of the Landlord, made or entered into an agreement to make a sale of its assets to which the Bulk Sales Act applies;
- vi. has taken action, if the Tenant is a corporation, with a view to winding up, dissolution or liquidation;
- vii. is in default pursuant the terms of the Art Gallery Loan Agreement between the parties;
- viii. any insurance policy is cancelled or not renewed by reason of the use or occupation of the Premises, or by reason of non-payment of premiums;

d. the Premises:

- i. become abandoned vacant or remain unoccupied for a period of 30 consecutive days.
- ii. are used by any other person or persons, or for any other purpose than as provided for in this Lease without the written consent of the Landlord.

(d) When an Act of Default on the part of the Tenant has occurred the Landlord shall have the right to terminate this Lease and to re-enter the Premises and deal with them as the Landlord may choose.

(e) If, because an Act of Default has occurred, the Landlord exercises its right to terminate this Lease and re-enter the Premises prior to the end of the Term, the Tenant shall nevertheless be liable for payment of Rent and all other amounts payable by the Tenant in accordance with the provisions of this Lease until the Landlord has re-let the

Premises or otherwise dealt with the Premises in such manner that the cessation of payments by the Tenant will not result in loss to the Landlord and the Tenant agrees to be liable to the Landlord, until the end of the Term of this Lease for payment of any difference between the amount of Rent hereby agreed to be paid for the Term hereby granted and the Rent any new tenant pays to the Landlord.

- (f) The Tenant covenants that notwithstanding any present or future Act of the Legislature of the Province of Ontario, the personal property of the Tenant during the term of this Lease shall not be exempt from levy by distress for Rent in arrears and the Tenant acknowledges that it is upon the express understanding that there should be no such exemption that this Lease is entered into, and by executing this Lease. The Tenant waives the benefit of any such legislative provisions which might otherwise be available to the Tenant in the absence of this agreement; and the Tenant agrees that the Landlord may plead this covenant as an estoppel against the Tenant if an action is brought to test the Landlord's right to levy distress against the Tenant's property.
- (g) If, when an Act of Default has occurred, the Landlord chooses not to terminate the Lease and re-enter the Premises, the Landlord shall have the right to take any and all necessary steps to rectify any or all Acts of Default of the Tenant and to charge the costs of such rectification to the Tenant and to recover the costs as Rent.
- (h) If, when an Act of Default has occurred, the Landlord chooses to waive its right to exercise the remedies available to him under this Lease or at law the waiver shall not constitute condemnation of the Act of Default, nor shall the waiver be pleaded as an estoppel against the Landlord to prevent its exercising its remedies with respect to a subsequent Act of Default. No covenant, term or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord.
- (i) Any notice required or permitted to be given by one party to the other pursuant to the terms of this Lease may be given:

To the Landlord at:

City Manager,
City of Owen Sound

808 2nd Avenue East
OWEN SOUND ON N4K 2H4

To the Tenant at:

The above addresses may be changed at any time by giving 10 days written notice. Any notice given by one party to the other in accordance with the provisions of this

Lease shall be deemed conclusively to have been received on the date delivered if the notice is served personally or 72 hours after mailing if the notice is mailed.

- (j) This written lease contains all the agreements between the parties hereto and becomes binding on the parties hereto only when duly executed by all parties.

THIS LEASE shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns respectively, subject to paragraph 1(b).

IN WITNESS WHEREOF the Landlord has hereunto affixed its corporate seal under the hands of its Mayor and Deputy Clerk and the Tenant has hereunto executed this Lease.

SIGNED SEALED AND DELIVERED)	The Corporation of the City of Owen Sound
)	
)	Per: _____
)	Ian C. Boddy – Mayor
)	
)	Per: _____
)	Carolyn Stobo – Clerk
)	
)	[<i>Gallery</i>]
)	
)	Per: _____
)	
)	Per: _____
)	
)	
)	
)	

SCHEDULE “A”

Legal Description