

CITY OF ELLIOT LAKE



CITY COUNCIL - SPECIAL MEETING
AGENDA

08-09-2020

Tuesday, September 8, 2020

6:30 pm

COUNCIL CHAMBERS

Pages

1. CALL TO ORDER
2. ROLL CALL
3. DECLARATIONS OF CONFLICT OF INTEREST
4. PUBLIC PRESENTATIONS
5. CORRESPONDENCE LIST
6. REPORTS
7. NOTICES OF MOTION
8. OTHER BUSINESS
9. PUBLIC QUESTION PERIOD
10. CLOSED SESSION BUSINESS
11. BY-LAWS
 - 11.1 By-Law 20-65 2
Being a by-law to authorize a sublease agreement with respect to space at the Pearson Plaza
 - 11.2 By-Law 20-66 13
Being a by-law to confirm the proceedings of Council at its meeting held Tuesday, September 8, 2020
12. ADJOURNMENT

THE CORPORATION OF THE CITY OF ELLIOT LAKE

***B*Y-LAW NO. 20-65**

Being a by-law to authorize a sublease agreement with respect to space at the Pearson Plaza.

The Council of The Corporation of the City of Elliot Lake **ENACTS AS FOLLOWS:**

- 1.** **THAT** the Corporation enter into a sublease agreement with McCowan and Associates Ltd. and Hart Sores Inc. with respect to 7271 sq ft of commercial space located in Pearson Plaza, 40 Hillside Drive South, a copy of which agreement is attached hereto as Schedule “A” and forms part of this by-law.
- 2.** **THAT** the Mayor or Acting Mayor together with the City Clerk of the Corporation are hereby authorized and directed to execute the agreement on behalf of the Corporation under the corporate seal.

PASSED this 8th day of September, 2020.

MAYOR

CITY CLERK

SUBLEASE AGREEMENT

This Sublease Agreement is made the 25th day of August, 2020 (the “Sublease”)

BETWEEN:

McCowan and Associates Ltd.

(hereinafter called the “Head Landlord”)

-and-

The Corporation of the City of Elliot Lake

(hereinafter called the “Sublandlord”)

-and-

Hart Stores Inc.

(hereinafter called the “Subtenant”)

WHEREAS by a lease dated the 16th day of April, 2015 (the “Head Lease”), between McCowan and Associates Ltd., as a lessor (the “Head Landlord”) and the Sublandlord, as lessee, the Head Landlord leased to the Sublandlord for and during a term (the “Term”) of ten (10) years commencing on the 30th day of November, 2016 and expiring on the 30th day of November, 2026, certain premises (the “Premises”) including a building comprising a Leasable Area containing approximately seven thousand and twenty-one (7,271) square feet as shown cross-hatched in black on the floor plan attached to the Head Lease as Schedule “A”, and municipally known as Unit 4, Pearson Plaza, 40 Hillside Drive South, in the City of Elliot Lake, in the Province of Ontario;

AND WHEREAS, subject to the terms and conditions of this Sublease, the Sublandlord has agreed to sublet to the Subtenant as the Premises, as shown cross-hatched in black on the preliminary floor plan attached to this Sublease as Schedule “A” (the “Subleased Premises”);

NOW THEREFOR THIS SUBLEASE WITNESSES that in consideration of the sum of Two (\$2.00) Dollars now paid by each of the parties to the other, the receipt and sufficiency of which is hereby respectively acknowledged:

Section 1.0 INTERPRETATION

- a) All capitalized terms contained in this Sublease shall have the meaning they are given in the Head Lease, except as defined otherwise in this Sublease.
- b) If there is any conflict or ambiguity between the specific provisions of this Sublease and the provisions of the Head Lease, then as between the Sublandlord and the Subtenant, the specific provisions of this Sublease shall prevail.
- c) Where there is more than one Subtenant, the “Subtenant” shall be read as plural with all appropriate grammatical and other changes wherever the context requires, and such Subtenants shall be jointly and severally liable under this Sublease. The headings in this Sublease are for ease of reference only and are not to be used as an aid in the interpretation of this Sublease.

Section 2.0 GRANT OF SUBLEASE

- a) In consideration of the rents, terms, conditions, covenants and agreements to be respectively paid, observed and performed on the part of the Subtenant, the Sublandlord hereby subleases to the Subtenant the Subleased Premises.

Section 3.0 SUBLEASE TERM

a) The term (the “Sublease Term”) of this Sublease shall commence on the 1st day of November, 2020 (the “Commencement Date”) and shall expire on the 29th day of November, 2026.

b) The Subtenant will be entitled to occupy the Subleased Premises for a period (the “Fixturing Period”), commencing on the 15th day of September, 2020 and expiring on the 31st day of October, 2020, for the purpose of constructing and otherwise preparing the Subleased Premises for the operation of its business. During the Fixturing Period, the Subtenant will not have to pay Sublease Rent, but the Subtenant shall be subject to all the other terms and conditions of this Sublease insofar as they are applicable including, without limitation, the obligations to pay all utilities consumed in the Subleased Premises, the costs of garbage removal, any security costs and charges associated with its construction work, the obligation to maintain insurance pursuant to Section 6.0(iii), the provisions relating to the liability of the Subtenant for its acts and omissions, including the acts and omissions of its agents, servants, employees, contractors, and the indemnification of the Head Landlord and the Sublandlord.

Section 4.0 OPTIONS TO EXTEND

Intentionally deleted.

Section 5.0 SUBLEASE RENT

a) This Sublease shall be a gross lease to the Sublandlord, except as otherwise expressly set out herein. The Sublandlord shall be responsible for any shortfall in rent, costs, charges, taxes, impositions or expenses of any kind related to the Subleased Premises, their use and occupancy, their contents or the business carried on in them, as same are specified under the Head Lease.

b) Throughout the Sublease Term, the Subtenant shall pay to the Sublandlord or such party as the Sublandlord may from time to time direct in writing, in lawful money of Canada and without deduction, abatement or set off, the following rent (the “Sublease Rent”):

- i. With respect to minimum rent (the “Sublease Minimum Rent”) the Subtenant shall pay a Percentage Rent (as defined in subparagraph (ii) below) towards the Minimum Rent and Additional Rent payable under the Head Lease;
- ii. With respect to percentage rent (the “Percentage Rent”) the Subtenant shall pay to the Head Landlord, in the manner and on the conditions and at the times hereinafter set forth during each Rental Year, as Percentage Rent, a sum equivalent to ten percent (10%) (which percent is herein referred to as the “Percentage Rent Factor”) of the Subtenant’s Net Revenue during each such Rental Year payable pursuant to the provisions of Addendum 1 attached hereto;
- iii. All amounts (other than Minimum Rent) payable under the Head Lease in respect of the Subleased Premises (the “Sublease Additional Rent”) including, without limitation: (i) all utility charges based on separate meter readings; and (ii) costs incurred by the Sublandlord and the Head Landlord for additional services supplied or work performed in respect of the Subleased Premises.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT SUBLEASE RENT SHALL BE PAYABLE BY THE SUBTENANT COMMENCING FROM THE DATE THE SUBTENANT IS OPEN AND OPERATING BUSINESS FROM THE SUBLEASED PREMISES.

c) The payments aforesaid will be made when due under the Head Lease, or in the case of payments not required under the Head Lease, upon demand by the Sublandlord. The Sublandlord shall not be required to undertake, contest or review the accuracy of any statement as to any additional rent items which it may receive from the Head Landlord, unless the Subtenant first agrees to pay all of the Sublandlord’s costs relating thereto;

- i. All applicable taxes in respect of the Subleased Premises, including applicable Value Taxes and/or Harmonized Sales Taxes (“Value Taxes” and/or “HST”) in respect of the Sublease Rent; and
- ii. Any other amounts invoices by the Head Landlord to the Sublandlord, or directly to the Subtenant, under the Head Lease in respect of the Premises which relate to the Subtenant’s use or occupancy of the Subleased Premises.
- d) All amounts payable by the Subtenant under this Sublease shall be characterized as further Sublease Rent for the purposes of entitling the Sublandlord to all rights and remedies under this Sublease for any non-payment thereof. If the Subtenant fails to pay when due any Sublease Rent as required hereunder, the unpaid amount will bear interest from the date upon which such unpaid amount is due until actual payment thereof at a Stipulated Rate set out in the Head Lease.

Section 6.0 SUBTENANT’S COVENANTS

a) The Subtenant covenants with the Sublandlord as follows:

- i. To perform and observe all the obligations of the Sublandlord under the Head Lease (except for the covenant to pay Rent there under, which shall be substituted by the covenant to pay the Sublease Rent set forth in Section 5.2 of this Sublease, and the covenant restricting the use of the Subleased Premises, which shall be substituted by the covenant set forth in Section 6.1(d) with respect to the Subleased Premises;
- ii. To indemnify the Sublandlord from and against all actions, claims, expenses and demands in respect of all such obligations and with respect to every other matter directly or indirectly related to the Subtenant’s occupancy of the Subleased Premises;
- iii. To maintain the insurance coverage in respect of the Subleased Premises as required by the Head Lease. Where the Head Lease requires the Head Landlord or its mortgagee(s) to be named as an insured or an additional insured or loss payee, the Subtenant will, in addition to so naming such parties in the required manner, also add the Sublandlord as an insured (or additional insured or loss payee, as the case may be). The Subtenant will provide the Sublandlord with certificates of insurance or a copy of all the Subtenant’s insurance policies as required by the Head Lease. All such policies of insurance, and certificates evidencing the placement thereof, shall contain a provision that the Sublandlord will receive thirty (30) days’ written notice of any material change or cancellation;
- iv. Not to use the Subleased Premises for any purpose other than for the operation of a department store and/or subsidiary or affiliated company. Provided however, it is expressly understood and agreed and it is an express condition hereof that the Subtenant will not use the Subleased Premises for the operation of a food supermarket or wholesale or retail store which carries on directly or indirectly the business of a grocer or a retailer in fresh or frozen meats, fruits, vegetables, fish, poultry, bakery, pre-packaged bread, delicatessen, bulk food or dairy products whether such goods are sold or given away (“Prohibited Items”). Notwithstanding the foregoing, the restriction against the sale of Prohibited Items shall not prohibit the Subtenant from selling pet food items and pre-packaged bread, cookies, cakes and pastries not prepared on the Premises (the “Permitted Items”) provided that the maximum rentable area used for the sale or display of the Permitted Items shall be in an area of no more than five hundred (500) square feet of rentable area for bakery items and five hundred (500) square feet of rentable area for pet food items, within the Subleased Premises (the “Permitted Area”). It is agreed that the Subtenant can sell brand name pet food items or brand name bakery items (the “National Brands”) in twenty percent (20%) of the Permitted Area subject to the Subtenant not promoting the National Brands as loss leaders (as this expression is used in the retail industry) in the normal course of its business. In the event that the Subtenant does promote the National Brands of the Permitted Items as loss leaders during the Term of this Lease, the Subtenant shall lose its right to sell National Brands of the Permitted Items from the Subleased Premises of any type on the Subleased Premises.

- v. To operate its business in the Subleased Premises during the hours and on the days permitted by any by-law, rule or regulation of any government authority relating to hours of business operation;
- vi. To keep the Subleased Premises in a clean and wholesome condition;
- vii. The Subtenant acknowledges that it has received a copy of the Head Lease and is familiar with its terms, covenants and conditions; and
- viii. Not to do, omit, or refuse to do any act or thing which would cause a breach of any of the Sublandlord's obligations under the Head Lease. For greater certainty and without limiting the generality of the foregoing, this provision shall be construed as requiring the Subtenant not to cause a breach of the Sublandlord's obligations under the Head Lease to repair, insure and cause no construction liens to be registered against title to the lands as a result of work done by or on behalf of the Subtenant.

Section 7.0 SUBLANDLORD'S WORK

Subtenant accepts the Subleased Premises on an as-is, where-is basis. Subject to any limitations contained in the Head Lease with respect to the Head Landlord's rights on expiry or sooner termination of the Head Lease, the Sublandlord hereby conveys to the Subtenant ownership and title in all improvements, equipment and chattels in the premises as at the Commencement Date for the nominal charge of Two Dollars (\$2.00) the receipt of which is hereby acknowledged.

Section 8.0 TERMINATION OF SUBLEASE

- a) This Sublease shall terminate on any termination of the Head Lease, or as otherwise provided in the Head Lease.
- b) If a default under the Head Lease occurs as a result of any failure on the part of the Subtenant to observe or perform all the terms, covenants and conditions in this Sublease on the part of the Subtenant to be observed and performed, the Sublandlord shall have the rights and remedies of the Head Landlord under the Head Lease, mutatis mutandis, in relation to such default as if the Sublandlord were the Head Landlord and the Subtenant were the tenant under the Head Lease.

Section 9.0 REMOVAL OF LEASEHOLD IMPROVEMENTS

- a) Subject to compliance with all the terms of the Head Lease, at the expiry of the Sublease Term, the Subtenant shall remove (a) its trade fixtures and personal property, and (b) any leasehold improvements as the Sublandlord or Head Landlord may require to be removed, and the Subtenant shall repair any damage caused by such removal to the satisfaction of the Sublandlord and the Head Landlord and in accordance with the provisions of the Head Lease. If the Subtenant fails to carry out such removal, the Sublandlord may dispose or make use of such property as it sees fit, and may assume ownership thereof, in each case without bonus or penalty and at the expense of the Subtenant.

Section 10.0 ENTRY BY SUBLANDLORD

- a) The Subtenant shall permit the Sublandlord, its agents, employees or workers to enter upon the Subleased Premises at reasonable times for the purposes of inspection and making any repairs, alterations, or improvements to the Subleased Premises which the Sublandlord is permitted or required to make under this Sublease, however this does not, in any way, obligate the Sublandlord to inspect or perform any repairs, alterations or improvements to the Subleased Premises.

Section 11.0 SUBLANDLORD'S COVENANTS

- a) Subject to the payment of the Sublease Rent and full performance by the Subtenant of its obligations hereunder, the Sublandlord covenants and agrees with the Subtenant for quiet enjoyment with respect to the Subleased Premises.

Section 12.0 ASSIGNMENT AND SUBLETTING

- a) The Subtenant covenants not to assign, sublet or part with or share possession of all or any part of the Subleased Premises without the prior written consent of the Sublandlord, which consent may be unreasonably or arbitrarily withheld (notwithstanding any statutory provision to the contrary), or if granted, may be granted by the Sublandlord upon such terms and conditions as it may see fit, subject to obtaining the prior written consent of the Head Landlord in accordance with, and subject to, the terms of the Head Lease. The Subtenant may not mortgage, charge, or encumber, whether by way or assignment, sublease or otherwise howsoever, all or any portion of its interest in this Sublease or the Subleased Premises.

Section 13.0 DAMAGE AND DESTRUCTION

- a) If the Subleased Premises shall be damaged or destroyed to an extent which would permit the Head Landlord to terminate the Head Lease, then if the right to terminate shall be exercised, this Sublease shall be deemed to be terminated as of the date of termination of the Head Lease. If this Sublease shall be terminated as aforesaid, the Subtenant shall surrender the Subleased Premises on the same date that the Sublandlord is required to surrender the Premises pursuant to the Terms of the Head Lease and the Sublease Rent and all other payments for which the Subtenant is liable under the terms of this Sublease shall be apportioned and paid in full to the date of such termination.

- b) If the Subleased Premises are damaged or destroyed and this Sublease is not terminated, the Sublease Rent shall not abate except to the extent that the Sublandlord shall receive an abatement of the same pursuant to the Head Lease.

Section 14.0 RELEASE AND INDEMNITY

- a) Neither of the Head Landlord nor the Sublandlord shall be liable for the death of or injury to the Subtenant or others on the Subleased Premises, or for the loss of or damage to property of the Subtenant or others by theft or otherwise, even if caused by negligence of the Sublandlord or Head Landlord or those for whom they are legally responsible. Without limiting the generality of the foregoing, the Sublandlord shall not be liable for death, injury, loss or damage of or to persons or property resulting or arising from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Subleased Premises or from the pipes, appliances or plumbing works, or from any other place, or by dampness, or by other cause of any kind and the Sublandlord and Head Landlord are not liable for death, injury, loss or damage caused by other tenants or occupants or other persons in the Subleased Premises or in any other part of the building, or resulting from construction, alteration or repair of the Subleased Premises or the building. All property of the Subtenant kept or stored in the Subleased Premises or elsewhere in the building or on the lands surrounding same will be kept or stored at the risk of the Subtenant only and the Subtenant will hold the Sublandlord and Head Landlord harmless from all claims arising out of damage to it, including subrogation claims (if any) by the Subtenant's insurers.

- b) The Subtenant shall be liable for and shall indemnify the Sublandlord from and against all claims, actions, damages, liability and expenses in connection with losses of life, personal injury, damage to property, or any other loss, damage or injury, whether or not of a nature related to the foregoing arising from any occurrence on the Subleased Premises; or from the occupancy or use of the Subleased Premises or occasioned wholly or in part by an act or omission of the Subtenant, its agents, servants, employees or contractors or by anyone permitted by the Subtenant to be on the Subleased Premises. In case the Sublandlord or Head Landlord, without actual (as opposed to merely vicarious) fault on their part, are made parties to litigation begun by or against the Subtenant, the Subtenant will protect and hold harmless the Sublandlord and Head Landlord and will pay all costs, expenses and reasonable legal fees incurred or paid by the Sublandlord and/or Head Landlord in connection with the litigation. The Subtenant will also pay all costs, expenses and reasonable legal fees incurred by the Sublandlord in enforcing this Sublease. Any obligation of the Subtenant to indemnify hereunder shall survive the termination of this Sublease in respect of every happening during the Sublease Term.

Section 15.0 ADVANCE RENT

Intentionally deleted.

Section 16.0 NOTICES

- a) Any demand, notice or communication to be provided hereunder shall be in writing (but need not be under seal) and shall be given by personal delivery or by prepaid registered mail, addressed to the respective parties as follows:

To the Head Landlord: By mail to:
 P.O. Box 982
 Barrie, ON L4M 5E1

By courier to:
 158 Dunlop Street East, Suite 201 (rear entrance)
 Barrie, ON L4M 1B1

By fax to: (705) 737-0484

To the Sublandlord:
 City of Elliot Lake – City Hall
 45 Hillside Drive North
 Elliot Lake, ON P5A 1X5

To the Subtenant:
 Hart Stores Inc.
 900 Place Paul Kane
 Laval, QC H7C 2T2

Or to such other address as any party may from time to time notify the other. And demand, notice or other communication given by personal delivery shall be conclusively demand to have been received by the party to which it is addressed on the day of actual delivery thereof to all addresses required above. Any notice sent by prepaid registered mail as aforesaid shall be deemed to have been delivered on the third (3rd) business day (excluding Saturdays, Sundays, and Statutory Holidays) following the date of mailing thereof provided that postal services have not been interrupted, in which case notice shall only be given by personal delivery as aforesaid.

Section 17.0 ENTIRE AGREEMENT AND SEVERABILITY

- a) There are no covenants, representations, agreements, warranties, or conditions in any way relating to the subject matter of the Sublease, whether expressed or implied, collateral or otherwise, either oral or written, except those set forth in this Sublease. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Sublease shall be binding upon the Sublandlord or the Subtenant unless reduced to writing and signed by each of them
- b) If any provision of this Sublease shall be deemed illegal, invalid or unenforceable, then it shall be considered separate and severable from this Sublease and the remainder of this Sublease shall not be affected by the severance, but shall remain in full force and be binding on the parties and enforceable to the fullest extent of the law.

Section 18.0 SUCCESSORS AND ASSIGNS

- a) This Sublease and everything contained in it, including all scheduled annexed to it, shall enure to the benefit of and be binding on the successors and permitted assigns of the parties.

Section 19.0 TIME

- a) Time is of the essence of this Sublease and each and every provision in it.

Section 20.0 GOVERNING LAW

- a) This Sublease shall be construed and be governed by the laws of the Province of Ontario.

Section 21.0 AMENDMENT OR MODIFICATION

a) No amendment, modification or supplement to this Sublease shall be valid or binding unless in writing and executed by the parties hereto.

IN WITNESS WHEREOF the parties have hereinto affixed their respective corporate seals under the hands of their proper signing officers duly authorized in that behalf:

McCowan and Associates Ltd. (Head Landlord)

Per: _____
Name: _____

Title: _____
I have the authority to bind the Corporation.

The Corporation of the City of Elliot Lakes (Sublandlord)

Per: _____
Name: _____

Title: _____
I/We have the authority to bind the Corporation.

Per: _____
Name: _____

Title: _____
I/We have the authority to bind the Corporation.

Hart Stores Inc. (Subtenant)

Per: _____
Name: _____

Title: _____
I/We have the authority to bind the Corporation.

Per: _____
Name: _____

Title: _____
I/We have the authority to bind the Corporation.

ADDENDUM 1

PERCENTAGE RENT

PERCENTAGE RENT

- (a) The Subtenant shall pay to the Head Landlord, in the manner and on the conditions and at the times hereinafter set forth during each Rental Year, as Percentage Rent, a sum equivalent to ten percent (10%) (which percent is herein referred to as the "Percentage Rent Factor") of the Subtenant's Net Revenue during each such Rental Year.
- (b) Percentage Rent is payable monthly, at the office of the Head Landlord or at such other place as the Head Landlord designates, without any prior demand therefor and without any set-off. Percentage Rent shall be computed separately for each Rental Year. There shall be no carry backs or carry forwards. The Subtenant shall utilize estimated figures (in which the method of calculation is approved by the Head Landlord and Sublandlord) in calculating the Subtenant's reportable Net Revenue exclusions and deductions for the month so taken. The monthly first payment of Percentage Rent shall be made on or before the twenty-first (21st) day after the last day of the first month following the expiration of the Fixturing Period (the "Rent Commencement Date"), and thereafter on or before the 15th day of each successive month during the Term, save and except that the last payment due following the end of the Term shall be payable on the twenty-first (21st) day of the month following the end of the Term. The amount of each payment of Percentage Rent shall be equal to the Percentage Rent Factor of the Net Revenue in such monthly period. If the certified statement to be furnished by the Subtenant pursuant to Section 2.04(b) hereof at the end of any Rental Year discloses that the total Percentage Rent paid by the Subtenant for such Rental Year exceeds the total Percentage Rent required to be paid by the Subtenant for such Rental Year, the Head Landlord shall credit any such excess against Percentage Rent then or in the future owing by the Subtenant under this Sublease, unless an audit by the Head Landlord is in progress, or the Subtenant shall pay to the Head Landlord simultaneously with the furnishing by the Subtenant of such certified statement any deficiency disclosed by such certified statement, whichever of the foregoing is applicable.

GROSS AND NET REVENUE REPORTS

- (a) Within fifteen (15) days following the end of each month during the Term, the Subtenant shall deliver to the Head Landlord and the Sublandlord, at the place then fixed for the payment of Rent and such other address as the Sublandlord advises, together with payments of monthly Percentage Rent, a written statement (the "Monthly Statement") signed by the Subtenant which shall: (i) state that Net Revenue and Gross Revenue as reported in the Monthly Statement is in accordance with the definition of Net Revenue and Gross Revenue in this Sublease; (ii) contain a certification by the Subtenant that the Monthly Statement is true and correct; (iii) be in such detail, form and scope as the Subtenant currently provides to other landlords and (iv) without limiting the previous requirements, show (A) the amount of Net Revenue for the preceding month (and fractional month period, if any, at the Rent Commencement or expiry of the Sublease Term) and an itemization of all permissible exclusions and deductions therefrom, (B) the amount of Gross Revenue for all preceding month periods of the Rental Year, and (C) the payments made on account of Percentage Rent for the Rental Year. The Subtenant's failure or refusal to submit the Monthly Statement would constitute an Event of Default under Section 8.0 of this Sublease and Head Lease and the Head Landlord is only entitled to its remedies thereunder.
- (b) Within forty-five (45) days following the end of each Rental Year (including the last Rental Year of the Term), the Subtenant shall deliver to the Head Landlord and Sublandlord, at the place then fixed for the payment of Rent, a written statement (the "Annual Statement") signed by the chief financial officer of the Subtenant, if the Subtenant is a corporation, by each partner in the Subtenant, if the Subtenant is a partnership (such signature to be made by the chief financial officer of each corporation which is a partner in the partnership), and by the Subtenant if the Subtenant is neither a corporation nor a partnership, which Annual Statement shall: (i) state that Net Revenue and Gross Revenue as shown in the Annual Statement is in accordance with the definition of Net Revenue and Gross Revenue in this Sublease; (ii) contain a certification that the Annual Statement is true and correct; (iii) be in such detail, form and scope as the Subtenant currently provides to other landlords; and (iv) without limiting the previous requirements, show by month periods, the amount of Net Revenue and Gross Revenue during the preceding Rental Year.
- (c) The Subtenant shall not change its procedure relating to any aspect of its reporting of Net Revenue and Gross Revenue without the prior written consent of the Head Landlord and Sublandlord, which consent shall not be unreasonably withheld.

SUBTENANT'S RECORDS

(a) For the purposes of ascertaining the amount payable as Percentage Rent, the Subtenant shall prepare, keep, maintain and preserve at the Subtenant's principal office for at least three (3) years following the end of each Rental Year, full, true and accurate books of account, documents and records that adhere to sound accounting practice (which shall include, without limitation, (i) inventories and receipts of merchandise at the Subleased Premises, (ii) daily dated cash register tapes (including tapes from temporary cash registers), and total slips (sometimes known as "z summary tapes") (iii) pre-printed consecutive serially numbered non-repetitive sales slips and invoices, (iv) daily dated receipts from all sales, charges, services and other transactions on, at or from the Subleased Premises made by the Subtenant and any other Persons conducting any business upon or from the Subleased Premises and daily sales and point of sales reports, (v) the original of all mail, telephone, or electronically or computer placed orders either received, taken or filled in, on, from, through or at the Subleased Premises, (vi) records of all sales made by mechanical or other vending devices, (vii) settlement report sheets of transactions with Franchisees, Transferees or other Persons doing business on or from the Subleased Premises, (viii) the original records showing that merchandise returned by customers was purchased at the Subleased Premises by such customers, (ix) memoranda, receipts or other records of merchandise taken out on approval, (x) sales tax and H.S.T. records and returns, (xi) receipts for daily bank deposits, (xii) computer printouts, (xiii) bank statements, (xiv) all pertinent original sales records (segregated from all of Subtenant's other business material), (xv) financial journals and sales summary records, (xvi) general ledgers, (xvii) financial statements, including profit and loss statements, (xviii) support documents regarding any exclusion or deduction from Net Revenue, and (xix) such other sales and other records as Head Landlord and Sublandlord reasonably requires) which are required to satisfy the requirements of any authorities and which would normally be examined by an independent chartered accountant pursuant to accepted auditing standards in performing a detailed audit of the Subtenant's sales. The Subtenant shall also cause all such books, documents and records to be kept by all Transferees, Franchisees or other Persons doing business in, on, at, through or from the Subleased Premises, and shall cause them to open their books, documents and records for inspection, copy and audit, or any of them at any time and from time to time by the Head Landlord and Sublandlord and the Head Landlord and Sublandlord's auditors or chartered accountants, or any of them. The Subtenant's obligation to retain all books, documents and records in accordance with this Section shall survive the expiration or sooner termination of this Sublease. The Subtenant shall itself, and shall cause all other Persons conducting business on or from the Subleased Premises, to record at the time of sale in the presence of the customer, on pre-printed consecutive serially numbered non-repetitive sales slips and invoices, all receipts from sales, charges, services, refunds, exchanges and other transactions, whether for cash or credit, in a computerized or electronic cash register or device acceptable to the Head Landlord and Sublandlord having (a) a daily dated automatic tape or other storage medium which shall permanently record each sales transaction, complete with any voids and refunds (and which shall indicate any separate department by which such sales were made), (b) a sealed non-resettable cumulative totaling device, and (c) such other control features as are required and approved by the Head Landlord and Sublandlord, from time to time.

Notwithstanding the foregoing provisions of this Section, so long as the Subtenant is Hart Stores Inc. or a Permitted Transferee, the documents and records referred to herein shall be in such form and style and contain such details and breakdown as the Subtenant provides to substantially all of its other landlords in Canada where Net Revenue is reported.

DEFINITIONS

"Gross Revenue": includes the actual sales prices, rentals and fees of all goods, wares, merchandise, food products, beverages and other things sold, leased or licensed and the actual charges for all services performed (including Leases of and hire-purchase agreements with respect to goods, wares, merchandise or other things) in, at or from the Subleased Premises by Subtenant or by any sub-tenant, licensee, concessionaire or otherwise, for Subtenant's account or for the account of any other person, firm or corporation or other business conducted upon or from the Subleased Premises, whether for cash, or credit or otherwise, without reserve or deduction for inability or failure to collect, including, but not limited to, such sales and services,

- (i) where the orders therefor originate in, at or from the Subleased Premises, whether delivery or performance is made from the Subleased Premises or from some other place;
- (ii) made or performed pursuant to mail, telephone, telegraph, facsimile or other similar orders received at the Subleased Premises;
- (iii) made or performed by means of mechanical or other vending devices, and from all lottery and other ticket sales in the Subleased Premises;

(iv) made or performed as a result of transactions originating in, at or from the Subleased Premises; and

(v) which Subtenant or any sub-tenant, licensee or concessionaire in the normal and customary course of its business and in accordance with good accounting practice, would credit or attribute to its operations at the Subleased Premises or any part thereof.

All deposits not refunded to purchasers shall be included in Gross Revenue. Each sale upon instalment or credit shall be treated as a sale for the full price in the month during which the sale shall be made, irrespective of the time when the Subtenant shall receive payment therefor.

The following shall not be included in Gross Revenue, namely:

- (a) any exchange of merchandise between stores of the Subtenant where such exchange is made solely for the convenient operation of the Subtenant's business and not for the purpose of reducing Gross Revenue;
- (b) returns to shippers or manufacturers;
- (c) cash or credit refunds to customers on transactions otherwise included in Gross Revenue;
- (d) amounts collected from customers for and paid to a taxing authority by the Subtenant for any direct sales, excise or similar tax imposed by any duly constituted governmental authority;
- (e) the amount of any reasonable discount on sales to employees not to exceed two percent (2%) of Gross Revenue; and
- (f) sales of fixtures, machinery and equipment after use thereof in the conduct of the Subtenant's business in the Subleased Premises.

“Net Revenue”: the total amount of revenue from Gross Revenue minus direct expenses, including but not limited to, price reductions and refunds.

THE CORPORATION OF THE CITY OF ELLIOT LAKE

***B*Y-LAW NO. 20-66**

Being a By-Law to Confirm the Proceedings
of Council at its Meeting held on September
8th, 2020

WHEREAS the Council of The Corporation of the City of Elliot Lake has held a Council Meeting on September 8th, 2020 and seeks to confirm all of its actions ;

NOW THEREFORE the Council of The Corporation of the City of Elliot Lake hereby enacts as follows:

1. **THAT** all of the actions of Council at its meeting held on September 8th, 2020 in respect of each recommendation contained in all Report and in respect of each motion, resolution and other action passed and taken by the Council at its said meeting is hereby adopted, ratified and confirmed.
2. **THAT** the Mayor and appropriate officials of the Corporation are hereby authorized and directed to do all things necessary to give effect of each of the said actions, motions and resolutions or to obtain approvals where required.
3. **THAT** except where otherwise provided, all documents required to be signed on behalf of the Corporation shall be signed by the Mayor or by the Acting Mayor and by the City Clerk, and the City Clerk is hereby authorized and directed to affix the seal of the Corporation to all such documents.
4. **THAT** this By-law, to the extent to which it provides authority for or constitutes the exercise of the Council of its powers to proceed with, or to provide any money for any undertaking, work, project, scheme, act, matter or thing which requires an approval in addition to the approval of Council, shall not take effect until the additional approval has been obtained.
5. **THAT** this By-law shall come into force and take effect on the date of its passing.

PASSED this 8th Day of September, 2020

MAYOR

CITY CLERK