

By-Law 2260

The Corporation of the Town of Essex

By-Law Number 2260

Being a by-law to authorize the execution of a Lease Agreement between the Corporation of the Town of Essex and L.I.F.E. Essex Inc. for the Operation of an Adult Learning Centre located in the Kinsmen Fieldhouse, 50 Fairview Avenue West, Essex, Ontario

WHEREAS the Corporation of the Town of Essex ("**Town**") is the owner of the property and buildings located in the Kinsmen Fieldhouse at 50 Fairview Avenue West, Essex, Ontario (the "**Premises**"), which building space is available for lease for the operation of an Adult Learning Centre;

AND WHEREAS L.I.F.E. Essex Inc. ("**L.I.F.E.**") is desirous of leasing space in the Premises for an Adult Learning Centre;

AND WHEREAS the Town is desirous of entering into a Lease Agreement with L.I.F.E. for the Premises;

NOW THEREFORE the Council of the Town hereby enacts as follows:

- **That** the Mayor and Clerk are hereby authorized to execute a Lease Agreement between the Town and L.I.F.E. in the form attached hereto as Schedule "A" for the use of the Premises as designated in Appendix "A" to such Lease Agreement; and
- **That** this by-law shall come into force and take effect upon the final passing thereof.

Read a first, a second, and a third time and finally passed on February 5, 2024.

Mayor

Clerk

Schedule "A" to By-Law Number 2260

THIS LEASE AGREEMENT made this 5th day of February, 2024

BETWEEN:

L.I.F.E. ESSEX INC.

(the "**Lessee**")

AND

CORPORATION OF THE TOWN OF ESSEX

(the "**Lessor**")

WITNESSETH:

WHEREAS the *Municipal Act, 2001* (the "**Act**"), provides that the Lessor may, for its own purposes, exercise its powers under the culture, park, recreation, and heritage sphere of jurisdiction in the municipality of the Lessor;

AND WHEREAS, Section 11 of the Act provides that the Lessor may pass By-Laws respecting matters relating to culture, parks, recreation, and heritage;

AND WHEREAS the Lessor is the owner and operator of the building located at 50 Fairview Avenue West, Essex, Ontario (the "**Building**");

AND WHEREAS, that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the said Lessee to be paid observed and performed, the said Lessor by these presents doth demise and lease unto the said Lessee all that messuage and tenement located in the Building and consisting of approximately 1294 sq. ft. and being composed of the area as shown on Appendix "A" attached hereto (hereinafter called the "**premises**"), upon the following terms and conditions:

TO HAVE AND TO HOLD the premises for a five (5) year term (the "**initial term**") subject to an option for a further term of five (5) years as herein described below, to be computed from the fifth day of February, 2024, and ending on the 31st day of July, 2028, and will include an annual Consumer Price Index as published by The Bank of Canada adjustment to be made to the previous year's rent throughout the initial term and any extension thereof. The initial term and any extension thereof shall be referred to in this Lease Agreement as the "**Term**".

YIELDING AND PAYING THEREFORE RENTAL AS FOLLOWS:

- Rent for the first year of the Term shall be the sum of five thousand, three hundred and thirty-four dollars and twelve cents (\$5,334.12) plus Harmonized Sales Tax ("**H.S.T.**"), payable in monthly installments of four hundred and forty-four dollars and fifty-one cents (\$444.51) plus H.S.T. effective February 5, 2024, and ending July 31, 2024;
- During each subsequent year of the Term, the rent will be adjusted on August 1 of each year of the Term by the proportionate year over year change in the total Consumer Price Index as published by The Bank of Canada and a statement will be forwarded to the Lessee by the Lessor prior to August 1 of each year of the Term, noting such adjustment of the rent amount;
- Rent shall be paid annually by way of twelve (12) monthly post-dated cheques, or via alternate approved methods, made payable to the Lessor and remitted prior to August 1 of each year of the Term;
- The Lessee will comply with all applicable Federal, Provincial, Municipal, and local health unit (Windsor-Essex Health Unit) safety and licensing rules, laws, regulations, and provisions;

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- The Lessee will immediately notify in writing to the Manager, Parks and Facilities of the Lessor of any problems, issues, concerns, repairs, or damage to the premises, including but not limited to Lessor equipment, Lessor leased equipment or Lessor mechanical fixtures, Lessor utility services or Lessor structures requiring immediate attention;
- The Lessee will ensure that absolutely no alcohol, tobacco or cannabis products of any nature, brand, or type will be sold, provided or used on the premises or any municipal facility of the Lessor at any time throughout the term of this Lease Agreement;
- The Lessee to provide all cleaning supplies to maintain cleanliness and sanitary conditions of the premises to the satisfaction of the Lessor, in its sole discretion, including but not limited to removal of garbage/recycling;
- Subject to the *Commercial Tenancies Act*, if the Lessee abandons or vacates the premises at any time prior to the expiration of the Term, the Lessor shall be permitted to retain absolutely all of the aforesaid sum of monies so deposited with the Lessor, and;
- If any payments required to be made by the Lessee hereunder are not paid when due, then interest at the rate of one and a quarter (1.25%) percent per month from the date when such overdue amounts were due to the date when such overdue amounts are paid shall accrue and be due and payable as additional rent.

The Lessee covenants with the Lessor:

- To pay the rent;
- To pay the cost and expenses incurred in the operating, replacing, maintaining and repairing of the premises, and the equipment located therein, save and except structural repair, which shall be the responsibility of the Lessor, including, but not limited to any individually assessed utilities, telephone, cable, wi-fi, hydro, water, gas, heating or air-conditioning, snow removal, landscaping, garbage removal, insurance and security costs required by the Lessee and assigned to the premises during the Term and further, the Lessee acknowledges that Lessor shall not be liable for any interruption or failure in the supply of any such utilities or services to the premises;
- Not to carry on upon the premises any activities that may be deemed a nuisance or unlawful or by which the insurance on the premises will be increased, and further not to carry on any other business or activities other than the normal operations of the Lessee without the consent of the Lessor, such consent not to be arbitrarily or unreasonably withheld;
- To maintain the premises including the exterior areas of the Building, including all public areas, in good condition and free from litter. If any garbage/materials are left on site that do not belong to the Lessee, Lessee shall contact the Manager, Parks and Facilities of the Lessor, to report that cleanup may be necessary;
- That it has inspected the premises and conducted such examinations and tests as it deems desirable. The Lessee acknowledges that the Lessor does not warrant or represent the condition of the premises to the Lessee, and the Lessee accepts the premises in its present condition;
- That, except as herein otherwise specifically provided, Lessee assumes the entire responsibility for the condition, operation, maintenance, and management of the premises and Lessor shall have no responsibility whatsoever for such or for damage to the Lessee's property in and upon the premises under any circumstances whatsoever;

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- That if, after reasonable notice given by the Lessor to the Lessee, the Lessee refuses or neglects to repair properly and promptly as required hereunder and to the reasonable satisfaction of the Lessor, the Lessor may make such repairs without liability to the Lessee for any loss or damage that may accrue to the Lessee's merchandise, fixtures or other property or to the Lessee's business by reason thereof, and upon completion thereof the Lessee shall pay as additional rent the Lessor's costs for making such repairs upon presentation of a bill therefore;
- That it shall throughout the Term, at its own expense, keep in force for the benefit of the Lessor and Lessee, comprehensive general liability insurance in respect of injury to or death of one or more persons or property damage with limits of not less than Two Million (\$2,000,000) Dollars per occurrence covering the premises described herein. The Corporation of the Town of Essex (33 Talbot Street South, Essex, ON N8M 1A8) **shall be named as an additional insured in the policy of insurance and the policy shall contain a cross liability and separation clause.** Such policy of insurance shall not be changed, cancelled, or allowed to lapse without providing the Lessor with thirty (30) days' notice in writing. As a condition of the Lessor entering into this Lease Agreement, Lessee will provide a Certificate of Insurance for such comprehensive liability insurance to the Lessor upon entering into this Lease Agreement;
- That it shall throughout the Term, at its own expense, keep in force insurance against loss or damage by fire on any equipment, inventory and supplies owned by Lessee and maintained on site;
- That it will indemnify Lessor and save Lessor harmless from and against any and all claims, actions, damages, liability and expense (including legal fees on a full indemnity basis) in connection with or arising from or out of any occurrence in, upon or at the premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, or Lessee's agents, contractors, employees, servants, licensees or invitees;
- That it shall not make any alterations, additions, or improvements to the premises without first submitting the plans and specifications (including materials to be used) thereof to the Lessor and without first obtaining approval in writing of the Lessor, such approval may not be unreasonably withheld. Lessee shall further covenant to be responsible for any applicable costs, expenses, fees and all applicable inspections and the costs thereof, including but not limited to, those of the Lessor;
- To permit the Lessor and its agents access to the premises and other areas of the Building that can only be accessed through the premises, upon providing reasonable notice to Lessee; and
- That Lessee is a duly incorporated not-for profit corporation whose not-for profit and corporate status is and shall remain in good standing for the duration of the Term.

The Lessor covenants with the Lessee:

- To provide Lessee with quiet enjoyment of the premises, and
- During the Term, to make any required structural repairs to the roof, exterior walls, foundations, drains and sewers of the premises caused by structural defect or weakness unless caused by the act or neglect of Lessee, its agents, servants, invitees or those for whom Lessee is at law responsible in which event such repair shall be made by the Lessor but at the expense and cost of Lessee.

Provided that Lessee is not in breach of the terms of this Lease Agreement, Lessee may remove its fixtures, if such removal may be, and is done without injury to the premises.

Provided that in the event of damage to the premises by fire, lightning or tempest, rent shall cease until the premises are rebuilt.

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Provided that, where the premises become vacant and so remain for a period of thirty (30) days, it shall be presumed that Lessee has abandoned the premises, and the Lessor may re-enter and take immediate possession of the premises.

Proviso for re-entry by the Lessor on non-payment of rent or non-performance of covenants, provided that such re-entry shall, at all times, be in accordance with the provisions of the *Commercial Tenancies Act*.

Provided Lessee has not been in default during the initial term and it is mutually agreeable between the Lessor and Lessee, Lessee shall have and is hereby granted, an option to extend the term of this Lease for an additional five (5) year period upon providing such notice in writing to the Lessor at least ninety (90) days prior to the end of the initial term, with such renewal to begin upon the expiration of the initial term of this Lease. If the option to lease for a further term of five (5) years is exercised, the rental amount thereafter shall continue to be adjusted year over year, effective on August 1 of each year, in proportion to the applicable Consumer Price Index as published by The Bank of Canada.

Provided that, if at the end of the Term, whether by effluxion of time or any other reason, the Lessor permits Lessee to remain in possession of the premises and accepts rent in respect thereto, a tenancy from year to year shall not be created by implication of law but the Lessee shall be deemed to be a monthly Lessee only subject in all respects to the provisions of this Lease Agreement.

Provided that the Lessor shall have the right to cancel this Lease Agreement at any time during the Term for reason of any default by Lessee under this lease such default being a failure to pay rent when due or a failure to perform its covenants or any other of its obligations under this Lease Agreement and such default has not been remedied within five (5) days written notice of such default.

Provided further that the Lessor shall have the right to cancel this Lease Agreement at any time during the term of the Agreement as a result of declaring the premises surplus or determining another use for the premises, upon providing notice in writing to Lessee of at least ninety (90) days.

It is hereby declared and agreed that the expressions "Lessor" and "Lessee" wherever used in this Lease Agreement, shall, when the context allows, include, be binding on and enure to the benefit of not only the parties hereto, but also their respective heirs, executors, administrators, and assigns.

And it is further agreed between the parties hereto that wherever the singular and masculine are used throughout this Lease they shall be construed as if the plural or feminine had been used, where the context or the party or parties hereto so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered had been made.

Lessor and Lessee acknowledge and agree that each has joined in and contributed to the drafting of this Lease Agreement and as a result there shall be no presumption in construing the provisions of this Lease Agreement favoring or burdening either Lessor or Lessee based upon draftsmanship or similar rule of construction. Lessor and Lessee further acknowledge and agree that each have had the opportunity to consult and obtain independent legal and professional advice in conjunction with this lease and its obligations thereto and have either done so or waived their right to such.

This Lease Agreement may be executed in any number of separate counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same document. Delivery of an executed counterpart of this Lease Agreement with a facsimile signature shall have the same binding effect as delivery of an executed original.

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And the following addresses are provided for the Lessor and Lessee for purposes of providing notice:

Lessor: The Corporation of the Town of Essex
33 Talbot Street South, Essex, Ontario, N8M 1A8

Telephone: 519-776-7336

Lessee: L.I.F.E. Essex Inc.
50 Fairview Avenue West
Essex, ON N8M 1Y1
Telephone: 519-791-1532
Email: llalife@yahoo.com

IN WITNESS WHEREOF the parties hereto have duly executed this Lease Agreement on the date first set out above.

LIFE ESSEX INC.

Lea Anne Shepley, Director

Sherri Currie, Director

We have authority to bind the Corporation

THE CORPORATION OF THE TOWN OF ESSEX

Sherry Bondy, Mayor

Joseph Malandrucolo, Clerk

We have authority to bind the Corporation

Appendix 'A' – LIFE Leased Space

