

**By-Law Number 2127**  
**The Corporation of the Town of Essex**  
**By-Law Number 2127**

**Being a by-law to Repeal By-Law 1852, a by-law to authorize the execution of a lease agreement between the Town of Essex and Richard R. Brett for the Management and Operation of a Skate Sharpening and Pro Shop at the Essex Centre Sports Complex located at 60 Fairview Avenue West, Essex, Ontario.**

**Whereas** the Town is the owner of the property and building located at 60 Fairview Avenue West, Essex, Ontario, which has space for lease;

**And Whereas** Richard R. Brett is desirous of leasing space to operate and manage a skate sharpening and pro shop at the Essex Centre Sports Complex located at 60 Fairview Avenue West;

**And Whereas** the Town is desirous of entering into a lease agreement with Richard R. Brett for the operation of a skate sharpening and pro shop located as noted above;

**Now therefore** the Council of The Corporation of the Town of Essex hereby enacts as follows:

1. That the Mayor and Clerk are hereby authorized to execute a lease agreement between The Corporation of the Town of Essex and Richard R. Brett to lease space to operate and manage a skate sharpening and pro shop to be located at 60 Fairview Ave West, Essex, Ontario, as designated in Appendix "A" to By-Law 2127 a copy of which is attached hereto.
2. That By-Law 1852 be hereby repealed effective immediately; and
3. This by-law shall come into force and take effect upon the final passing thereof.

**Read a first, a second time and be provisionally adopted on February 22, 2022.**

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Mayor

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Clerk

**Read a third time and finally passed on March 7, 2022.**

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Mayor

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Clerk

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**Appendix "A"**

**This Agreement** made in duplicate this 7<sup>th</sup> day of March, 2022.

**Between:**

**Richard R. Brett**

(the "Lessor")

**And**

**The Corporation of the Town of Essex**

(the Lessee")

**Witnesseth** 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 hath demised and leased and by these presents doth demise and lease unto the said Lessee all that messuage and tenement located in the following municipality, namely, occupancy of space on the main floor level of the twin pad arena in Essex Centre located at 60 Fairview Avenue West in the municipality of the Town of Essex for the purpose of the management and operation of a Skate Sharpening and Pro Shop (hereinafter called the "premises" shown on the attached schedule), upon the following terms and conditions:

**To have and to hold** the premises for and during the term of three (3) years to be computed from May 1, 2022 and ending on April 30, 2025.

**Yielding and paying** rental and deposits as follows:

**Term** commencing on May 1, 2022 and continuing thereafter through to April 30, 2025 in an amount of \$301.53 including applicable HST and the 2<sup>nd</sup> and 3<sup>rd</sup> years monthly rent be based on the previous year's base rent plus the annual Consumer Price Index (CPI) which

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will formulate the current year's base rent, each and every month due and payable to the Town of Essex on the first day of each month thereof. The CPI is recalculated in September of each year.

### **The Lessee covenants with the Lessor the following fourteen item with the failure to observe any such covenants to constitute an event of default under this Lease:**

- i. To pay the negotiated rent;
- ii. To pay all applicable business and associated taxes associated with the management and operation of the skate sharpening and pro shop business with no claim of responsibility whatsoever to be borne or associated with the Lessor;
- iii. To pay all rates, fees and charges related to the installation of any telephone connections and to maintain any telephone services under the Lessee name and paid in full by said Lessee with no costs or claim of responsibility whatsoever to be borne or associated with the Lessor;
- iv. To maintain the premises in a state of cleanliness and to repair any damage caused thereto by his own wilful or negligent conduct or that of persons who are permitted on the premises by him;
- v. Not to assign or sublet without the consent of the Lessor, such consent not to be arbitrarily or unreasonably withheld. The Lessee shall pay the Lessor's reasonable expenses incurred thereby;
- vi. Not to carry on upon the premises any business that may be deemed a nuisance or by which the insurance on the premises will be increased;
- vii. That the Lessee will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only accepted;

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- viii. That the Lessee will repair according to notice in writing, reasonable wear and tear and damage by fire lightning and tempest only excepted;
- ix. That the Lessor will maintain the outer doors, outer walls, windows (normal wear and tear only), roof, plumbing, heating and cooling, driveways and entryways on the lands demised herein in a reasonable condition for the use by the Lessee, its agents and employees and invitees and shall keep the driveways, entrances and parking areas reasonably clear of snow and ice, but should the Lessor make default in doing so it shall not be liable for direct or consequential damages including, but without restricting the generality of the foregoing, damage for destruction of the business of the Lessee and damage to or loss of goods, chattels and equipment and of the property of the Lessee;
- x. The Lessor covenants during the term of this Lease and any renewal thereof to make structural repairs to the roof, exterior walls, foundations, drains and sewers of the building caused by the structural defect or weakness unless caused by the misconduct or negligence of the Lessee, its agents, servants, invitees or those for whom the Lessee is at law responsible in which event such repair shall be made by the Lessor at the expense of the Lessee, the cost of such repairs to be paid by the Lessee together with an administrative fee of fifteen percent (15 %) of the costs of such repairs, as additional and upon demand;
- xi. The Lessee as per Request for Proposal (RFP) PR-2009-01 shall only provide skate sharpening services and be permitted to sell only hockey sticks, various tapes for ice hockey, pucks, laces, equipment repair components and other ice sport related equipment and associated merchandise. The Lessee is not permitted to sell non sport related clothing or goods without prior written consent from the Town of Essex Director of Community Services;
- xii. That the Lessee shall provide the Lessor commencing with the execution of this Agreement the Certificate of Insurance naming the Lessor having third party liability

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coverage and bearing thirty (30) day notification of termination of said coverage with annual production of the renewal of insurance on the annual anniversary date of said agreement, at his own expense, keep in force for the benefit of the Lessor and the 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 (\$2,000,000.00) per occurrence and insurance against loss or damage by fire in respect thereof of the demised premises and any and all improvements and equipment appurtenant thereto, to a value of two million (\$2,000,000.00) under an all-risk policy and covering loss of rent by the Lessee during any reconstruction period;

- xiii. The Lessee shall not make any alteration, addition or improvement without first submitting one (1) month written notification including but not limited to all plans and written specifications (including materials to be used, contractor information etcetera) thereof to the Lessor and without first obtaining the approval in writing thereof of the Lessor, such approval may not be unreasonably withheld; and
- xiv. To promptly notify the Lessor, in writing of any repairs to be made by the Lessor, and upon giving prior notice in accordance with The Commercial Tenancies Act, the Lessor shall be permitted to enter and view the state of repair and to make any such repairs.

**Provided that,** the lease is at an end and all rents have been paid in full the Lessee may remove his 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.

**Provided that,** where the premises become vacant and so remain for a period of thirty (30) consecutive days, it shall be presumed that the 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

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covenants, provided that such re-entry shall, at all times, be in accordance with the provisions of the Commercial Tenancies Act.

**Provided that,** if the term hereby granted shall be at any time seized or taken in execution or attachment, by any creditor of the Lessee, or if the Lessee shall make an assignment for the benefit of creditors, or becoming bankrupt or insolvent shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, the then current rent, together with the rent for three (3) months thereafter, (calculated on the average of the rental paid during the previous six (6) months of the term), shall immediately become due and payable, all subject to the provisions of the Landlord and Tenant Act, as amended.

**The Lessor** shall maintain the premises in a good state of repair and fit for habitation during the herein lease in order the premises comply with health and safety standards required by law.

**The Lessor** covenants with the said Lessee for quiet enjoyment. **PROVIDED** the Lessee has not been in default during the initial term hereof, the Lessee shall have and is hereby granted, an option to extend the term of this Lease for an additional five (5) years to begin upon the expiration of the term of this lease, all of the terms, covenants and provisions of this Lease shall apply to the extended term with the exception, however, that the rental shall be subject to negotiation. If the Lessee elects to exercise the option to extend, the Lessee shall do so by giving notice to the Lessor in writing, of its intention no later than three (3) months before the expiration of the term of the Lease.

### **Default**

If any of the following shall occur:

- a) if any Rent or other sums due hereunder are not paid within five (5) days after notice is given by the Lessor to the Town of such non-payment;
- b) if the Lessee fails to observe or perform any of the covenants, provisions, conditions, and other terms herein to be observed and performed, and such non-observance or

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non-performance continues for fifteen (15) days after notice is given by the Lessor to the Lessee requiring that the Lessee rectify;

- c) the Lessee becomes bankrupt or insolvent under the provision of any Act at the time in force for bankrupt or insolvent debtors or makes my assignment for the benefit of or proposal to creditors;
- d) the term hereof or any goods or chattels of the Lessee are seized or attached by or on behalf of any creditor;
- e) the Lessee assigns, sublets, charges, mortgages, or parts with possession of the Lands or any part thereof, without the prior written consent of the Lessor; or
- f) the Lessee falls to comply with any federal, provincial, or municipal statutes, laws, bylaws, ordinances, regulations, or orders including the requirements of any insurance underwriters applicable to the Lands,

then and in every such case, the Lessor may, in addition to any other rights or remedies it may have under other provisions of this Lease or by law, at its option exercise all or any of the following remedies:

- i. the Lessor may perform any obligation which the Lessee should have performed or cause the same to be performed, and for such purpose may enter upon the premises and do such things thereon as the Lessor considers requisite without effecting a termination of this Lease;
- ii. the Lessor may enter the premises and distrain upon the goods and chattels of the Town, or may remove and sell the goods, chattels and equipment of the Lessee without any notice or form of legal process, any rule of law to the contrary notwithstanding, and the Lessor may seize and sell the goods and chattels and the equipment, whether they are within the Lands or at any place to which the Lessee or any other person may have removed them in the same manner as if they had remained and been distrained upon the premises, and the Lessor may follow the goods and chattels for the maximum period permitted by law, and any sale by the Lessor may, in its sole discretion, be effected by public auction or private contract and either in bulk or by individual items, or partly by one means and partly by the other;
- iii. the Lessor may remove the goods, chattels, equipment and fixtures of the Lessee from the Lands and store them in a public warehouse or elsewhere at the cost of and for the account of the Town; and
- iv. the Lessor may terminate this Lease by commencing an action for possession or for termination of the Lease or by notice to the Lessee. Such termination may be effected

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either at or after the time of the breach or at any later time and notwithstanding that the Lessor may have exercised any of its other remedies. If the Lessor enters the Lands without notice to the Lessee as to whether it is terminating this Lease under this subsection or any other provision of this Lease, the Lease shall not be terminated, nor shall there be any surrender by operation of law, but the Lease shall remain in full force and effect until the Lessor notifies the Lessee that it has elected to terminate this Lease. No entry by the Lessor during the Term shall have the effect of terminating this Lease without notice to that effect to the Lessee;

Notwithstanding the provisions of any Act then in force to the contrary, the Town covenants that none of the goods and chattels of the Town at any time upon the Lands shall be exempt from levy by distress for rent in arrears and the Town waives the benefit of all and every exemption that might have accrued to the Town under the provisions of any Act then in force to that effect, but for the above covenant.

**In the event** of any the requirement of any correspondence and or notification between the Lessee or the Lessor, it is hereby agreed that all correspondence will be delivered by means of regular mail delivery, hand delivered, or by delivery of facsimile.

**In the case of the Lessor**, all correspondence or notification will be addressed or directed as follows:

#### **Lessor Contact Information:**

|                                      |   |
|--------------------------------------|---|
| <b>Name of Lessor Contact:</b>       | Town of Essex, Attention: Town Clerk            |
| <b>Address for Lessor Contact:</b>   | 33 Talbot Street South, Essex, Ontario, N8M 1A8 |
| <b>Facsimile for Lessor Contact:</b> | 519-776-8811                                    |

**In the case of the Lessee**, all correspondence or notification will be addressed or directed as follows:

#### **Lessee Contact Information:**

|                                |                  |
|--------------------------------|------------------|
| <b>Name of Lessee Contact:</b> | Richard R. Brett |
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**Address for Lessee Contact:** 18 Alice Street N, Essex, ON N8M 1C9

**Email for Lessee Contact:** richbrett1949@hotmail.com

**It is hereby** agreed between the parties hereto that if, upon the determination of the lease by defluxion of time, the Lessor permits the Lessee to remain in possession of the premises and accepts negotiated rents 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 tenant only.

**It is hereby** declared and agreed that the expressions "Lessor" and "Lessee" wherever used in this Indenture, shall, when the context allows, include, be binding on and inure to the benefit of not only the parties hereto, but also their respective 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.

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**In Witness Whereof** the parties hereto have duly executed this Agreement.

**Signed, Sealed and Delivered** in the presence of:

**Richard R. Brett**

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Witness as to signature of

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Richard R. Brett

**Receipt of Tenancy Agreement:**

I/We hereby acknowledge receiving a duplicate original copy of the herein lease agreement this                      day of                      2022.

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Lessee (Tenant)

**Signed, Sealed and Delivered** in the presence of:

**The Corporation of the Town of Essex**

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Witness as to signature of

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Mayor, Richard Meloche

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Witness as to signature of

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Clerk, Robert Auger

We have authority to bind the Corporation

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Schedule 'A'

1. Leased Space

