



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 164-2006

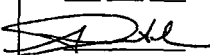
To authorize the execution of
a Lease with the Royal Canadian Legion Branch 15
for their occupancy of Centennial Recreation Centre

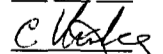
WHEREAS it is deemed expedient in the interest of The Corporation of the City of Brampton to enter into a Lease Agreement with Royal Canadian Legion Branch 15 for its use of the Centennial Recreation Centre at 80 Mary Street, Brampton;

NOW THEREFORE the Council of The Corporation of the City of Brampton **ENACTS AS FOLLOWS:**


1. The Mayor and Clerk are hereby authorized to execute a Lease Agreement between the City of Brampton (Owner) and Royal Canadian Legion Branch 15 (Tenant) for the use of the Centennial Recreation Centre, at nominal rent, with the Legion responsible for annual Reserve Fund Contributions, for a term of twenty years, and on other terms and conditions acceptable to the Commissioner of Community Services and in a form of agreement approved by the City Solicitor, together with all other documents that, in the opinion of the City Solicitor, are necessary to give effect to the terms of the Lease Agreement.

READ a FIRST, SECOND and THIRD TIME and PASSED in Open Council this 24th day of May, 2006.

Approved as to content (MAS Dept.) 05/23/06 
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Approved as to form (Legal Dept.) 05/23/06 


SUSAN FENNELL MAYOR


KATHRYN ZAMMIT CLERK

LEASE AGREEMENT

Legal File # B50.811

This Lease Agreement dated the 21st day of June, 2006.

BETWEEN:

THE CORPORATION OF THE CITY OF BRAMPTON
hereinafter called the "City"

OF THE FIRST PART

AND

THE ROYAL CANADIAN LEGION BRANCH 15
hereinafter called the "Legion"

OF THE SECOND PART

RECITALS:

WHEREAS the Legion is a not for profit corporation that offers recreational and social opportunities for current and former members of the military, as well as the citizens of Brampton, which includes, but is not limited to occasional use for wedding celebrations and other social functions (the "Legion Operation");

AND WHEREAS the City is the owner of the property known municipally as 80 Mary Street known as Centennial Recreation Centre (the "Building"), and described in Schedule A of this Agreement;

AND WHEREAS the Building and the adjacent park area are currently used for the purposes of providing recreation and leisure activities to the citizens of Brampton;

AND WHEREAS the City and the Legion have agreed to enter into a lease for the use of the Building by the Legion;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and the sum of \$2.00, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions hereinafter set out, the parties hereto agree as follows.

Definitions

1. For the purpose of this Lease Agreement
 - (a) "Audit" shall mean a Building Inspection Survey to determine the condition of the Building performed by a consultant approved by the City.
 - (b) "Commissioner" shall mean the Commissioner of Community Services.
 - (c) "Lifecycle Elements" shall mean all building and landscaping components within the areas labeled Area A and Area B on the sketch attached hereto as Schedule B, including, but not limited to, (a) the site, (b) building structure, interior and envelope, (c) mechanical and electrical systems, and (d) Ontario Building Code requirements.

- (d) "Reserve Fund" shall mean an interest-bearing account administered by the City, the funds from which shall be used solely for repairs or replacement of those Lifecycle Elements of the Building, the cost of which to repair or replace is \$5,000.00 or greater, inclusive of all applicable taxes. The said \$5,000.00 amount shall be subject to adjustment from time to time at the discretion of the City; however, such increase will be capped, based on inflation in accordance with the Consumers Price Index, Toronto, All Items.

Condition

2. This Lease Agreement is conditional upon the Legion obtaining approval from Provincial Command of Royal Canadian Legion and obtaining a license to serve liquor, beer and wine at the Premises.

Term and Rent

3. The City hereby leases the Building, as shown as Area A on Schedule B hereto attached, and thirty (30) exclusive use parking spaces within Area B on Schedule B (together hereinafter referred to as the "Premises"), to the Legion for a twenty (20) year term commencing on the Lease Commencement Date described below (the "Term") for a rent of two dollars (\$2.00) for the entire Term (the "Rent").
4. The Lease Commencement Date shall be the earlier of the date the Legion takes possession of the Premises and, if renovations are undertaken, the date the said renovations are commenced, being the date of building permit issuance.
5. The Legion covenants to pay the Rent and any Additional Rent as described in clause 7 below, throughout the Term. Payment of the Rent and any Additional Rent shall commence the date the Legion's Operations commence ("Payment Commencement Date"). If, pursuant to the Annual Reserve Fund Contribution clause below, the Legion chooses to offset its Annual Reserve Fund Contribution against construction costs, those annual payments are to be calculated from the Payment Commencement Date.
6. The Payment Commencement Date shall be such date as confirmed in a letter from the Legion to the Commissioner, confirming operational occupancy.

Additional Rent

7. The Legion agrees that the following costs shall constitute additional rent ("Additional Rent").
- (a) the education portion of realty taxes provided that the Legion shall apply from time to time for exemption from realty taxes and in the event such exemption is not obtained, the Legion shall become responsible for payment of realty taxes; and
 - (b) all Operating Costs pertaining to Area A of the Premises; and
 - (c) the Legion's proportionate share of the operating costs pertaining to Area B based on the Legion's proportionate exclusive use of the parking spaces to the total number of parking spaces in Area B; and
 - (d) initial Reserve Fund contribution in the amount of one hundred thousand dollars (\$100,000.00) payable on the Lease Commencement Date; and
 - (e) annual Reserve Fund contribution for the first five years of the Term in the amount of thirty-seven thousand five hundred dollars (\$37,500.00) per

annum, payable in advance on the Payment Commencement Date, or the anniversary thereof as the case may be, subject to a reduction as described under the “Capital Contribution Offset” clause below; and

- (f) annual Reserve Fund contribution for the sixth to twentieth years of the Term, both inclusive, in an amount to be fixed every five (5) years commencing at the start of the sixth year of the Term, based upon then estimated current market rent of the Premises as if the Premises was leased for a use similar to the use permitted by this Lease Agreement on the open market, said rent to be mutually agreed upon by the parties not less than three months in advance of the beginning of each five year period and to be based on 7,500 square feet; and
- (g) any amount payable pursuant to clauses 17, 27, 33 and 37 below.

Reserve Fund Contribution Offset

- 8. At the commencement of each year of the Term, the Legion shall apply, as a credit against the annual Reserve Fund contribution requirement described in clause 7(e) and (f) above, the documented construction costs incurred by the Legion in the Legion’s renovations of the Building, to an annual maximum credit equivalent to the annual Reserve Fund contribution amount. Said renovations shall be in compliance with the applicable clauses of this Lease and to the satisfaction of the Commissioner. The application of the construction costs to the annual Reserve Fund contributions shall be monitored by the Commissioner. Further, it is acknowledged by the parties that upon termination of this lease, the Building will be returned to the City with only those items in the Building Audit requiring repair or replacement before the date of such termination having been completed.

Renovations

- 9. The Legion shall have the right to make initial renovations to the Premises at Lease Commencement, as well as subsequent renovations, including a building addition in compliance with clauses 38 to 43 below, at any time during the Term, at the Legion’s sole expense, as required for the Legion’s occupation and use of the Premises in compliance with the “Use” clauses below, provided that the Legion shall obtain the City’s prior written approval of the design and cost of the proposed initial or subsequent renovations, as the case may be, and permit the City reasonable oversight of construction to ensure the City’s interests are protected, in compliance with the applicable clauses of this Lease Agreement. The Legion is solely responsible for, and shall obtain at its sole expense, all standard permits, approvals and other documentation, as though the City of Brampton was not the owner of the Premises.

Use

- 10. The Legion shall have the exclusive right to the use and enjoyment of Area A of the Premises throughout the Term.
- 11. The Legion shall have the exclusive right to use thirty (30) parking spaces within Area B and the non-exclusive right to the use and enjoyment of the remainder of Area B of the Premises throughout the Term, which it will share with the City to allow public access to the adjacent park area to the satisfaction of the Commissioner.
- 12. The Legion acknowledges that the park area adjacent to the Premises shall continue throughout the Term to be used for the purposes of providing recreation and leisure activities to the citizens of Brampton, including, but not limited to, the use of the adjacent horseshoe pits.

13. In compliance with clause 14 below, the Legion shall use the Premises solely for the Legion Operation.
14. The Legion covenants that the Premises shall not be used for any purpose that offends, is in conflict with, appears to be in conflict with, or is in any way detrimental to the image and or reputation of the City, such determination to be made by the Commissioner.
15. The Legion shall satisfy itself that the use of the Premises is in compliance with all applicable zoning, use by-laws, restrictions and regulations, and shall comply promptly with and conform to the requirements of all applicable laws and orders in force at any time during the Term, as they pertain to the Premises. If the Legion fails to comply and conform as required by this clause, the City may enter the Premises and perform the Legion's obligation and the Legion will pay all costs and expenses incurred as a result, as Additional Rent.
16. The Legion shall not mortgage or otherwise encumber its leasehold interest in the Premises.
17. The Legion shall remit to the City any benefit or payment the Legion may receive in connection with any expropriation in relation to the Premises excepting in that the Legion may recover its undepreciated capital costs and cost of relocation if relocation is required by the expropriating authority.
18. In the event that the Legion assigns this lease, or sublets all or a portion of the Premises, in compliance with clause 56 below, the Legion shall not profit from rent received from the assignee or the subtenant, as the case may be.
19. The Legion shall provide the City with access to, and exclusive use of, the Premises as may be required for a maximum of twelve (12) events per calendar year, at no cost. The parties agree to work together to clarify the timing of events, and reasonable terms and conditions for the City's use of the Premises.
20. The Legion shall not permit flammable oils or other flammable, dangerous or explosive materials other than those "normally" used in the Legion Operation to be kept on the Premises.

Legion Operation

21. The Legion shall provide, at its own expense, any and all such furniture, tools, utensils, or appliances as may be required for its use of the Premises.
22. The Legion shall comply with all requirements of the *Liquor Licence Act*, R.S.O. 1990, c.L.19, as amended, and any other applicable legislation, regulations, or policies related to alcohol.
23. The Legion shall comply with all smoking related by-laws, and any other applicable legislation, regulations, or policies.
24. The safeguarding and security of the Premises, and any furnishings, tools, utensils or appliances found therein, including, but not limited to, fire and theft prevention, shall be the sole responsibility of the Legion.

Maintenance, Repair, and Management Obligations

25. Except as otherwise provided in this Lease Agreement, the Legion shall be responsible for all routine management, cleaning, and Maintenance expenses of the Premises

(“Operational Costs”), and the Legion agrees to maintain the Premises in a state of reasonable repair and cleanliness, to the satisfaction of the Commissioner.

26. Notwithstanding clause 7(c), the Legion shall be responsible for all snow removal in connection with the Premises, including the entire surface of Area B, at the Legion’s sole expense.
27. The Legion shall be responsible for the payment and proper functioning of all public and/or private utility service charges in connection with the Premises, including, but not limited to, the charges for all electricity, gas, water and sewer.
28. If the Legion fails to comply with clauses 25, 26 and 27 above, the City may enter the Premises and perform the Legion’s obligation and the Legion will pay all costs and expenses incurred as a result, as Additional Rent.

Initial Audit

29. The parties agree that an Audit will be undertaken by the City and the Legion as of Payment Commencement Date and said Audit shall be considered to be the baseline Audit relative to any future audits that may be performed. The cost of the Audit and any future audits shall be borne equally between the Legion and the City.

Reserve Fund – Lifecycle Elements

30. The City acknowledges that the cost of necessary repairs or replacements of the Lifecycle Elements may, from time to time, exceed the funds available in the Reserve Fund. In that event, the Legion may approach the Commissioner to request the Commissioner to make a representation to Committee of Council, and through it, City Council, to address appropriate funding options for such repair or replacement.
31. Any expenditure from the Reserve Fund will require a written request to the Commissioner, from the Legion, approved by the Legion’s Executive, complete with the necessary explanation and cost quotations of the work to be done, and such request shall not be unreasonably refused by the Commissioner.
32. At the date of the expiration of the Term, or upon clause 54 coming into effect, any amount of the Reserve Fund remaining shall
 - (i) first, be used toward any repairs or replacement of the Lifecycle Elements or any Improvements to the Premises to their condition as described in the Audit, normal wear and tear excepted in compliance with the last sentence in clause 8 above and clause 44 below; and
 - (ii) second, if funds are still remaining after fulfilling part (i) above, be paid to the City as Additional Rent.

Improvements and Minor Repairs – Lifecycle Elements and Non-lifecycle Elements

33. Any repairs or replacements in relation to the Premises that are mutually agreed by the parties to be less than \$5,000.00 per occurrence, inclusive of all applicable taxes, (“Minor Repairs”) shall in their entirety, be the responsibility of, and at the sole expense of the Legion. Such amount may be adjusted from time to time at the discretion of the City, based on inflation, in accordance with the Consumers Price Index, Toronto, All Items. Said costs for Minor Repairs shall not be applicable as Reserve Fund Contribution Offset. The Parties agree that an aggregation of repairs or replacements with a total combined cost in excess of \$5,000.00 shall be considered Minor Repairs.

34. Any Minor Repairs or improvements shall be approved by the Commissioner in writing prior to the commencement of such work.
35. Such Minor Repairs and improvements will not be of such kind or extent as to, in any manner, weaken the structure of the Building or reduce the value of the Building.

Dispute Resolution

36. Before legal action is taken, the parties to this agreement shall use their best efforts to resolve any disputes regarding the obligations of this Lease Agreement, but if such disputes cannot be resolved between the parties, or by mediation, they shall be resolved in accordance with the *Arbitration Act, 1991*, as amended, by a sole arbitrator.

Inspections

37. The City shall have right to enter onto any or all portions of the Premises to perform an inspection upon providing twenty-four (24) hours notice to the Legion. If it is decided by the City that the Legion has failed to perform any repairs or replacements to Lifecycle Elements or Minor Repairs as are deemed necessary by the Commissioner, and such repairs are not performed by the Legion within fifteen (15) days of the inspection notice, and written confirmation by the City to the Legion of the deficiencies, the City shall have the right to perform any such work as deemed necessary and charge the Legion as Additional Rent (for Minor Repairs), or withdraw from the Reserve Fund, (for repairs or replacement of the Lifecycle Elements).

Potential Expansion of Building

38. During the Term, the Legion may approach the City regarding the expansion of the structure located in Area A ("Building").
39. The cost of any expansion or addition to the Building, and any related costs, including, but not limited to, design and contracting costs, will be at the sole expense of the Legion, and will be applicable as Capital Contribution Offset pursuant to clause 8 above.
40. The work related to the expansion or addition to the Building, and any related work, including, but not limited to, any design and contracting work, shall be the sole responsibility of the Legion, unless otherwise agreed to by the City.
41. For any expansion or addition to the Building, the Legion must obtain the approval of the Commissioner, and complete, execute and provide to the City, any and all necessary or requested documentation, to the satisfaction of the Commissioner.
42. If the Commissioner approves an expansion or addition, the City may appoint an inspector to monitor any or all stages of the project, including, but not limited to, the planning and construction stages.
43. Any expansion or addition shall become the property of the City immediately upon completion, and subject to this Lease Agreement (as amended to the satisfaction of both parties to address said expansion or addition), remain the property of the City after the expiration of the Term.

Final Audit and Expiry of Term

44. Sixteen (16) weeks prior to the expiration of the Term, the Legion shall provide the City with an up-to-date Audit of the Premises. The Legion shall then be responsible for the payment of any amount required for repairs or replacements of Lifecycle Elements or any Minor Repairs by that Audit in relation to the Premises (excluding reasonable wear and tear of the Lifecycle Elements that will extend beyond the Term of the Lease Agreement and excluding exterior repairs or replacements that were included in the City's approved budget prior to execution of this lease) to the satisfaction of the Commissioner.
45. Any repairs or replacements of the Lifecycle Elements, any Minor Repairs and/or improvements shall become the property of the City immediately upon their completion and remain the property of the City after the expiration of the Term, unless otherwise agreed to by both parties.

Destruction or Damage by Elements

46. If, during the Term, the Premises are destroyed or damaged by fire or the elements, then the following provisions shall apply.
- (a) If the Premises, at the sole opinion of the City, are so badly damaged as to be unfit for occupancy, and are incapable of being repaired with reasonable diligence within one hundred and twenty (120) days of the happening of such damage, then the Term hereby granted shall cease and expire, for all intents and purposes, from the time of such damage or destruction, and the Legion shall immediately surrender the same, and yield up possession of the demised Premises to the City, and any Rent and Additional Rent owing shall be paid to the City and thereafter abate.
- (b) If the Building is capable, with reasonable diligence, of being repaired and rendered fit for occupancy within one hundred and twenty (120) days from the happening of such damage as aforesaid, but if the damage is such as to render the Premises wholly unfit for occupancy, then the City shall repair the same within a reasonable time, and the Legion shall recommence its occupancy of the Premises immediately after such repairs shall be completed, and the Legion has received written confirmation of such from the Commissioner.

Insurance

47. The Legion shall at all times during the currency of the Term of this agreement and any renewal thereof, at its own cost and expense, take out and keep in full force and effect the following insurance coverage with respect to the Premises and its use and occupation thereof:
- (a) General Liability Insurance, including Alcohol Liability Insurance, with respect to the Premises against all claims for personal injury, including injury resulting in death, and property damage, with an inclusive limit of not less than **THREE MILLION DOLLARS (\$3,000,000.00) exclusive of costs, per occurrence.**
- (b) Tenants Legal Liability Insurance in respect to the Premises in an amount not less than **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per occurrence .**
48. Such policy or policies shall name The Corporation of the City of Brampton as an additional insured as its interest may appear and be with insurers that have a rating which meets the requirements of the City of Brampton's policy on insurance.

49. If such policy or policies are cancelled, changed for any reason, or materially altered in any way that would affect the City, thirty (30) days prior written notice by registered mail will be given by the Legion's insurer to the City.
50. The Legion shall deposit with the City, prior to entering this Lease Agreement, a Certificate of Insurance evidencing the above coverage, on a form provided by the City.
51. The City reserves the right to request such higher limits of insurance or other types of insurance policies appropriate to this agreement as the City may reasonably require from time to time.
52. The Legion shall cause its insurance to contain a waiver of any subrogation rights that the insurers may have against the City and against those for whom the City is responsible in law, failing which the Tenant shall be obliged to pay to the City all moneys to which any subrogator becomes entitled and the cost of any legal defence of any claim for subrogation.

Indemnification

53. The Legion shall indemnify and keep indemnified, save harmless, and forever discharge, the City and each of its elected officials, employees, officers, servants and agents, from and against all actions, suits, claims, executions, proceedings and demands, which may be brought against or made upon it or the City, in respect of any costs, expenses (including, but not limited to, reasonable legal fees) loss, damage or injury, including death, arising out of any cause whatsoever (including, but not limited to, any negligence, acts or omissions of the Legion or those for whom it is legally responsible), either direct or indirect, in connection with the Legion's use, occupation and/or operation of the Premises or this Lease Agreement

Default

54. The City and the Legion agree that
 - (a) if the Legion shall be in default in the payment of the Rent or Additional Rent, whether lawfully demanded or not, and such default shall continue for a period of fifteen (15) days after notice by the City to the Legion specifying such defaults and requiring the same to be remedied, or
 - (b) if the Legion shall be in default of any of its covenants hereunder (other than its covenant for payment of the Rent, or Additional Rent) and such default shall continue for a period of thirty (30) days (or such longer period as may be reasonably necessary to cure such default considering the nature thereof) after notice by the City to the Legion specifying with reasonable particularity the nature of such default and requiring the same to be remedied; or
 - (c) if the Legion shall dissolve or make an assignment for the benefit of creditors, or make an assignment, or have or receive an order made under the *Bankruptcy and Insolvency Act* or become insolvent or bankrupt, or
 - (d) if the Legion ceases to carry on business as defined in its Letters Patent;
 - (e) if, after ninety (90) days notice from the City that the Premises are ready for occupation by the Legion, the Legion has not occupied the Premises, or

then, at the option of the City, this lease shall become forfeited and void, and the City may, without additional notice or any form of legal process whatsoever, re-enter upon the Premises or any part thereof and enjoy the same in its former state. The right of re-entry on behalf of the City is without prejudice to the right of the City to recover any amounts owing or damages for any breach of covenant on the part of the Legion.

Legion's Use of Alderlea House

55. The City is granting the Legion the right, at a per diem cost to be determined based upon cost recoveries for the City, to continue to make use of the kitchen, banquet hall, washrooms and designated parking spaces at 40 Elizabeth Street, Brampton, commonly referred to as the Alderlea House, for the Legion's business until such time that the City requires vacant possession of Alderlea House for purposes of renovations and/or restorations and/or related work. The Parties agree to establish as soon as possible mutually agreed upon terms and conditions for the Legion's continuing use of Alderlea House, subject to Council authorization, if applicable. The City shall provide the Legion with the anticipated date that the City will require vacant possession as soon as possible.

Miscellaneous

- 56. The Legion may not assign this lease or sublet the whole or part of the Premises without the prior written consent of the City.
- 57. The Legion shall promptly comply with and conform to the requirements of every applicable statute, law, by-law, regulation, ordinance and order at any time or from time to time in force during the Term hereof affecting the use and/or occupation of the Premises.
- 58. The Legion agrees to pay all taxes, rates, charges and license fees assessed, levied or imposed in respect of the personal property and/or operation of the Legion, as such become payable.
- 59. The parties may agree to alter any of the terms, covenants or conditions of this lease agreement during the term hereof by mutual written agreement by them.
- 60. This lease agreement is binding upon the parties and their successors and assigns and constitutes the entire agreement between the parties regarding the subject matter of this lease agreement.

IN WITNESS WHEREOF THE PARTIES HERETO have hereunto affixed their corporate seals attested by the hands of their proper officers duly authorized in that behalf.

Authorization
By-Law No.
164-2006

Approved as
to form (LS)
[Signature]
06 21 06

Approved as to
content (MAS)
[Signature]
June 21/06

**THE CORPORATION OF THE
CITY OF BRAMPTON**

[Signature]
 Susan Fennell
 Mayor
[Signature] (Acting)
 Kathryn Zammit
 Clerk

BRAMPTON LEGION BRANCH 15

Name:
Title:

Name:
Title
I/We have authority to bind the corporation.

SCHEDULE A

LEGAL DESCRIPTION OF LANDS

Lots 9, 10, 13, 14 and 18, Plan BR-21;
Except VS206729;
Town of Brampton, Regional Municipality of Peel

SCHEDULE B

Sketch to Illustrate Premises

