

Lease Agreement

This Lease Agreement (the "Agreement") is made and entered into on _____, 2015, by and between the City of Gahanna, Ohio ("City"), an Ohio Municipal Corporation, with offices at 200 S. Hamilton Road, Gahanna, Ohio 43230, hereafter referred to as "Landlord" and VFW Post 4719 ("VFW"), with a mailing address of P.O. Box 30843, Gahanna, OH 43230, hereafter referred to as "Tenant" for the services as detailed herein. The City and VFW are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS: The VFW approached the City to purchase their property at 75 West Johnstown Rd., Gahanna, Ohio to provide funds for their continued operation, at which time the City agreed to lease back the structure and supporting property improvements to the VFW for their continued use;

WHEREAS: The City holds the VFW and its' members in the highest regard and with great gratitude for their service, therefore the City is providing this lease for said property to the VFW to continue their great tradition of fellowship and community service.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Lease Agreement, the Parties agree as follows:

SECTION I – TERM

- a. Initial Term. This Lease Agreement shall be for a period of ninety-nine (99) years, beginning on the 1st day of January, 2016.
- b. Option to Renew. Tenant shall have the option to renew this lease for an additional ninety-nine (99) year term under the same covenants, conditions and provisions as contained in this Lease. The Tenant shall give written notice to the Landlord requesting to renew this Lease no less than thirty (30) days before expiration of the initial term.

SECTION II – SCOPE OF VFW OBLIGATIONS

- a. Lease Rate. The Lease Rate or Rent paid by Tenant shall be \$1.00 per year.
- b. Premises. Landlord, in consideration of the rents and the performance of the covenants and agreements hereinafter to be paid and performed by Tenant, hereby leases to Tenant, for the Term, and Tenant hereby accepts from Landlord, the Premises as set forth and described in Exhibit A.
- c. Permitted Uses. The Premises may be used only for lounge and meeting related uses, including the sale and consumption of alcoholic beverage in any part of the Leased Premises. Tenant agrees that in the use and occupation of the Premises and in the prosecution or conduct of its business therein, Tenant will comply with all requirements

of all laws, ordinances, orders and regulations of the federal, state, county and municipal authorities now in force, or which hereinafter may be in force. Tenant covenants and agrees that it will not use or permit to be used any part of the Premises for any dangerous, noxious or offensive trade or business and will not cause or maintain any nuisance in, at or on the Premises, and the land upon which it is situated. Tenant agrees to occupy and operate in all of the Premises and commence its business and operations upon the beginning of this Lease and thereafter continuously conduct business.

- d. Maintenance. Except as otherwise specifically stated herein, Tenant shall, in a good and workmanlike manner, maintain and make all necessary repairs and replacements to the one-story commercial building on Premises; the heating, ventilating and air conditioning units and systems sprinkler, electrical, plumbing and sewer systems, fire suppression systems cooking hoods, grease guards and grease traps exclusively serving the Premises or located within the Premises; interior and exterior doors, door frames, door hardware, and door openers; windows and window frames; and plate glass. Tenant shall keep the Premises in a safe, dry and first-class condition, and in compliance with all Legal Requirements. Such replacement items shall be of comparable quality to those that are being replaced. If Tenant fails to perform Tenant's obligations, Landlord may, at Landlord's option, enter upon the Premises and put the same in good order, condition and repair and make such replacements as may be necessary, and the cost thereof shall become due and payable as Additional Rent by Tenant to Landlord upon demand, but nothing in this sentence contained shall be deemed to impose any duty upon Landlord or affect in any manner the obligations placed upon Tenant. Landlord shall maintain service for all roads and parking lots, including (but not limited to) snow removal from all roads and parking lots (citywide priority 2 of the adopted citywide snow removal plan). Landlord shall maintain all green space at a parks service level 2, excepting for any landscape beds which will be the responsibility of the tenant. Any such entry by Landlord shall not be deemed to be an eviction of Tenant. Tenant shall immediately contact Landlord should the need for any emergency repairs arise and Tenant shall otherwise promptly provide Landlord written notice of any maintenance or repair responsibility of Landlord. If Tenant fails to comply with the foregoing sentence, Landlord shall have no liability for the maintenance or repair work performed even if otherwise within its scope of responsibility.
- e. Construction and Improvements. Tenant may make alterations, additions or improvements to the existing structures on Premises (collectively, "Improvements") or build additional structures on Premises, subject to building and zoning code requirements. All Improvements shall be made at Tenant's sole cost and expense. All Improvements require prior approval by the landlord prior to implementing such improvements.

All Improvements made by Tenant, which have become an integral part of the Premises, shall be deemed the property of Landlord at the expiration or sooner termination of this Lease, regardless of whether originally installed by Landlord or by Tenant, and such Improvements may not be removed by Tenant at any time during the Term unless they are replaced by comparable Improvements, in new or like new condition. Upon expiration or earlier termination of this Lease, Tenant shall not remove any of such Improvements. Notwithstanding the foregoing to the contrary, Landlord may, at any time, designate by written notice to Tenant those Improvements which shall be removed by Tenant, and at the expiration or earlier termination of the Lease, Tenant shall promptly remove the same and repair any damage to the Premises caused by such removal. Personal property and trade fixtures belonging to Tenant shall remain the property of Tenant and may be removed by Tenant.

Tenant shall immediately notify Landlord in the case of fire or other casualty.

Landlord may make improvements to the lease property to facilitate the public enjoyment of this property, or any adjacent property. Such improvements shall take into consideration the use and enjoyment of the tenant and be designed and constructed to minimize any degradation of tenant's enjoyment of the lease premises. If such improvements have a permanent impact or reduction of area on the tenant's leased premises, the landlord shall mitigate such impact by providing equal replacement of such reduction in another adjacent area.

- f. Signs. Tenant will be permitted to install and operate a sign advertising the establishment to the general public. Such sign must be permitted by the City and compliant with all applicable codes.
- g. Encumbrances. Tenant shall not permit any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or materialman for or at the request of Tenant to be attached or recorded against the Premises or any other portion of the property. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises is filed against the Premises or any part of the property, Tenant will, within fifteen (15) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, or order of a court of competent jurisdiction. Tenant shall, within three (3) days thereafter, provide Landlord with a copy of the entry of the court approving the bond, or other written evidence reasonably satisfactory to Landlord that such lien has been otherwise discharged. Furthermore, in the event that any action on the lien has been or is commenced, Tenant shall undertake any and all legal procedures necessary to accomplish termination of such action. If Tenant fails to cause such lien or notice of lien to be discharged within such period, Landlord may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Tenant shall, immediately upon demand, reimburse Landlord for

all costs and expenses incurred by Landlord to discharge such lien including, without limitation, all attorneys' fees and, court costs, plus an administrative fee equal to fifteen percent (15%) of all expenses and costs incurred by Landlord. In addition, Tenant shall indemnify and hold Landlord and Landlord's lender, if any, harmless from and against all loss, cost, expense and liability whatsoever (including Landlord's cost of defending against the foregoing, such costs to include attorneys' fees) resulting or occurring by reason of any claims or causes of actions that may arise as a result of any lien, notice of lien or, claim relating to work and/or materials furnished to the Premises at the request of Tenant, its employees, agents or contractors.

- h. Permits and Requirements. Tenant shall, at its sole risk and expense, obtain any and all licenses and permits for such Permitted Use and Tenant shall not use or permit the use of the Premises for any purposes which would invalidate or render void any policies of insurance required to be maintained by Tenant hereunder. Tenant shall meet or exceed the standards for licensure for its Permitted Use prescribed by the Department of Health. Tenant shall provide a copy of its license from the Department of Health, and on demand produce a copy of each and every inspection report made by the Department of Health at the Premises. Tenant shall, at Tenant's sole cost, be responsible for obtaining and maintaining a liquor permit associated with the Premises.
- i. Operational Cooperation. Tenant and Tenant's staff shall work with Landlord's Department of Parks & Recreation, designated coordinator to resolve all operation related issues. Cooperation between the Landlord's Department of Parks & Recreation and Tenant in coordinating Special Events and Festivals is vital to the success of this agreement. Tenant agrees to coordinate with the Landlord's Department of Recreation and Parks and meet on an annual basis regarding the schedule of events. Landlord's Department of Recreation and Parks will provide festival and event programming in the park throughout the year, and of any street closures. Tenant is expected to support the efforts of the event coordinators' and work with the Landlord's Department of Recreation and Parks to manage access, deliveries and operations to limit the impact on Landlord's festival and event programs.
- j. Utilities and Refuse. Tenant shall be responsible for contracting for and paying all charges for all utilities including electrical power, natural gas, water, sewer services, refuse and any other services required by Tenant for its use and operation at the Premises. Tenant agrees that it will not place, hold, release or dispose of any pollutant, contaminant, waste, hazardous, toxic or radioactive substance or material, including but not limited to, medical waste and any hazardous substance, pollutant or contaminant (collectively, "Hazardous Materials") defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), any so-called "Superfund" or "Superlien" law, the Toxic Substance Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, interpretation or order relating to or imposing liability or standards of conduct concerning any Hazardous Materials, in, under, or about the Premises.

- k. Parking. The Premises do include dedicated parking spaces as in use today and included within the lease area (see attachment). Future development may relocate the physical location of said parking spaces, however, the existing quantity shall be maintained as a minimum to be provided.
- l. Insurance. Tenant shall, at its sole cost and expense, on the date the Premises shall be made available for Tenant's Work, procure and keep in full force and effect: (a) a commercial general liability (ISO form or equivalent) policy, including broad form property damages, extended bodily injury and independent contractors assumed or contractual liability under this Lease with respect to the Premises and the operations of Tenant and any person or entity conducting business in, on or about the Premises in which the limits with respect to personal liability and property damage shall be not less than Three Million Dollars (\$3,000,000) per occurrence on a location basis; (b) liquor liability insurance (if alcohol is served or sold at the Premises) in an amount of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate; (c) property insurance, including theft, and, if applicable, boiler and machinery coverage, written at replacement cost value in an adequate amount to avoid coinsurance and a replacement cost endorsement insuring Tenant's Property, plate glass (although Tenant shall be permitted to self-insure for plate glass if not available at an economically feasible rate), and signs located on or in the Premises; (d) workers compensation coverage as required by law and employer's liability insurance in an amount of One Million Dollars (\$1,000,000) per occurrence; (e) with respect to alterations, improvements and the like required or permitted to be made by Tenant hereunder, contractor's protective liability and builder's risk insurance, in amounts satisfactory to Landlord; (f) Comprehensive Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment owned, hired, and non-owned in the following minimum amounts with a limit of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage; (g) business interruption insurance; and (h) such insurance as may from time to time be required by city, county, state or federal laws, codes, regulations or authorities. From time to time during the Term at Landlord's request, Tenant shall: (i) procure, pay for and keep in full force and effect such other insurance as Landlord shall reasonably require; and (ii) increase the limits of such insurance as Landlord shall reasonably require.

All Tenant's policies of insurance shall be written by an insurance company having a Best rating of at least A-/IX and licensed to do business in the state in which the Premises is located. Any such insurance required of Tenant hereunder may be furnished by Tenant under any blanket policy carried by it or under a separate policy. A copy of each paid-up policy evidencing such insurance or a certificate of the insurer, certifying that such policy has been issued, shall be delivered to Landlord prior to any use or occupancy and, upon renewals, not less than thirty (30) days prior to the expiration of such coverage. Landlord may at any time, and from time to time, inspect and/or copy any and all insurance policies required to be procured by Tenant hereunder. Tenant's policy or policies shall

name Landlord, its officials and employees as additional insurers and shall bear endorsements to the effect that the insurer agrees to notify Landlord not less than thirty (30) days in advance of any modification or cancellation thereof. Should Tenant fail to carry such public liability and property insurance, Landlord may at its option (but shall not be required to do so) cause public liability and property insurance as aforesaid to be issued, and in such event Tenant agrees to pay the premium for such insurance as Additional Rent promptly upon Landlord's demand.

- m. Indemnification. Tenant shall indemnify Landlord, its officers, directors, members, beneficiaries, partners, representatives, agents and employees, and save them harmless from and against any and all claims, actions, damages, liability, cost and expense, including reasonable attorneys' fees arising from or out of: (a) any occurrence in, upon or about the Premises; unless arising out of or in connection with Landlord's negligent act or omission {b} the occupancy or use by Tenant of the Premises; (c) default by Tenant of any Lease obligations beyond any applicable cure period; or (d) any negligent or tortuous act or omission of Tenant, its agents, contractors, suppliers, employees, servants, customers or licensees and any person or entity conducting business in the Premises. For the purpose hereof, the Premises shall include the sidewalks and service areas adjoining the same and the loading platform area allocated to the use of Tenant. In case Landlord or any other party so indemnified shall, without fault, be made a party to any litigation commenced by or against Tenant, or if Landlord or any such party shall, in its sole discretion, determine that it must intervene in such litigation to protect its interest hereunder, including, without limitation, the incurring of costs, expenses, and attorneys' fees in connection with relief of Tenant ordered pursuant to the Bankruptcy Code (11 U.S.C. §101 et seq.), then Tenant shall protect and hold them harmless by attorneys satisfactory to Landlord and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by such party in connection with such litigation. Landlord shall have the right to engage its own attorneys in connection with any provision of this Lease.

SECTION III – SCOPE OF CITY’S OBLIGATIONS

- a. Real Estate Taxes. Landlord shall pay, or cause to be paid, all Real Estate Taxes applicable to the Premises. "Real Estate Taxes" as used herein shall mean all taxes and assessments (special or otherwise) levied or assessed directly or indirectly against the Premises and other taxes arising out of the use and/or occupancy of the Premises, imposed by any taxing authority having jurisdiction, including service payments in lieu of real property taxes. The Landlord and Tenant are currently property tax exempt based on their current organization, activities and revenues. Should the Tenant’s activities change in the future, removing the tax-exempt status of the property, the Tenant shall bear the obligation of reimbursing the Landlord for said taxes on an annual basis by December 31st of each year.

- b. Quiet Enjoyment. Provided that Tenant has performed all of its obligations under this Lease, Landlord covenants that Tenant shall have and enjoy quiet and peaceable possession of the Premises during the Term free of molestation by Landlord, subject to the provisions of this lease. City ordinances, regulations, and/or rules will not unduly restrict VFW programs.
- c. Recreational Weaponry. Landlord will not unduly restrict various recreational weaponry used for Boy Scouts and Cub Scouts programs at the VFW, including firearms, BB guns, and archery gear.
- d. Ball Field Usage. Tenant shall have access to the Ball Field on property when the field is available and not scheduled for use by Landlord.

SECTION IV – TERMINATION

- a. **Default and Right to Cure**. If either Party shall default in the performance of any obligation or covenant required to be performed under this Agreement, and the defaulting party fails to remedy such default within a period of fifteen (15) days after receipt from the non-defaulting party of written notice to remedy the same, or if such default may not be remedied within such fifteen (15) day period or fails to commence and diligently pursue completion of such remedy, then the non-defaulting Party shall have the right to terminate this Agreement.

SECTION V – INDEMNIFICATION

- a. Landlord assumes no liability, express or implied, for any claim, demand, action, liability, loss or expense, including attorneys' fees that may arise from Tenant or a third party as a result of this Agreement.

SECTION VI – CONFIDENTIALITY

- a. By virtue of this Agreement, a Party may have access to information that is confidential to the other Party ("Confidential Information"). A Party's Confidential Information shall not include information that:
 - (i) is or becomes a part of the public domain through no act or omission of the other Party;
 - (ii) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
 - (iii) is lawfully disclosed to the other Party by a third Party without restriction on disclosure; or

- (iv) is independently developed by the other Party. The Parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement. Neither Party shall be prohibited by this Section from making disclosures to the extent required by law; prior written notice via electronic mail for such disclosure shall be given to the other party prior to such disclosure.

SECTION VII – ASSIGNMENT/TRANSFER

- a. Except as expressly set forth herein, Tenant shall not assign, sublease or otherwise transfer all or any portion of the rights granted by this lease (any of the foregoing herein an "Assignment"), without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Any transfer of this lease from Tenant by merger, consolidation, liquidation or otherwise by operation of law shall constitute an assignment for the purposes of this Lease. In the event of an Assignment, Tenant shall remain primarily liable for Tenant's obligations hereunder and the assignee shall assume all obligations of Tenant in writing.

SECTION VIII – NOTICE

- a. Any notices permitted or required by this Agreement shall be in writing and shall be given or made by hand delivery, certified mail, return receipt requested, or by overnight express with written receipt, addressed to the respective Parties as follows:

If to OTHER PARTY:
President

If to Gahanna:
Parks Director, City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230

With a Copy to:

With a Copy to:
City Attorney, City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230

SECTION IX – FORCE MAJEURE

- a. Notwithstanding any other provisions in this Agreement, no default, delay or failure to perform on the part of either party shall be considered a breach of this Agreement if such default, delay or failure to perform is shown to be due to causes beyond the reasonable control of the defaulting Party, including but not limited to, causes such as riots, civil disturbances, actions or inactions of governmental authorities or suppliers, epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, or nuclear disasters.

SECTION X – CAPTIONS

- a. The subject headings of the various sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

SECTION XI – COUNTERPARTS

- a. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

SECTION XII – THIRD PARTY BENEFICIARIES

- a. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the Parties hereto, and their permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

SECTION XIII – ENTIRE AGREEMENT

- a. This Agreement, together with the Exhibits referenced herein, constitutes the entire Agreement and understanding of the Parties and supersedes all prior discussions and agreements relating to the subject matter hereof. This Agreement may be amended or modified only in writing signed by the Parties.

SECTION XIV – NO WAIVER OF CONTRACTUAL RIGHT

- a. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by either Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

SECTION XV – GOVERNING LAW

- a. This Agreement is subject to applicable federal laws, federal or state tariffs, if any, and will be governed by the laws of the State of Ohio. For any inconsistency between this Agreement and those regulations, this Agreement shall be deemed amended as necessary to conform to such regulations.

SECTION XVI – VENUE

- a. The Parties hereto hereby consent to the exclusive jurisdiction of the courts of the State of Ohio in Franklin County, and the United States District Court for the Southern District

of Ohio and waive any contention that any such court is an improper venue for enforcement of this Agreement.

SECTION XVII – SEVERABILITY

- a. If any term or provision of this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such term or provision only will be void to the extent of such invalidity, and the remainder of this Agreement shall remain in full force and effect; provided, however, that if such term or provision constitutes the essence of this Agreement then this Agreement shall be deemed terminated without such termination constituting a breach hereof.

SECTION XVIII – BINDING EFFECT

- a. This Agreement will be binding upon and inure to the benefit of each party and their respective successors and assignees.

SECTION XIX – BANKRUPTCY

- a. If Tenant shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal or state bankruptcy law or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent, or shall make a general assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if any involuntary petition proposing the adjudication of Tenant as bankrupt, or its reorganization under any present or future federal or state bankruptcy law or any similar federal or state law shall be filed in any court and such petition shall not be discharged or denied within ninety (90) days after the filing thereof, or if a receiver, trustee or liquidator of all or substantially all of the assets of User shall be appointed, then Landlord may, at its sole option, immediately terminate this Agreement. The termination provision set forth in Section IV(a) shall be applicable to this termination.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

City of Gahanna

By: _____
Rebecca W. Stinchcomb, Mayor

Date: _____

State of Ohio)
)SS:
County of Franklin)

On this, the _____ day of _____, 20____, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

Name of Other Entity

By: _____
Jerry Kerr, Commander

Date: _____

State of Ohio)
)SS:
County of Franklin)

On this, the _____ day of _____, 20____, before me a notary public, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Notary Public

Approved as to Form:

Shane Ewald, City Attorney