

DRAFT 04/01/2010

GROUND LEASE

Between

City of Delano
as Landlord

and

Delano American Legion Post 377, Inc.
as Tenant

Delano, Minnesota

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EXHIBITS

- Exhibit A Legal Description of Parcel
- Exhibit B Site Plan and Premises
- Exhibit C Permitted Exceptions
- Exhibit D Legal Description of 240 Babcock Boulevard West, Delano, MN

GROUND LEASE

THIS GROUND LEASE (“Lease”) is made and entered into as of this 1st day of April, 2010, by and between **CITY OF DELANO**, a Minnesota municipal corporation (hereinafter referred to as “Landlord”), and Delano American Legion Post 377, Inc. a Minnesota non-profit corporation (hereinafter referred to as “Tenant”).

WITNESSETH:

That in consideration of the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

1. DEFINITIONS.

- (a) Commencement Date. April 1, 2010.
- (b) Default Rate. The rate of two percent (2%) in excess of the prime rate of U.S. Bank National Association or the highest rate permitted by law, whichever is lower.
- (c) Lease Date. The date set forth in the introductory paragraph of this Lease.
- (d) Occupant. Any Person from time to time entitled to the use and occupancy of any portion of the Premises, including Landlord or Tenant, the employees and lessees of Landlord or Tenant, or the employees of such lessees.
- (e) Parcel. The Premises is referred to herein sometimes as “Parcel”.
- (f) Party. Landlord and Tenant and, after compliance with the notice requirements set forth in this Lease, each of their respective successors and assigns.
- (g) Permittee. Each Occupant of the Premises, and each officer, director, agent, contractor, customer, vendor, supplier, visitor, invitee, licensee, subtenant, and concessionaire of each Occupant insofar as their activities relate to the intended Premises.
- (h) Person. A natural person, an association, a corporation, a limited liability company, a partnership, a trustee or other legal entity.
- (i) Premises. The certain parcel of real property in the City of Delano, State of Minnesota, legally described on Exhibit A attached hereto and shown on Exhibit B attached hereto, both of which are made a part hereof.

- (j) Utilities. Those facilities and systems for the transmission of utility services including, without limitation, storm sewer catch basins (and related storm sewer lines), water lines, sanitary sewer lines, electrical lines, gas lines, telephone lines, and any and all other utility lines and any valves, switches, transformers, manholes or other accessory devices appurtenant and/or accessory to such utility lines.

2. PREMISES.

- (a) Landlord hereby demises unto Tenant and Tenant rents the Premises from Landlord. Tenant covenants and agrees to pay rent during the term of this Lease pursuant to the provisions of the Lease. Landlord also grants to Tenant, for Tenant's benefit and for the benefit of its Permittees the rights to use the Premises solely for the Uses described in Section 13. No building or other structure shall be constructed upon the Premises, provided however veteran memorial monuments, flag poles and picnic tables are allowed.

3. TERM.

- (a) Term. Subject to earlier termination as provided herein, including but not limited to termination under Section 6 hereof, the term of this Lease shall be for a period of ninety-nine (99) years. It shall commence on the Commencement Date and shall continue to the last day of April, 2109.

4. RENT - ADDITIONAL RENT.

- (a) Rent. Tenant shall pay to Landlord upon execution of this Lease as and for rent for the entire term the amount of \$1.00.
- (b) Additional Rent. All amounts which Tenant is required to pay pursuant to this Lease (other than Rent), together with any fine, penalty, interest and costs which may be added for nonpayment or late payment thereof, shall constitute additional rent (referred to herein as "Additional Rent"). If Tenant fails to pay any Additional Rent due under this Lease, then Landlord shall have the right to pay the same and shall have all of the rights, powers and remedies with respect thereto as are provided herein or by law in the case of nonpayment of Rent.

5. REAL ESTATE TAXES.

- (a) Payment. Tenant shall pay all ad valorem real estate taxes and special assessments attributable to the Premises ("Taxes") directly to the applicable county or city as Taxes are due, with a copy of the payment or receipt mailed to Landlord. Tenant shall pay all special assessments that are assessed against the Premises. As of the Lease Date Landlord is not aware of any special assessments pending or contemplated against the Premises.

- (b) Challenge. Tenant shall have the right to initiate proceedings to contest the validity or amount of any Taxes levied against the Premises or the assessed value of the Premises with Landlord's written approval, which approval shall not be unreasonably withheld. In the event that Tenant shall initiate a challenge to any such Taxes, Tenant shall deposit with Landlord or with the Leasehold Mortgagee an amount sufficient to cover the unpaid portion of the taxes being challenged. Should such proceedings be successful, Tenant shall be entitled to any tax refund or future abatement attributable to the Premises.

6. TERMINATION RELATING TO 240 BABCOCK BOULEVARD WEST, DELANO, MN.

- (a) Termination. If Tenant sells or ceases operation of the American Legion Club at 240 Babcock Boulevard West, Delano, Minnesota, legally described on Exhibit D hereto or otherwise vacates said property, Landlord shall have the option to terminate this Lease as of the date of sale, cessation of operation or vacation by giving written notice to Tenant of such election so to terminate the Lease. If the Landlord terminates the Lease pursuant to this Section 6 Tenant shall immediately surrender the Premises without any occupants to Landlord and shall provide evidence to Landlord that all subleases have been terminated.
- (b) Termination. If this Lease shall be terminated pursuant to this Section, then any Additional Rent and any other charges paid in advance shall be refunded to Tenant.

7. INSURANCE. Tenant Insurance. Premises. Tenant, with respect to the Premises and all activity hereon, shall, at all times during the term of this Lease, maintain or cause to be maintained with a financially responsible insurance company or companies the following insurance:

A. General Liability. Tenant shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of any activity by Tenant or by anyone employed by any Tenant or by anyone for whose acts Tenant may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Paragraph, or required by law. The policy(ies) shall name the City as an additional insured for the services provided under this Agreement and shall provide that the Tenant's coverage shall be primary and noncontributory in the event of a loss.

B. Tenant shall procure and maintain the following minimum insurance coverages and limits of liability on this Project:

Worker's Compensation Statutory Limits

Employer's Liability	\$500,000 each accident \$500,000 disease policy limit \$500,000 disease each employee
Comprehensive General Liability	\$1,000,000 property damage and bodily injury per occurrence \$2,000,000 general aggregate \$2,000,000 Products – Completed Operations Aggregate \$100,000 fire legal liability each occurrence \$5,000 medical expense
Comprehensive Automobile Liability	\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles).
Umbrella or Excess Liability	\$1,000,000

C. The Comprehensive General/Commercial General Liability policy(ies) shall be equivalent in coverage to ISO form CG 0001, and shall include the following:

- i. Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU).
- ii. Personal injury with Employment Exclusion (if any) deleted.
- iii. Broad Form CG0001 0196 Contractual Liability coverage, or its equivalent.
- iv. Broad Form Property Damage coverage.
- v. Additional Insured Endorsement(s), naming the "City of Delano" as an Additional Insured, on ISO form CG 20 10 07 04 or such other endorsement form as is approved by Landlord.
- vi. Severability of Insured's provision.

D. Tenant shall maintain in effect all insurance coverages required under this Paragraph at Tenant's sole expense and with insurance companies licensed to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by City in writing. In addition to the requirements stated above, the following applies to the insurance policies required under this Paragraph:

- a. All policies shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable);

- b. All policies shall be apply on a “per project” basis;
- c. All policies, except the Worker’s Compensation Policies, shall contain a waiver of subrogation as required in paragraph 7 F naming “the City of Delano”;
- d. All policies, except the Worker’s Compensation Policies, shall name “the City of Delano” as an additional insured;
- e. All policies, except the Worker’s Compensation Policies, shall insure the defense and indemnity obligations assumed by Tenant under this Agreement; and
- f. All polices shall contain a provision that coverages afforded there under shall not be canceled or non-renewed, nor shall coverage limits be reduced by endorsement, without thirty (30) days prior written notice to the City.

A copy of the Tenant’s Certificate of Insurance which evidences the compliance with this Paragraph 7 must be filed with Landlord prior to the start of Tenant’s Work. Upon request a copy of the Tenant’s insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to Landlord and shall provide satisfactory evidence that Tenant has complied with all insurance requirements. Renewal certificates shall be provided to Landlord prior to the expiration date of any of the required policies. Landlord will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Tenant of any deficiencies in such documents and receipt thereof shall not relieve Tenant from, nor be deemed a waiver of, Landlord’s right to enforce the terms of Tenant’s obligations hereunder. Landlord reserves the right to examine any policy provided for under this paragraph.

E. Effect of Tenant’s Failure to Provide Insurance. If Tenant fails to provide the specified insurance, then Tenant will defend, indemnify and hold harmless the Landlord, the Landlord's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the Landlord (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of Tenant, its subcontractors, agents, employees or delegates. Tenant agrees that this indemnity shall be construed and applied in favor of indemnification. Tenant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with

that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the Landlord may require Tenant to:

- a. Furnish and pay for a surety bond, satisfactory to the Landlord, guaranteeing performance of the indemnity obligation; or
- b. Furnish a written acceptance of tender of defense and indemnity from Tenant's insurance company.

Tenant will take the action required by the Landlord within fifteen (15) days of receiving notice from the Landlord.

- F. Waiver of Claims and Subrogation. Notwithstanding any other provision in this Lease to the contrary, Landlord and Tenant hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by casualty insurance maintained by the parties hereunder, even if such loss or damage shall have been caused by the fault or negligence of the other party, or any one for whom such party may be responsible.

8. INDEMNIFICATION AND WAIVER.

Tenant covenants and agrees to indemnify, defend and hold harmless Landlord from and against all claims, costs, expenses and liability (including reasonable attorneys' fees and cost of suit incurred in connection with all claims) including any action or proceedings brought hereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to any person or entity, or to the property of any person or entity which shall occur on the Premises, except to the extent such claims are caused by the negligent or the willful act or omission of Landlord, its licensees, concessionaires, agents, servants or employees, or the agents, servants, or employees of any licensee or concessionaire thereof, wherever the same may occur; provided Landlord's liability is limited by the limitation of liability contained in Minnesota Statutes Chapter 466. Nothing in this section shall be deemed to be a waiver of the liability limits applicable to Landlord in Minnesota Statutes Chapter 466 or other applicable statutes.

9. LANDLORD'S REPRESENTATIONS AND WARRANTIES.

Landlord represents, warrants and covenants that:

- (a) Landlord has the full power to carry out the transactions contemplated by this Lease and all proceedings required to be taken on the part of Landlord to authorize Landlord to execute and deliver this Lease to consummate the transaction contemplated have been duly and validly taken.
- (b) The execution, delivery and performance of the Lease will not conflict with the statutes by which Landlord is established as a municipal corporation, and will not

conflict or result in a breach of default under any note, lease, mortgage, indenture, contract or commitment to which Landlord is a party or by which Landlord may be bound.

- (c) There are no pending lawsuits which in any way affect title to the Transit Parcel or the Premises, affect the organization or solvency of Landlord, or affect the validity and enforceability of this Lease.

10. TENANT REPRESENTATIONS AND WARRANTIES.

Tenant represents, warrants and covenants that:

- (a) Tenant is a non-profit corporation in good standing organized and existing under the laws of the State of Minnesota, that all actions necessary to authorize the execution of this Lease have been taken by the Board of Directors, and Members if necessary, and that the officer(s) executing this Lease have been duly authorized to execute this Lease.
- (b) The execution, delivery and performance of this Lease will not conflict with Tenant's corporate documents, and will not conflict or result in a breach of default under any note, mortgage, indenture, contract or commitment to which Tenant is a party or by which Tenant may be bound.
- (c) There are no pending lawsuits which in any way affect the organization or solvency of Tenant, or affect the validity and enforceability of this Lease.

11. MAINTENANCE OF PREMISES.

(a) Except as otherwise provided in this Lease, Tenant, at its sole cost and expense and throughout the term of this Lease shall keep and maintain the Premises to the standards and maintenance followed by the City for uses of a similar nature as identified in Section 13.

12. INTENTIONALLY LEFT BLANK

13. USES.

- (a) Permitted Uses. The Premises may be used only and solely for open space, parking, picnics, American Legion social gatherings, and roadside rest area.
- (b) Prohibited Uses. No building or structure may be constructed, erected or placed on the Premises, whether or a temporary or permanent nature provided however veteran memorial monuments, flag poles and picnic tables are allowed. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Premises that is inconsistent with use identified in Section 13. (a).

14. UTILITIES.

Tenant covenants and agrees that it shall pay the cost for utility services serving the Premises. Should a break, malfunction or other disruption (“Disruption”) of utility service occur the costs to repair shall be Tenant’s responsibility.

15. GOVERNMENTAL REGULATIONS.

Tenant shall observe and comply with all requirements, rules, orders and regulations of the federal, state and municipal governments or other duly constituted public authority affecting the Premises.

16. DAMAGE AND DESTRUCTION.

- (a) No damage to the Premises or damage to or destruction of any improvements erected or placed at the Premises shall in any way alter, affect or modify Tenant’s obligations under this Lease, including Tenant’s obligations to pay rent, taxes and other financial obligations hereunder. In the event of any damage to the Premises, Tenant shall (a) give immediate written notice of the damage or destruction to Landlord, which notice shall include a description of the damage and, as far as known to Tenant, the cause of the damage, (b) promptly enforce all provisions pertaining to such damage in any applicable permitted sublease, and (c) take such action as may be required under applicable municipal ordinances and other laws, rules and regulations with respect to any such damage or destruction. Tenant shall also be obligated to act promptly, but no later than ten (10) days from the date of the damage or destruction, to remove all debris resulting from such damage or destruction and take such action as is necessary to place the Premises in a neat, safe condition. If Tenant fails to remove all such debris or take such action as is necessary to place the Premises in a neat, safe condition within ten (10) days following such damage or destruction (and in all events prior to the expiration of any applicable time period established by law, ordinance, rule or other applicable regulation for the removal, clean-up, repair or other required action with respect to such damage or destruction) Landlord shall have the right (but not the obligation) to do so, whereupon Tenant shall be liable to pay Landlord, upon demand, the cost and expense incurred by Landlord. The failure by Tenant to make such payment to Landlord may be treated by Landlord as a default in the payment of rent due and owing by Tenant hereunder.

- (b) If the Premises is damaged by fire, earthquake, flood or other casualty, or by any other cause of any kind or nature, so that the Premises are more than fifty percent (50%) unusable for the Permitted Uses, Tenant, with the consent of the Leasehold Mortgagee, may terminate this Lease upon written notice to the Landlord as soon as reasonably possible, and no later than ninety (90) days from the date of the damage and destruction. If the Tenant terminates the Lease pursuant to this Section 16(b) Tenant shall surrender the Premises without any occupants as soon

as reasonably possible to Landlord and shall provide evidence to Landlord that all subleases have been terminated. In the event Tenant elects not to terminate the Lease, but elects to repair and restore, such repair and restoration shall be completed pursuant to Section 16(b) herein.

- (c) Notwithstanding the foregoing, Tenant may terminate this Lease if (i) the Premises are damaged during the last year of the Lease Term and (ii) Tenant reasonably estimates it will take more than two months to repair the damage, and Tenant provides Landlord with a written notice of termination of this Lease within thirty (30) days from the date of the damage. Upon termination Tenant shall surrender the Premises without any occupants as soon as reasonably possible to Landlord and shall provide evidence to Landlord that all subleases have been terminated.

17. EMINENT DOMAIN.

- (a) Premises. If all or part of the Premises shall be taken by any public authority by right of eminent domain or conveyed in lieu thereof Landlord shall have the option to terminate this Lease as of the date of taking by giving written notice to Tenant of such election so to terminate the Lease.
- (b) Termination. If this Lease shall be terminated pursuant to this Section, then any Additional Rent and any other charges paid in advance shall be refunded to Tenant.
- (c) Taking Award. In the event of a Taking, Tenant shall not be entitled to any and the entire award paid by the condemning authority shall be the property of Landlord.

18. TRANSFER OF LANDLORD'S INTEREST.

Should Landlord sell or assign this Lease (other than a conditional assignment as security for a loan), then Landlord, as transferor, shall be relieved of any and all covenants, obligations and undertakings on the part of Landlord accruing under this Lease from and after the date of such transfer provided that Landlord's successor in interest shall assume such obligations from and after such date of transfer. Notwithstanding the foregoing, until Landlord notifies Tenant in writing of the name and address of the transferee and the date of such transfer, Landlord's liability shall continue with respect to any portion sold or assigned and Landlord shall (for the purpose of this Lease only) be the transferee's agent. Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the Premises transferred prior to receipt of notice.

19. ASSIGNMENT AND SUBLETTING.

- (a) Assignment. There shall be no assignment of all or a portion of this Lease by Tenant.
- (b) Subleasing. There shall be no sublease of all or a portion of the Premises.

20. TENANT'S DEFAULT AND LANDLORD'S REMEDIES.

- (a) The occurrence of the following shall constitute an event of default under this Lease: If Tenant fails to pay any monetary obligation due hereunder within ten (10) days after the same shall be due, or fails to perform any other term, condition or covenant of this Lease, or if Tenant or an agent of Tenant shall falsify any report required to be furnished to Landlord pursuant to the terms of this Lease, or if Tenant or any guarantor of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or any person shall file against Tenant or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or any such guarantor's property, or if Tenant or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon the Premises or suffer this Lease to be taken under any writ of execution, then in any such event Tenant shall be in default hereunder.
- (b) Landlord shall provide written notice to Tenant of the occurrence of a monetary default and Tenant shall have 30 days after written notice to cure such default; and shall provide written notice of a non-monetary default and Tenant shall have 30 days to cure (or such longer period as may be required to cure such non-monetary default provided Tenant immediately commences to cure and thereafter diligently pursues the same to completion).
- (c) Upon occurrence of an event of default and Tenant's failure to cure:
 - (i) Landlord, in addition to other rights or remedies it may have, shall, subject to the non-disturbance agreements with subtenants, have the immediate right of re-entry and may remove all persons and property from the Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby.
 - (ii) Should Landlord elect to re-enter the Premises as herein provided, or should it take possession of the Premises pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make

such alterations and repairs as may be necessary in order to relet the Premises, and relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each such reletting all rental received by the Landlord from such reletting shall be applied first to the payment of any indebtedness other than Additional Rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and of costs of such alterations and repairs; third, to the payment of residue and unpaid Additional Rent or any other amount due hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant, upon demand, shall pay any such deficiency to Landlord. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time after such re-entry and reletting elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any such breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises, reasonable attorney's fees, all of which amounts shall be immediately due and payable from Tenant to Landlord.

- (iii) Landlord may, at its option, instead of exercising any other rights or remedies available to it in this Lease or otherwise by law, statute or equity, spend such money as is reasonably necessary to cure any default of Tenant herein and the amount so spent, and costs incurred, including attorney's fees in curing such default, shall be paid by Tenant, as Additional Rent, upon demand.
 - (iv) If suit shall be brought for recovery of possession of the Premises, for the recovery of Additional Rent, or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, and a breach shall be established, Tenant shall pay to Landlord all expenses incurred therefore, including reasonable attorney's fees, together with interest on all such expenses at the Default Rate from the date of such breach of the covenants of this Lease.
- (d) No remedy herein or elsewhere in this Lease or otherwise by law, statute or equity, conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

21. TENANT'S REMEDIES.

In the event Landlord shall be in default of any representation, warranty, or covenant of Landlord, then Tenant may, after the continuance of any such default for thirty (30) days after written notice ("Work Notice") thereof by Tenant to Landlord (or, in the case of a non-monetary default, such longer period as may be required to cure such default provided Landlord commences to cure such default within such thirty (30) day period and thereafter diligently pursues the same to completion), or upon reasonable notice in the event of an emergency, make any necessary payments or perform any obligation specified in the Work Notice to cure such default, all on behalf of and at the expense of Landlord. Landlord shall, on demand, pay Tenant, forthwith, the amount so paid by Tenant and the costs incurred by Tenant in connection with Tenant's performance of any obligation specified in the Work Notice.

22. COVENANT OF TITLE.

- (a) Quiet Enjoyment. Landlord covenants, represents and warrants that it has full right and power to execute and perform this Lease and to grant the estate demised herein and that Tenant, on payment of the Additional Rent and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements, appurtenances and privileges belonging thereto during the Lease term without molestation or hindrance of any person whomsoever, and if, at any time during the term hereby demised the title of Landlord shall fail or it be discovered that its title shall not enable Landlord to grant the term hereby demised, then Tenant shall have the option, at Landlord's expense, to correct such defect or to annul and void this Lease with full reservation of its right to damages, if any.
- (b) Title. Landlord further covenants, represents and warrants that the Premises is free and clear of any liens, encumbrances, restrictions and violations (or claims or notices thereof), except for those items of listed on Exhibit C attached hereto (collectively, "Permitted Exceptions").
- (c) Subordination, Nondisturbance and Attornment. This Lease and all rights of Tenant hereunder are expressly subject and subordinate to the lien of any mortgage (each a "Mortgage") that may now exist or may hereafter be placed upon the Landlord's interest in the Premises, provided, however, that, notwithstanding such subordination, Tenant's possession and quiet enjoyment of the Premises shall not be disturbed by any holder of a Mortgage so long as Tenant is not in default, after the expiration of any cure or grace periods applicable thereto, in performance of its obligations under this Lease. Tenant agrees to deliver to Landlord, within ten (10) business days after receipt of a written demand, a waiver of priority or a subordination of this Lease, in recordable form, subordinating Tenant's rights hereunder to the lien of a Mortgage; provided, however, that any such document shall provide the agreement of the holder of such Mortgage that:

- (i) The holder of such Mortgage will not disturb Tenant's possession and quiet enjoyment of the Premises under this Lease so long as Tenant is not in default, after the expiration of any cure or grace period applicable thereto, in the performance of its obligation under this Lease;
 - (ii) If the Mortgagee acquires title to the Premises, the holder of such Mortgage will accept the Tenant as Tenant of the Premises under the terms and conditions of this Lease and Tenant shall recognize such holder as the landlord hereunder.
- (d) Estoppel Certificate. Landlord and Tenant shall execute and deliver to the other party to this Lease, within fifteen (15) business days after written request by such other party, a written certificate stating, if true, as of the date of such certificate: (i) that this Lease is in full force and effect and has not been modified, altered, amended, sublet or assigned (or, if it has, then specifying the dates and terms of any such amendment or any such transfer), (ii) that this Lease constitutes the full agreement between the parties, (iii) that the certifying party, and, to the certifying party's actual knowledge (excluding any imputed or constructive knowledge), the other party to this Lease is not in default under this Lease and no situation exists that could, with the passage of time or the giving of notice (or both), constitute a default hereunder, or, if such is not the case, stating the nature of the default, (iv) charges payable by Tenant and the dates to which such amounts have been paid, (v) the Commencement Date and the date on which the Term expires, and (vi) any other factual information pertaining to the Lease reasonably requested by Landlord or Tenant.

23. LEASEHOLD MORTGAGE. Tenant shall have no right at any time to mortgage its leasehold interest under this Lease.

24. HAZARDOUS MATERIAL.

Tenant shall not use, or permit the use of Hazardous Materials on, about, under or in the Premises, except for diminimus amounts used in the ordinary course of the conduct of the Permitted Uses and any such use shall at all times be in compliance with all Environmental Laws. Tenant shall indemnify, protect, defend and hold harmless Landlord from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by Tenant whether or not in the ordinary course of business. For the purposes of this Section 24, the term (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic, hazardous pollutants, contaminants, chemicals, materials, or substance listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

25. CONDITION OF PREMISES AT TERMINATION.

At the expiration or earlier termination of the Lease term, Tenant shall surrender the Premises to Landlord, in good order and condition, except for ordinary wear and tear. Any property not removed within ten (10) days following the expiration or earlier termination of this Lease shall be deemed to have been abandoned and shall, at Landlord's option, become the property of Landlord, and may be retained or disposed of by Landlord as Landlord alone shall determine. Tenant's obligation to observe or perform the covenants set forth in this Section 25 shall survive the termination of this Lease.

26. HOLDING OVER.

In the absence of any written agreement to the contrary, if Tenant should remain in occupancy of the Premises after the expiration of the Lease term, it shall so remain as a tenant from month-to-month and all provisions of this Lease applicable to such tenancy shall remain in full force and effect.

27. NOTICES.

All notices, demands and other communications required or permitted to be given under this Lease shall be in writing and shall be deemed to be given when delivered (or, if delivery is refused, on the date delivery was attempted) if sent by recognized overnight courier, or upon three (3) business days after deposit in the U.S. Mail if sent by certified or registered mail, postage prepaid. All notices shall be addressed to Landlord and Tenant at the following addresses:

Landlord: City of Delano
234 Second St. North,
Delano, MN, 55328
Attention: Phil Kern, City Administrator

With a copy to: Gregerson, Rosow, Johnson & Nilan, Ltd.
1600 Park Building
650 Third Avenue South
Minneapolis, MN 55402
Attention: Richard F. Rosow

Tenant: Delano American Legion Post 377
Attn: _____
240 Babcock Boulevard West,
P.O. Box E
Delano, MN

With a copy to: _____

28. PARTIAL INVALIDITY.

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced.

29. ENTIRE AGREEMENT - APPLICABLE LAW.

This Lease, the exhibits and amendments or addendums, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, provisions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions, provisions or understandings, either oral or written, between them other than as herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. This Lease shall be governed by and construed in accordance with the laws of the State of Minnesota.

30. SUCCESSORS AND ASSIGNS.

The conditions, covenants and agreements contained in this Lease shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and assigns. The covenants, restrictions, benefits and obligations under this Lease shall be deemed to create mutual and reciprocal benefits and servitudes upon the Premises, which shall run with and against said property and be a benefit and burden thereon, and shall be binding upon all Occupants of the Premises for so long as this Lease remains in effect. Said covenants, restrictions, benefits and obligations shall cease and be of no further force or effect after the termination of this Lease.

31. MEMORANDUM OF LEASE.

The Parties shall upon execution of this Lease execute and deliver a memorandum of lease which Landlord shall, at its sole expense, cause to be recorded as a lien against the Premises and the Transit Parcel.

32. BROKER'S REPRESENTATION.

Landlord and Tenant each represent that such Party has not dealt with any broker or brokers in connection with the negotiation, execution and delivery of this Lease. Landlord and

Tenant shall, and do hereby, indemnify and save the other harmless from and against any losses, damages, penalties, claims or demands of whatsoever nature arising from a breach of its foregoing representation including, without limitation, reasonable attorneys' fees and expenses. The representations and indemnifications set forth in this Section shall survive the cancellation or termination of this Lease.

33. CAPTIONS AND DEFINITIONS.

Marginal captions of this Lease are solely for convenience of reference and shall not in any way limit or amplify the terms and provisions thereof. The necessary grammatical changes which shall be required to make the provision of this Lease apply (a) in the plural sense if there shall be more than one Landlord and (b) to any landlord, which shall be either a corporation, an association, a partnership or an individual, male or female, shall in all instances be assumed as though in each case fully expressed.

34. SURVIVAL.

Unless otherwise provided, upon the termination of this Lease under any of the provisions hereof, the parties hereto shall be relieved of any further liability hereunder except as to acts, omissions or defaults occurring prior to such termination.

35. FORCE MAJEURE.

Landlord and Tenant shall be excused for the period of any delay in performance of any obligations hereunder by reason of the wrongful or negligent acts or omissions of the other party, their agents, employees, or contractors, or by reason of labor disputes, civil disturbance, war, war-like operations, invasions, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fires or other casualty, or acts of God out of such party's control (referred to collectively herein as "Force Majeure"). Notwithstanding the foregoing: (a) nothing contained in this Section shall excuse either party from paying in a timely fashion any payments due under the terms of this Lease; and (b) no delay under this Section shall be permitted in connection with delays caused by local governmental ordinances, codes or regulations in effect on the effective date of this Lease or the implementation of same.

36. ATTORNEYS' FEES.

If either Landlord or Tenant shall institute any action or proceeding against the other Party relating to this Lease, then the unsuccessful Party in such action or proceeding shall reimburse the successful Party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees and costs as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful Party, the successful Party in any lawsuit on this Lease shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Lease into any judgment on this Lease.

37. INTENTIONALLY LEFT BLANK.

39. LANDLORD'S LIABILITY.

Notwithstanding anything to the contrary herein, Landlord shall not be required to pay on behalf of itself and to any other party or parties any amount as indemnification to a party or parties, arising by operation of law or otherwise as a result of the relationships created, pursuant to this Lease in excess of the limits of liability applicable to the party required to pay as established in Minnesota Statutes Chapter 466, or in the event that Minnesota Statutes Chapter 466 does not apply, the maximum amount of insurance coverage available to the party required to pay. The intent of this section is to limit Landlord's obligation to indemnify another party or parties. In those instances in which the Landlord is directly liable for damages as well as for indemnification to another party, the combined liability of the Landlord will not exceed the limits of liability under Minnesota Statutes Chapter 466 applicable to the Landlord or in the event that Minnesota Statutes Chapter 466 does not apply, the maximum amount of insurance coverage available to the Landlord.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

CITY OF DELANO,
a Minnesota Municipal Corporation

By: _____
Its: Mayor

By: _____
Phil Kern
Its: City Administrator

DELANO AMERICAN LEGION POST 377, INC.
a Minnesota Non-Profit Corporation

By: _____
[INSET NAME OF SIGNOR]
Its: _____

Exhibit A

Legal Description of Premises

Exhibit B

Site Plan

Exhibit C

Permitted Exceptions

1. Real estate taxes and installments of special assessments not yet due and payable.
2. Public utility and drainage easements.

[Add restrictions in deed and grant.]

Exhibit D

Legal Description of 240 Babcock Boulevard West, Delano, MN