RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH THE CHATTANOOGA HISTORY CENTER TO LEASE APPROXIMATELY THREE THOUSAND NINE HUNDRED (3,900) SQUARE FEET, IN A PORTION OF 1170 SOUTH WATKINS STREET, TAX MAP NO. 156C-C-012, FOR AN AMOUNT OF ONE DOLLAR ($1.00) PER YEAR, CONTINGENT UPON APPROVAL BY THE REGIONAL PLANNING AGENCY ON MARCH 14, 2016.

_____

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to enter into a Lease Agreement, in substantially the form attached, with the Chattanooga History Center to lease approximately three thousand nine hundred (3,900) square feet, in a portion of 1170 South Watkins Street, Tax Map No. 156C-C-012, for an amount of one dollar ($1.00) per year, contingent upon approval by the Regional Planning Agency on March 14, 2016.

ADOPTED: _____, 2016

/mem

City of Chattanooga

Resolution/Ordinance Request Form

Date Prepared: February 26, 2016

Preparer: Cary Bohannon **Department:** General Services

Brief Description of Purpose for Resolution/Ordinance: **Res./Ord. #** _____ **Council District #** 9

A RESOLUTION REQUEST AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH CHATTANOOGA HISTORY CENTER TO LEASE APPROXIMATELY THREE THOUSAND NINE HUNDRED (3,900) SQUARE FEET, IN A PORTION OF 1170 S. WATKINS STREET, TAX MAP NO. 156C-C-012, FOR AN AMOUNT OF ONE DOLLAR ($1.00) PER YEAR, CONTINGENT UPON APPROVAL BY THE REGIONAL PLANNING AGENCY ON MARCH 14, 2016.

Name of Vendor/Contractor/Grant, etc.	Chattanooga History Center	New Contract/Project? (Yes or No)	YES
Total project cost	$ N/A	Funds Budgeted? (YES or NO)	N/A
Total City of Chattanooga Portion	$ N/A	Provide Fund	N/A
City Amount Funded	$ N/A	Provide Cost Center	N/A
New City Funding Required	$ N/A	Proposed Funding Source if not budgeted	N/A
City's Match Percentage	% N/A	Grant Period (if applicable)	N/A

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
$	
$	
$	

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

MR-2016-050 WILL BE HEARD BY THE REGIONAL PLANNING AGENCY ON MONDAY, MARCH 14, 2016.

AS IT IS BEING DRAFTED BY VALERIE MALUEG AND NOT YET COMPLETE, THE LEASE IS NOT ATTACHED.

Approved by: _____

DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made and entered into as of the ____ day of _____, 2016, by and between the City of Chattanooga, Tennessee, a municipal corporation (hereinafter referred to as "Lessor"), and the Chattanooga History Center, a Tennessee nonprofit corporation, whose address is 2 W. Aquarium Way, Suite 200, Chattanooga, Tennessee 37402 (hereinafter referred to as "Lessee").

RECITALS

WHEREAS, Lessee desires to lease facilities from Lessor to be used exclusively for storage of exhibits, materials and other items related to the history of the City of Chattanooga; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to, lease to Lessee approximately 2,500 square feet of a building located at 1170 S. Watkins Street, situated in the City of Chattanooga, Hamilton County, Tennessee;

NOW, THEREFORE, in consideration of the faithful performance of the terms, covenants, and conditions and the mutual obligations of the parties as set forth herein, the parties agree as follows:

SECTION 1. Leased Premises. Lessor leases to Lessee that approximately 2,500 square feet of a building located at 1170 S. Watkins Street, situated in the City of Chattanooga, Hamilton County, Tennessee, identified as Tax Map No. 156C-C-012, more particularly depicted in red on **Exhibit "A"** attached hereto and incorporated herein by reference (the "Leased Premises"). Lessee shall be entitled to use the common areas depicted in green on **Exhibit "A"** consisting of approximately 1,400 square feet.

SECTION 2. Use of the Leased Premises. It is expressly agreed to and understood by the parties that the Leased Premises shall be used exclusively for storage of Lessee's exhibits, materials and other items related to the history of the City of Chattanooga. Lessee shall not utilize

the Leased Premises for any other purposes without the express written approval of Lessor, which hereby designates its Mayor as Lessor's agent for this purpose. Lessee shall neither engage in nor allow illegal activities on the Leased Premises nor allow alcoholic beverages to be sold or consumed on the Leased Premises.

SECTION 3. Term. The term of this Lease shall commence upon execution by the parties (the "Commencement Date"), shall be for a period of one year. Either party may terminate this Lease at any time without cause upon giving the other party written notice of its intention to terminate, and such notice shall be received at least thirty (30) days prior to the termination date.

SECTION 4. Lease Payments. Lessee shall, during the term of this Lease, pay to Lessor the net annual rent of One Dollar ($1.00) per year, with the first annual payment due on the Commencement Date of this Lease and subsequent annual payments due on the anniversary date of the Commencement Date of this Lease. As additional consideration, the Lessee agrees to use the Leased Premises exclusively for storage of exhibits, materials, and other items related to the history of Chattanooga. All rentals payable by Lessee to Lessor under this Lease shall be paid to Lessor at the address herein designated in SECTION 29.

SECTION 5. Improvements. Lessee agrees that no improvements, additions, or alterations ("Improvements") shall be made to the Leased Premises without obtaining Lessor's written approval. If Lessee desires to make Improvements to the Leased Premises, it shall be required to submit a detailed description of the Improvements to be made to Lessor (the "Lessee's Plan"). The Lessee's Plan shall be subject to Lessor's written approval. Lessor's approval of Lessee's Plan shall in no event, unless expressly set forth in such approval, be deemed to create any obligations on the part of the Lessor to do any work or make the Improvements or to authorize Lessee to make any further additions, improvements, or alterations to the Leased Premises. In the event Lessor approves Lessee's Plan, the parties shall execute an amendment to this Lease setting forth the

obligations of the Lessee with respect to the construction of Improvements in accordance with Lessee's Plan, which shall be attached as an exhibit to the lease amendment.

SECTION 6. Annual Reporting Requirements; Appropriation of Funds. Lessee shall comply with all federal, state, and local laws governing annual reporting requirements of Lessee's business affairs and transactions, which includes, but is not limited to, compliance with T.C.A. § 6-54-111 and Chattanooga City Code Sec. 2-526 as to City of Chattanooga appropriations, outlining the procedures for receiving appropriations from governmental entities. All reports required by state and local law shall be submitted by March 1 of each year during the term of this Lease and any holdovers or extensions. During the term of this Lease, Lessee must, within ninety (90) days of the end of each fiscal year submit to Lessor a copy of its annual audited financial report for that fiscal year.

For the purposes of this Section, the amount of funds deemed appropriated to Lessee shall be based upon a fair market rental value of $10.00 per square foot (2500± square feet constituting usable leased space) for a total annual amount of $25,000.00.

SECTION 7. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease.

SECTION 8. Termination and Holding Over. Upon termination of this Lease, at the expiration of the term hereof or any extension thereof, Lessee shall surrender the Leased Premises to Lessor in as good condition as received, ordinary wear and tear and damage by fire or other casualty excepted. Lessee covenants to Lessor that it shall vacate the Leased Premises on or before thirty (30) days following the expiration of the term hereof or any extension thereof including removal of all personal property. Any personal property of Lessee which is not removed from the Leased Premises after termination of this Lease shall be deemed abandoned and may be disposed

of by Lessor in any manner without accounting or being liable to Lessee. Lessee shall surrender all keys to the Leased Premises at or before the termination of this Lease.

SECTION 9. Indemnity, Liability and Liability Insurance.

(a) Indemnity, Liability. Lessee shall conduct his activities on the Leased Premises subject to this Lease so as not to endanger any persons or property therein. Lessee shall indemnify, save and hold harmless, and defend Lessor (including payment of reasonable attorney's fees), and all of its officers, agents, and employees from any and all claims resulting from losses, injuries, damages, and liabilities to persons or properties resulting, wholly or in part, from acts or omissions of the Lessee, including acts or omissions of his agents, officers, employees, guests, and/or patrons, to the full extent of its insurance coverage provided within this Section 9. This Section 9 further requires the Lessee to indemnify, save and hold harmless, and defend the Lessor (including payment of reasonable attorney's fees), and all of its officers, agents, and employees, from any and all claims for injuries or damages resulting from the Lessee's use of the Leased Premises. Notwithstanding the foregoing, the Lessee shall not be liable or held to indemnify on liability arising from any part of the Leased Premises which is under the control of, or is caused by, the act, omission, design, or construction by the Lessor. The provisions of this Section 9 shall survive the expiration or sooner termination of this Lease.

(b) Liability Insurance. At its sole expense, Lessee shall procure and maintain during the term of this Lease insurance of the types and in the amounts described below against claims for injuries to persons or damages to property which may arise from or in connection with this Lease.

(c) Commercial General Liability Insurance. Lessee agrees during the term of this Lease to maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than One Million Dollars ($1,000,000) each occurrence for bodily

injury, personal injury and property damage. If such insurance contains a general aggregate limit, it will apply separately to this Lease, or be no less than two (2) times the occurrence limit. Lessee agrees to provide the insurance policies at its sole expense, with commercially reasonable increases in coverage, but in no event shall the insurance coverage be less than the limits set by the Tennessee Governmental Tort Liability Act, as may be amended. Such insurance will:

i. Contain or be endorsed to contain a provision that includes the Lessor, its officials, officers, and employees as insureds with respect to liability arising out of work or operations performed by or on behalf of Lessee including materials, parts, or equipment furnished in connection with such work or operations. The coverage will contain no special limitations on the scope of protection afforded to the above listed insureds. Liability coverage can be provided in the form of an endorsement to Lessee's insurance or as a separate owner's policy; and

ii. For any claims related to this Lease, be primary insurance as respects the Lessor, its officials, officers and employees. Any insurance or self-insurance programs covering the Lessor, its officials, officers and employees will be in excess of insurance and will not contribute with it.

(d) Additional Insurance Requirements.

Lessee shall include Lessor as additional insured on all business and property insurance. Proof of said insurance shall be provided to Lessor's Risk Manager.

Lessee shall:

i. Prior to the Commencement Date, furnish Lessor with original

certificates of insurance and any amendatory endorsements effecting coverage required by this Section, and provide that such insurance will not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to the City Attorney and Risk Manager of Lessor;

ii. If requested by Lessor, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance;

iii. Place such insurance with an insurer that is licensed to do business in Tennessee and has an A.M. Best Company rating of no less than AV; and

iv. Require all contractors to maintain during the terms of this Lease, commercial general liability insurance, business automobile liability insurance and workers' compensation/employers' liability and furnish contractor's certificates of insurance to Lessor prior to the commencement of work.

Furthermore, any deductibles or self-insured retentions must be declared to and approved by Lessor.

SECTION 10. Casualty Insurance and Damage. The Lessor shall be under no duty to carry any casualty insurance which would cover the property of the Lessee within the Leased Premises, and the Lessee shall bear all risks of loss to its property. If the Leased Premises are rendered totally or substantially untenable by fire or other casualty, this Lease, at the option of either party shall terminate.

SECTION 11. Limitation of Lessor's Liability.

(a) Lessor shall not be liable to Lessee in any manner whatsoever for failure to furnish or delay in furnishing any service or services provided for in this Lease and no such failure or delay shall constitute actual or constructive eviction of Lessee nor operate to relieve from prompt and punctual performance of each and all of the covenants to be performed herein by Lessee.

(b) Lessor shall not be liable to Lessee, its invitees, agents, employees, or contractors for damage to person or property caused by defects in the cooling, heating, electric, water or other apparatus or systems located in, on, or about the Leased Premises.

(c) Lessor shall not be liable for any theft or loss of property of Lessee, invitees, agents, employees, or contractors.

SECTION 12. Assignment or Sublease. Lessee shall neither assign nor transfer this Lease or any interest herein nor sublease the Leased Premises or any part thereof to anyone during the term of this Lease or any extensions or holdovers.

SECTION 13. Discrimination. Lessee covenants to comply with all federal, county, and city laws and ordinances in regard to discrimination due to handicap, age, race, color, religion, sex, national origin, or any other classification protected by said laws.

SECTION 14. Nonprofit Status. Lessee shall provide evidence of its status as a nonprofit civic organization under Section 501(c)(4) of the Internal Revenue Code prior to the Commencement Date and maintain its status as a nonprofit civic organization at all times during the term of this Lease.

SECTION 15. No Warranties. Lessee takes and accepts the Leased Premises from Lessor "**AS IS**," that is at its condition as of the Commencement Date of this Lease, upon the terms and conditions herein contained.

SECTION 16. Utilities; Water Quality Fees. Lessee shall bear the expense for the use of any and all utilities on the premises and a pro rata portion of water quality fees. The Lessor and the Lessee agree to the flat fee of Two Hundred Ninety Five and 00/100 Dollars ($295.00) per year to cover utility costs and Lessee's pro rata portion of water quality fees. This fee is based on the Lessee's 2500 sq. feet of Leased Premises being 74/1000 percent (0.074%) of the total square footage of the building.

SECTION 17. Repairs and Maintenance.

(a) Lessor shall make necessary repairs to the roof and exterior walls of the building, except such repairs made necessary by any act or negligence of Lessee or its invitees, agents, employees, or contractors. Notwithstanding anything contained in this Lease to the contrary, in no event shall Lessor be required to make repairs exceeding the sum of $1,000.00 per fiscal year. In the event that repairs required to be made by Lessor exceed the sum of $1,000.00 in any given fiscal year during the term of this Lease, Lessee shall have the option of making the repairs at its sole expense or terminating this Lease upon thirty (30) days' written notice to Lessor.

(b) Lessee shall make and pay for any other repairs, maintenance, and replacements to the Leased Premises which are necessary to keep the same in good state of repair and operating order. Lessee shall not suffer or permit any waste or neglect of the Leased Premises and will take such steps as often as may be necessary to keep the buildings, and other improvements on the Leased Premises in a first-class and model condition. Any repairs made by both parties shall be done in a workmanlike manner and within a reasonable period of time.

(c) Lessor shall not be liable for the cost of any repairs made by or through Lessee, unless there is an express written agreement to the contrary between the parties, or unless the repair involves any appliance or fixture which is provided by Lessor and which is covered by

a warranty, guaranty, or other similar instrument running to Lessor, and then only to the extent covered by said warranty or guaranty.

(d) On the part of Lessee in making any repairs or replacements required to protect the Leased Premises against waste or deterioration, Lessor may, but shall not be required to, make such repairs and replacements on Lessee's account and the expense of such repairs and replacements shall constitute and be collectable as additional rent.

SECTION 18. Laws and Ordinances. Lessee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Leased Premises are concerned, and that the Lessee will not by any act of its agents or officers render the Lessor liable therefor.

SECTION 19. Possession. If this Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Leased Premises, and the Lessor shall be entitled to immediate possession.

SECTION 20. Attorney's Fee for Right to Recover Possession. Should the Lessor at any time rightly seek to recover possession of the Leased Premises, and be obstructed or resisted therein, and any litigation thereon ensues, the Lessee shall be bound to pay the Lessor a reasonable attorney's fee.

SECTION 21. Right to Enter. The Lessor shall have the right to enter into and upon said Leased Premises or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs, additions, or alterations as may be necessary for the safety, comfort, and preservation thereof.

SECTION 22. Damage or Destruction. In the event the Leased Premises shall be damaged by fire, or other casualty, the Lessee shall give immediate notice thereof to the Lessor. This Lease shall, unless notice is given as set forth below, continue in full force and effect, and the Lessor

shall, at its own expense, with reasonable promptness, subject to force majeure as defined in SECTION 28 and delays in making of insurance adjustments by Lessor, repair the Leased Premises. Lessor need not restore fixtures and improvements owned by Lessee or floor coverings, furnishings, personal property, and other decorative features furnished by Lessee. In the event the Leased Premises shall, before or after the Commencement Date, be so damaged that the Lessor shall decide not to repair the same, or if the Lessor shall decide to demolish or rebuild the Leased Premises for any reason whatsoever, upon notice to Lessee, the term of this Lease shall cease and terminate effective as of the time of the damage, and the accrued rent, if any, shall be paid up to the time of the damage. All proceeds of insurance payable as a result of fire or other casualty shall be the sole property of the Lessor.

SECTION 23. Condemnation of Property. In the event that any government, public body, or other condemning authority shall take, or if Lessor shall transfer in lieu of such taking, all or such part of the Leased Premises thereby making it physically or financially infeasible for the Leased Premises to be used in the manner intended by this Lease, Lessee shall have the right to terminate this Lease effective as of the date of the taking by the condemning party and the rental shall be prorated appropriately. However, if only a portion of the Leased Premises is taken, and Lessee does not elect to terminate this Lease under this Section 03, then rental payments provided under this Lease abate proportionately as to the portion taken which is not then usable by Lessee. Lessor shall make all necessary repairs and alterations to restore the portion of the Leased Premises remaining to as near its former condition as circumstances will permit (at a cost not to exceed Lessor's proceeds from said condemnation or transfer), and this Lease shall continue.

SECTION 24. Defaults. The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

(a) The occurrence of any of the following acts shall constitute an immediate, material, non-curable default by Lessee:

i. Abandonment of the Leased Premises, except for causes of force majeure, as defined in SECTION 28; and

ii. Any attempted assignment, transfer, or sublease in violation of SECTION 12 above;

(b) Failure to pay rent as provided for herein or failure to perform any term, covenant, or condition of this Lease, other than those set forth in subparagraph A above, shall not constitute a default unless such breach is not cured within the time periods set forth below. Lessor shall give written notice to Lessee of such default and if Lessee does not cure any rent default within five (5) days, or other default within twenty (20) days, after the giving of such notice (or, if such default is of such a nature that it cannot be completely cured within such twenty (20) days), if Lessee does not commence such curing within twenty (20) days and thereafter proceed with reasonable diligence and in good faith to cure such defaults, then Lessor may terminate this Lease on not less than three (3) days' written notice to Lessee, and on the date specified in said notice the term of this Lease shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Leased Premises by any lawful means and remove Lessee or other occupants and their effects.

SECTION 25. Remedies. The parties' remedies hereunder are not exclusive but cumulative to other remedies provided by law or in equity in the event of default.

SECTION 26. Surrender of Leased Premises on Termination. Lessee shall peaceably deliver possession of the Leased Premises to Lessor on the date of expiration or termination of this Lease, whatever the reason for termination. Lessor shall have the right to re-enter and take

possession of the Leased Premises on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 27. No Waiver. Any waiver by the parties of any default or breach of any one or more of the terms, conditions, or covenants of this Lease shall be in writing and shall not be construed to be a waiver of any subsequent or other breach or default of the same or of any other term, covenant, or condition of this Lease. No delay, failure, or omission of Lessor to re-enter the Leased Premises, to insist on strict enforcement of any term, covenant, or condition, or to exercise any right, privilege or option arising from any breach or default shall impair any such right, privilege or option or be construed as a waiver of or acquiescence in such breach of default.

SECTION 28. Force Majeure. Lessor shall be excused for the period of any delay in the performance of any obligation hereunder when prevented by doing so by cause or causes beyond Lessor's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services, or financing or through acts of God.

SECTION 29. Notices. All notices and other communications given hereunder by the parties shall be in writing and shall be delivered personally or by mail, postage prepaid, and the date of any notice by certified mail shall be deemed the date or certification thereof delivered by or addressed to the parties as follows:

Lessor: City of Chattanooga, Tennessee
ATTN: General Services Department
101 E. 11th Street, Suite G4
Chattanooga, TN 37402

With a copy to: City Attorney
100 E. 11th Street, Suite 200
City Hall Annex
Chattanooga, TN 37402

Lessee: Chattanooga History Center
ATTN: Jo Coke
2 W. Aquarium Way, Suite 200
Chattanooga, Tennessee 37402

With a copy to: _____
_____
_____

SECTION 30. Miscellaneous Provisions.

30.1 Applicable Law. This Lease shall be construed and interpreted pursuant to the laws of the State of Tennessee. Should there be any provision thereof to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the legality, validity, and enforcement of the remaining provisions shall not be affected, but shall continue in full force and effect. Any disputes between the parties and/or default by Lessee may only be submitted to a court of competent jurisdiction in Hamilton County, Tennessee, and the prevailing party shall be entitled to recover all costs, expenses, and legal fees in defending such legal action.

30.2 Entire Agreement. This Lease represents and constitutes the entire understanding between the parties and supersedes all other leases, agreements, and communications between the parties, whether oral or written, concerning the subject matter herein. Any amendment to this Lease must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

30.3 Binding Effect. The terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

30.4 Headings. Section headings are for convenience of reference only and shall not limit or otherwise affect the meanings of this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease on the _____ day of _____, 2016, at Chattanooga, Hamilton County, Tennessee.

LESSOR:

CITY OF CHATTANOOGA, TENNESSEE

BY: _____
ANDY BERKE, *Mayor*

LESSEE:

CHATTANOOGA HISTORY CENTER

BY: _____
_____, _____
Name Title

Total Proposed Lease Space Approximately 3,900 sf +/-
Lease Area (RED) Approximately 2,500 sf +/-
Common Area (GREEN) Approximately 1,400 sf +/-

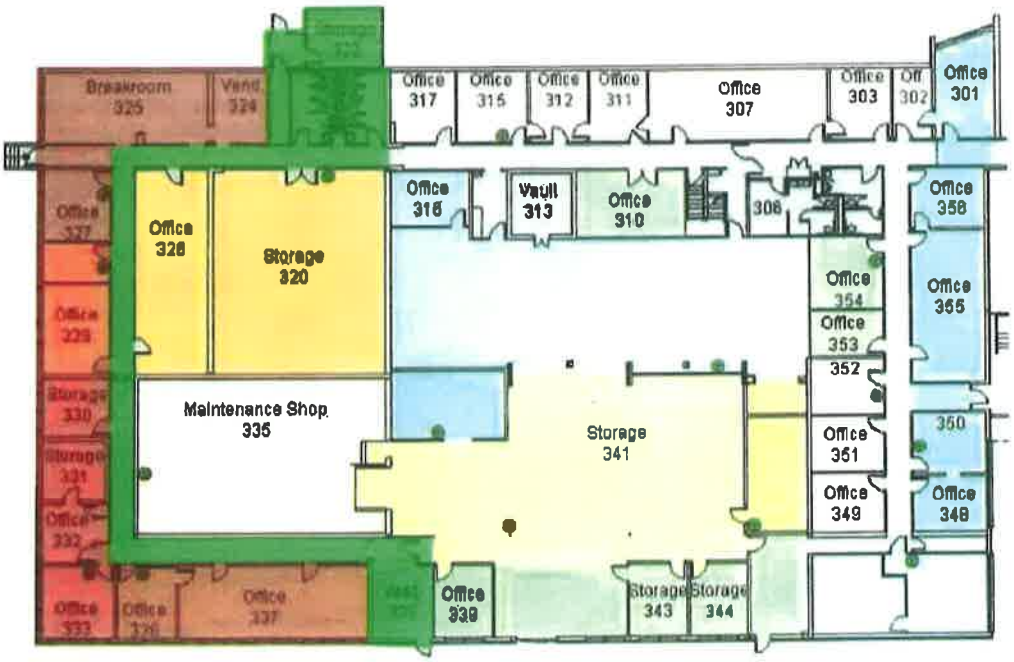

Exhibit "A"