

RESOLUTION NO. 28912

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE WITH EAST LAKE NEIGHBORHOOD ASSOCIATION, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR THE OCCUPANCY AND OPERATION OF A CONCESSION STAND FOR THE BENEFIT OF THE COMMUNITY, WITH AN ADDRESS OF 3000 E. 34TH STREET ON A PORTION OF PARCEL NUMBER 168B-U-018.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor to execute a lease with East Lake Neighborhood Association, Inc., in substantially the form attached, for the occupancy and operation of a concession stand for the benefit of the community, with an address of 3000 E. 34th Street on a portion of Parcel Number 168B-U-018.

ADOPTED: January 31, 2017

/mem

General Services on behalf of Public Works Parks Division ghart@chattanooga.gov



**CITY OF CHATTANOOGA
NON-PROFIT LEASE STANDARD FORM AGREEMENT**

This NON-PROFIT LEASE STANDARD FORM AGREEMENT (“Agreement”) is entered into as of the stated Effective Date by and between the City of Chattanooga, Tennessee, a municipal corporation (hereafter “Lessor”), and Lessee identified in Paragraph 1 (collectively “Parties”) for use of the property as identified in the Legal Property Description attached hereto as **Exhibit A** and incorporated herein by reference.

RECITALS

WHEREAS, Lessee desires to lease property from Lessor to be used exclusively for the operation of programs authorized by the Lessee’s Board of Directors and more fully described herein; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to lease to Lessee that certain building and/or land (“Premises”) containing the approximate square footage stated herein, situated in the City of Chattanooga, Hamilton County, Tennessee; and

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:

1. **General Terms.**

Effective Date	February 1, 2017
Leased Premises Address	A portion of 3000 E. 34th Street
Square Footage of Leased Premises	208 s.f. with approximately 250 s.f. of common area
Lessor Name & Entity Type	City of Chattanooga, a Tennessee Municipal Corporation
Lessee Name & Entity Type	East Lake Neighborhood Association, Inc. (62-0670664)
Tax Map No.	A portion of 168B-U-018
Legal Description	The Legal Property Description is attached hereto as Exhibit A.
Term	This Agreement is effective for the following period from the Effective Date: 4 years
Renewal Options	This Agreement shall be renewed for the following number of terms with each term being for the period of months stated herein. 4 years with no renewal options
Lease Purpose	The Parties enter into this Agreement for the following purposes:

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	To allow the Neighborhood Association to operate the concession stand for the benefit and use of the community
Fair Market Rental Value Calculation <i>Please consult with General Services to obtain these calculations. 423.643.7503</i>	No. Square Feet: 208 square feet (Approximately 250 s.f. of common area) Fair Market Rental Value (dollars per sq. ft. per General Services): \$21.63 per s.f. (208) on yearly basis for total value (rounded) of \$4,500 per year (Monthly is \$1.80 per s.f.) Total Rental Value per month (dollars per sq. ft. x no. sq. ft.): 208 s.f. x \$1.80 = \$374.40 (Round to \$375 per month)
Utility Services and Water Quality Fees	Any applications and connections for necessary utility services on the Leased Premises shall be made in the name of the party stated here: City of Chattanooga City of Chattanooga shall be solely liable for utility charges as they become due, including, but not limited to, those for water, gas, electricity, telephone, and water quality fees. It shall be a breach of this Agreement to fail to keep such payments current. The following additional terms apply to utility services and/or water quality fees: [if none, state "Not Applicable"] City will have responsibility of all utility and water quality fees
Notice to Lessor	General Services, Attn: Real Property Coordinator, 274 East 10 th Street, Chattanooga, TN 37402 <i>Copy to: City of Chattanooga, Office of the City Attorney, 100 East 11th Street, Suite 200, Chattanooga, TN 37402 (423) 643-8250</i>
Notice to Lessee	East Lake Neighborhood Association, Inc., PO Box 3031, Chattanooga, TN 37407-0534

2. Leased Premises. Lessor leases to Lessee that certain property containing the approximate "Square Footage of Leased Premises" located at the above-stated Leased Premises Address situated in the City of Chattanooga, Hamilton County, Tennessee, identified by the Tax Map Number as stated in paragraph 1 of this Agreement and more particularly described in the Legal Property Description, attached hereto as **Exhibit A**.

3. Consideration; Utilization of Leased Premises. It is expressly agreed to and understood by the Parties that the Leased Premises shall be used exclusively for the Lease Purpose described in paragraph 1, the purposes of which are authorized by the Lessee's Board of Directors or for other charitable purposes for the community's benefit. Lessee shall not utilize the Leased Premises for any other purposes without the express written approval of Lessor, which hereby designates its Mayor as its 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.

4. Term. The term of this Agreement shall commence upon the Effective Date as stated in paragraph 1. Either party may terminate this Lease at any time without cause upon giving the other party

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written notice of its intention to terminate, and such notice shall be received at least thirty (30) days prior to the termination date.

5. Lease Payments. Lessee shall, during the term of this Agreement, pay to Lessor the net annual rent of One Dollar (\$1.00) per year, with the first annual payment due on the Effective Date of this Agreement and subsequent annual payments due on the anniversary date of the Effective Date of this Agreement. As additional consideration, the Lessee agrees to use the property exclusively for charitable purposes authorized by the Lessee's Board of Directors. All rents payable by Lessee to Lessor under this Lease shall be paid to Lessor at the Notice address specified in paragraph 1.

6. Alterations. Lessee agrees that no improvements, additions, or alterations 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 Agreement 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 amendment.

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

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 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 Agreement 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 Agreement.

9. Indemnity. Lessee, as a material part of the consideration to be rendered to Lessor, hereby waives all claims against Lessor for injuries or damage for any cause arising at any time to persons in or about said Leased Premises where said injuries or damage occurs as a result of the use of the Leased Premises by Lessee or from the failure of Lessee to keep the Leased Premises in good condition and repair, as herein provided. Lessee will indemnify Lessor and save it harmless from and against any and all claims, actions, damages, liability and expense (including reasonable attorneys' fees and court costs) in connection with loss of life, personal injury and/or damage to property arising from or out of the occupancy or use by Lessee of the Leased Premises or any part thereof occasioned wholly or in part by any act or omission of Lessee, its invitees, agents, employees, or contractors. Lessee further agrees to defend, pay all costs of defense, including attorney's fees, and/or any judgment or cost for any claim or suit brought against Lessor as a result of any claim brought against Lessee, its invitees, agents, employees, or contractors. This indemnification of Lessor shall survive the expiration or sooner termination of this Agreement.

9. 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 Agreement and any holdovers or extensions. During the

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term of this Agreement, 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 paragraph, the amount of funds deemed appropriated to Lessee shall be based upon a fair market rental value as stated in the Fair Market Rental Value calculation in paragraph 1.

10. Audit Requirements.

(a) Lessor may audit all financial and related records (including digital) associated with the terms of the Agreement including: timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Lessee. Lessor may further audit any Lessee records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by Lessor) or to identify conflicts of interest.

(b) Lessee shall at all times during the term of the Agreement and for a period of seven (7) years after the expiration or earlier termination of this Lease, keep and maintain records of expenditures of any funds appropriated by Lessor. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Lessee. Documents shall be maintained by the Lessee necessary to clearly reflect all work done and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Lessee shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by Lessor at all reasonable times and without prior notice.

(c) The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the Lessee and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Lessee's obligations to Lessor.

(d) Costs of any audits conducted under the authority of this Section and not addressed elsewhere will be borne by Lessor unless the audit identifies significant findings that would benefit Lessor. Lessee shall reimburse Lessor for the total costs of an audit that identifies significant findings that would benefit Lessor.

(e) This paragraph shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which Lessor may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

11. Insurance. At its sole expense, Lessee shall procure and maintain during the term of this Agreement 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 Agreement.

(a) 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:

(1) 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

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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

(2) For any claims related to this Agreement, 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.

(b) 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 Department of General Services/Real Property Coordinator.

Lessee shall:

(1) Prior to the Effective 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 Department of General Services/Real Property Coordinator;

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

(3) 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

(4) Require all contractors to maintain during the terms of this Agreement, 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. Lessor shall insure the building on the Leased Premises against the risk of fire. Lessee agrees to reimburse Lessor for the cost of maintaining this coverage when it remits its annual Agreement payment.

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.

13. Non-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.

14. Nonprofit Status. Lessee shall provide evidence of its status as a nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code prior to the Effective Date and maintain its status as a nonprofit charitable organization at all times during the term of this Agreement.

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

16. Utility Services and Water Quality Fees. The responsibility for utility services and water quality fees are set forth in paragraph 1 of this Agreement.

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17. Repairs and Maintenance. Lessee shall make and pay for all 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 Lessee shall be done in a workmanlike manner and within a reasonable period of time. Lessor shall not be liable for the cost of any repairs, maintenance or replacements made by or through Lessee.

18. 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 Agreement 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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 Agreement 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 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 Effective 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 Agreement

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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.

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

(a) Abandonment of the Leased Premises, except for causes of force majeure, as defined in the section entitled "Force Majeure;" and

(b) Any attempted assignment, transfer, or sublease in violation of the section entitled "Assignment and Sublease;"

(c) 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 Agreement shall terminate, and Lessee shall then quit and surrender the Leased Premises to Lessor. If this Agreement 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.

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.

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 Agreement, 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.

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 Agreement 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 Agreement. 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.

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.

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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 of certification thereof delivered by or addressed to the Parties set forth in paragraph 1.

30. Applicable Law. This Agreement 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.

31. Entire Agreement. This Agreement 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 Agreement must be in writing and adopted by lawful resolution of the respective governing bodies to be bound thereby.

32. Binding Effect. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

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

[signature page to follow]

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IN WITNESS WHEREOF, the Parties, as authorized representatives, have executed this Agreement which shall become effective as of the Effective Date stated herein.

Attest:	LESSOR
	By:
	Name/Title:

Attest	LESSEE
	By:
	Name/Title:

Verification Statements (Requesting Department and by Assigned Attorney)

Requesting Department verifies no changes have been made to this Standard Form Agreement without prior review & approval by the Office of the City Attorney	
An Attorney for the City has reviewed this Agreement and approves it as to form and legality.	

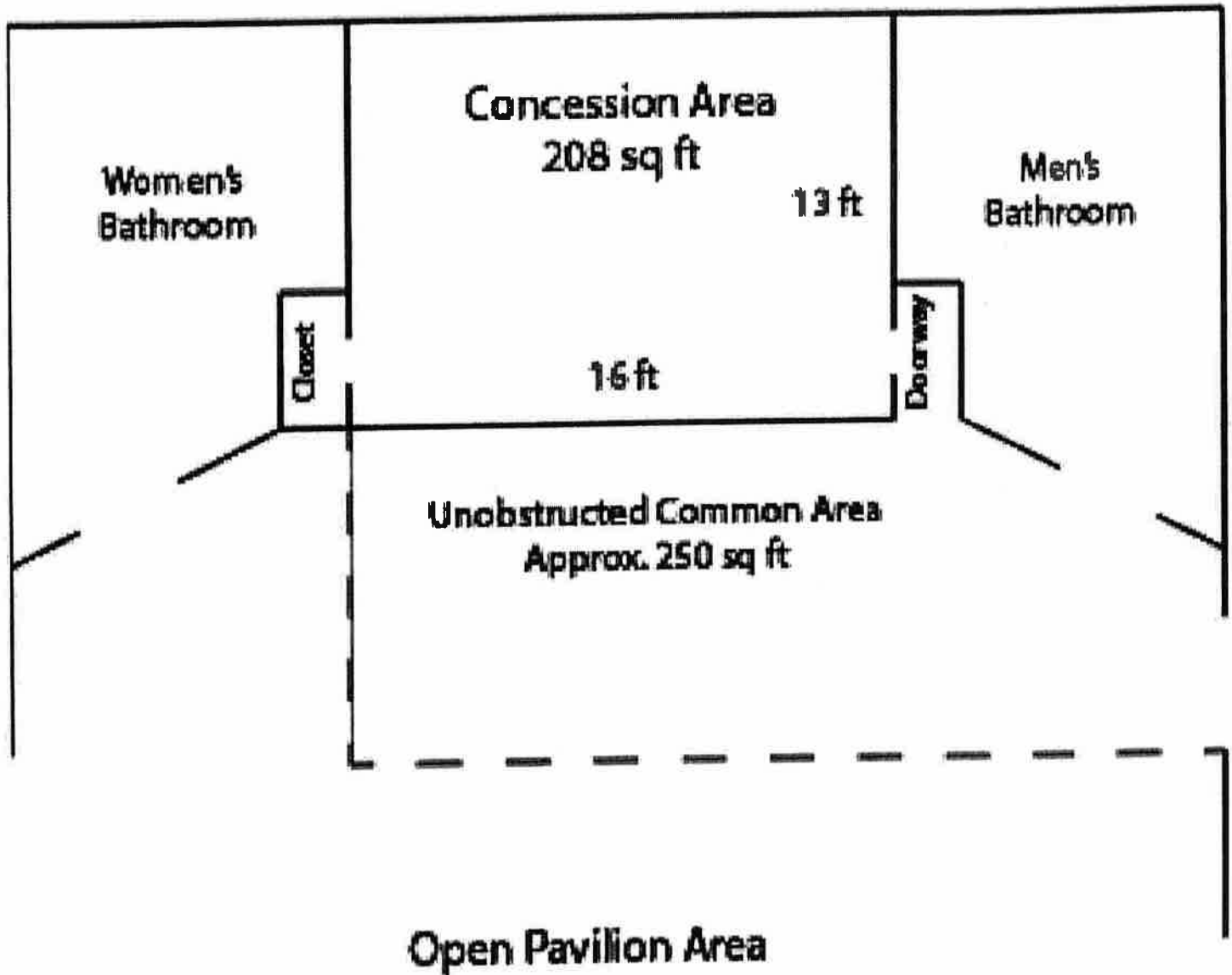


EXHIBIT A