

RESOLUTION NO. 29162

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH CHATTANOOGA GOODWILL INDUSTRIES, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR A PORTION OF THE PROPERTY LOCATED AT 1815 E. MAIN STREET, TAX MAP NO. 156B-D-009, FOR THE OPERATION OF PROGRAMS TO OFFER SURPLUS AND DONATED GOODS TO NON-PROFIT ORGANIZATIONS AND TO PROVIDE SURPLUS AND DONATED FURNITURE, APPLIANCES, AND OTHER HOUSEHOLD GOODS TO HOMELESS, DISPLACED, AND OTHER LOW INCOME INDIVIDUALS AND FAMILIES ENTERING PERMANENT HOUSING THROUGH THE CHATTANOOGA FURNITURE BANK.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Mayor is hereby authorized to execute a Lease Agreement with Chattanooga Goodwill Industries, Inc., in substantially the form attached, for a portion of the property located at 1815 E. Main Street, Tax Map No. 156B-D-009, for the operation of programs to offer surplus and donated goods to non-profit organizations and to provide surplus and donated furniture, appliances, and other household goods to homeless, displaced, and other low income individuals and families entering permanent housing through the Chattanooga Furniture Bank.

ADOPTED: September 12, 2017

/mem

LEASE

THIS LEASE AGREEMENT (“Lease”) made and entered into as of the ____ day of _____, 2017, by and between the City of Chattanooga, Tennessee, a municipal corporation (“Lessor”), and the Chattanooga Goodwill Industries, Inc. a Tennessee nonprofit corporation, whose address is 3500 Dodds Avenue, Chattanooga, Tennessee 37407 (“Lessee”).

WITNESSETH:

WHEREAS, Lessee desires to lease facilities from Lessor to operate programs to offer (1) surplus and donated goods to nonprofit organizations and (2) to provide surplus and donated furniture, appliances, and other household goods to homeless, displaced and other low income individuals and families entering permanent housing through the Chattanooga Furniture Bank; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to, lease to Lessee a portion of that that certain building located at 1815 E. Main Street, situated in the City of Chattanooga, Hamilton County, Tennessee, identified as Tax Map No. 156B-D-009.

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 a portion of that certain building located at 1815 Main Street, situated in the City of Chattanooga, Hamilton County, Tennessee, identified as Tax Map No. 156B-D-009, containing approximately 8,600 square feet of usable space and approximately 450 square feet of common area space, as indicated by the cross-hatched area shown on **Exhibit “A,”** attached hereto and incorporated herein by reference (the “Leased Premises”).

SECTION 2. Consideration; Utilization of Leased Premises; "AS IS" Condition. Lessee may utilize the Leased Premises for the purpose of operating programs that provide various office products and other items of value to nonprofit organizations and furniture and household goods to the citizens of the community, and the agreement by Lessee to operate such programs constitutes the primary consideration of this Lease. Lessee shall not utilize the Leased Premises for any other purpose without the express written approval of Lessor, which hereby designates its Mayor as its agent for this purpose. Lessee takes and accepts the Property from Lessor "AS IS," that is in its condition as of the Commencement Date of this Lease, upon the terms and conditions herein contained.

SECTION 3. Term. The term of this Lease shall commence upon execution by the parties (the "Commencement Date") and shall be for a period of one (1) year with the option to renew for three (3) additional terms of one (1) year each. Either party may terminate this Lease upon giving the other party written notice of its intention to terminate the Lease, and said notice shall be received at least sixty (60) 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.

SECTION 5. Nonprofit Status. Lessee shall maintain its status as a nonprofit charitable organization under Section 501(c)(3) of the Internal Revenue Code at all times during the term of this Lease.

SECTION 6. Alterations. Lessee shall not make any alterations, improvements, or additions to the Leased Premises without the prior, express, and written consent of the Lessor. All such alterations, replacements, changes, additions and improvements that may be made, erected,

installed, or affixed on or in the Leased Premises during the term of this Lease shall be, and shall be deemed to be, part of the realty and the sole and absolute property of Lessor.

SECTION 7. 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 \$3.00 per square foot (8,600± square feet constituting usable leased space) for a total annual amount of \$25,800 .

SECTION 8. Audit Requirements.

A. Lessor may audit all financial and related records (including digital) associated with the terms of the Lease 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 Lease 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 fulfilment 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 Section 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.

SECTION 9. Ownership of Improvements. Any improvements erected or placed on the Leased Premises shall remain on and shall not be removed from the Leased Premises. At the expiration of this Lease, all such improvements shall be the property of Lessor.

SECTION 10. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Leased Premises during the term of this Lease.

SECTION 11. Environmental Matters.

A. Lessee covenants that, during the term of this Lease, in connection with any construction on or operation and/or use of the Property, Lessee shall comply in all respects with all

applicable requirements of Applicable Law (as defined below) and that the Property shall not be used for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials. Lessee shall notify Lessor promptly in the event of any violation or suspected or alleged violation of Applicable Law, and shall promptly forward to Lessor copies of any and all orders, notices, permits, applications or other communications and reports in connection with any such violation or any other matters relating to Applicable Law. Lessee further covenants that it will not install on or under the Property any underground storage tank. Lessee shall indemnify and hold Lessor harmless from all losses, damages, claims, liabilities, and expenses, including reasonable attorneys' fees and other expenses, arising out of or relating to (i) the presence of any Hazardous Materials on the Property which Hazardous Materials were not present on the Property on the Commencement Date, (ii) any violation or alleged violation of Applicable Law attributable to actions of Lessee occurring after the Commencement Date, or (iii) any breach of any covenants set forth in this Lease.

B. Lessee and Lessor understand and agree that the indemnity provided in this Section shall survive the termination of this Lease and shall continue in full force and effect until the expiration of any applicable periods of limitation with respect to any loss or liability covered by such indemnity.

C. As used in this Section, the term "Hazardous Materials" shall mean any "hazardous substance" as that term is defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), and petroleum.

D. As used in this Lease, the term "Applicable Law" shall mean all local, state, and federal environmental laws, regulations, rules, guidelines, ordinance, and administrative and judicial orders and rulings applicable to Lessee.

SECTION 12. 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-one (31) days following the expiration of the term hereof or any extension thereof including removal of all personnel and property.

SECTION 13. 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 expenses, including attorney's fees, 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 agents, contractors or employees. This indemnification provision shall survive the expiration or soon termination of this Lease.

SECTION 14. Insurance. As a condition precedent to the effectiveness of this Lease, Lessee shall procure and maintain, at Lessee's sole cost and expense, from an insurer licensed to do business in the State of Tennessee, the following insurance:

A. Lessee agrees during the term of this Lease and any extensions, renewals or holdovers to take out and maintain Commercial General Liability Insurance, a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence for property damage and bodily injury, including premises/operations, product/completed operations, contractual liability, independent contractors, broad form property damage (which policy shall include a replacement cost guarantee provision), and personal injury, or Two Million Dollars (\$2,000,000.00) general aggregate, at Lessee's sole cost and expense, with commercially reasonable increases in coverage thereafter, but in no event less than the limits set by the *Tennessee Governmental Tort Liability Act*, as may be amended. The Lessor shall be named as an additional

insured on the liability policy prior to commencement of any work on the Leased Premises. Lessee shall provide Lessor evidence of coverage by a signed certificate of insurance that shows the coverage to be in effect, and Lessor shall be provided with a 30-day written notice prior to cancellation of the policy. The certificate of insurance shall indicate that the insurance is placed with an insurer rated AX or better by A.M. Best's Rating Guide or as approved by the City's Real Property Coordinator. A copy of the certificate of insurance shall be provided to the City's Real Property Coordinator at 101 E. 11th Street, Suite G-4, Chattanooga, TN 37402. Any failure or non-coverage of such policy or judgment that exceeds the policy limits shall not affect the indemnification or hold harmless provision contained in SECTION 13 above. 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 for use and occupancy of the Leased Premises, except for any claims brought against Lessor resulting from the intentional acts of Lessor.

B. Lessee agrees to comply with all then applicable state and federal Workers' Compensation laws.

C. All contractors, if any, hired or used by Lessee are to provide Builder's Risk Insurance.

D. Lessee shall insure, at its sole expense, all its personal property located in the Leased Premises. Lessor shall not be responsible for damage or loss of property of Lessee kept or stored on the Leased Premises.

SECTION 15. Assignment. Lessee shall not assign or transfer this Lease or any interest herein nor sublease the Leased Premises or any part thereof to anyone without the prior written approval of Lessor. Further, neither this Lease nor any interest herein shall be subject to transfer by attachment, execution, proceedings in insolvency or bankruptcy, or receivership unless a

receivership is sought by Lessor. Any such assignment or use without such consent shall be voidable at the option of Lessor, who may, on such breach, immediately re-enter and take possession of the Leased Premises.

SECTION 16. 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. Further, 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 17. 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 18. 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 19. Repairs and Maintenance.

(a) Lessee shall repair and maintain the Leased Premises inside in good order, and repair without limitation, interior painting, all plate glass, windows, doors, bulbs, walls, floors, floor coverings, ceilings, plumbing lines and fixtures, gas pipes, electric wiring, electric fixtures, light fixtures, and equipment, heating, ventilating, and air conditioning systems, sprinkler systems, and all machinery, equipment, and facilities forming a part of the Leased Premises. Lessor shall keep and maintain the exterior of the building, walkways, and driveways, in good order and repair

during the term of this Lease. Notwithstanding the foregoing, Lessor's agreement to maintain the exterior of the building, walkways, and driveways in good repair shall be subject to annual appropriations as approved by Lessor.

(b) The Lessor shall not be held liable for the cost of any repairs made by or through the 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 the Lessor and which is covered by a warranty, guaranty, or other similar instrument running to the Lessor, and then only to the extent covered by said warranty or guaranty.

(c) The Lessee shall not make any repairs upon appliances which have been provided by the Lessor or upon any fixtures, including, but not limited to, the kitchen and bathroom facilities without first obtaining express consent of the Lessor.

SECTION 20. 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 21. Utilities. The Lessee shall be responsible for payment of necessary utility services, including, without limitation, the cost for electricity, telephone, water, water quality fees, and gas. It shall be a breach of the Lease to fail to keep such payments current.

SECTION 22. Real Property Taxes. During the term of this Lease, Lessee agrees to pay all real property taxes assessed by the Hamilton County Assessor of Property, Hamilton County, Tennessee.

SECTION 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, and after such notice, an equitable reduction of rent shall be allowed by Lessee for the time such portions

of the Leased Premises shall remain untenable or incapable of use and occupancy, and 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 29, and delays in making of insurance adjustments by Lessor, repair the Leased Premises. If the damage results in the act or omission of Lessee, or Lessee's agents, employees, or invitees, Lessee shall not be entitled to any abatement or reduction of rent. Lessor need not restore fixtures and improvements owned by Lessee or floor coverings, furnishings, 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. Lessor agrees that if the repairs provided for herein cannot be made within six (6) months from the date of the casualty, subject to force majeure as defined in SECTION 29, then in such event Lessee shall have the right, after said six (6) months, but prior to substantial completion, to terminate this Lease on thirty (30) day's written notice to Lessor.

SECTION 24. Defaults.

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 29; and
- (ii) Any attempted assignment, transfer, or sublease in violation of SECTION 15 above;

- (iii) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Leased Premises or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located on the Leased Premises or of Lessee's interest in this Lease, or where Lessee becomes a "debtor" as defined in any bankruptcy laws;
- (iv) Failure to operate the programs as outlined in SECTION 2 above for the community's benefit;
- (v) Engaging in or allowing illegal activities being conducted on the Leased Premises.

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, but Lessor shall remain liable as hereinafter provided. 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. Abandoned Property. If Lessee abandons the Leased Premises or is dispossessed thereof by process or law or otherwise, Lessee shall be deemed to have abandoned any personal property belonging to Lessee left on the Leased Premises forty-five (45) days after the date of abandonment or dispossession, and title to said personal property shall be deemed to have been transferred to Lessor. Lessor shall have the right to remove and to dispose of said personal property without liability therefor to Lessee or to any person claiming under Lessee, and shall not need to account for its disposal.

SECTION 29. 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 30. 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 as follows:

Lessor: City of Chattanooga, Tennessee
ATTN: Real Property Office of ECD
101 East 11th Street, Suite G-4
Chattanooga, TN 37402

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

Lessee: Chattanooga Goodwill Industries
3500 Dodds Avenue
Chattanooga, Tennessee 37407

SECTION 31. 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.

SECTION 32. Miscellaneous Provisions.

32.1 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.

33.2 Entire Agreement. This Lease represents and constitutes the entire understanding between the parties and supersedes all other 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.

33.3 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.

33.4 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 _____, 2017, at Chattanooga, Hamilton County, Tennessee.

LESSOR:

CITY OF CHATTANOOGA, TENNESSEE

BY: _____

Printed Name: ANDY BERKE

Printed Title: MAYOR

ATTEST:

GAIL HART, *Real Property Coordinator*

LESSEE:

CHATTANOOGA GOODWILL INDUSTRIES,
INC.

BY: _____

Printed Name: _____

Printed Title: _____

ATTEST:

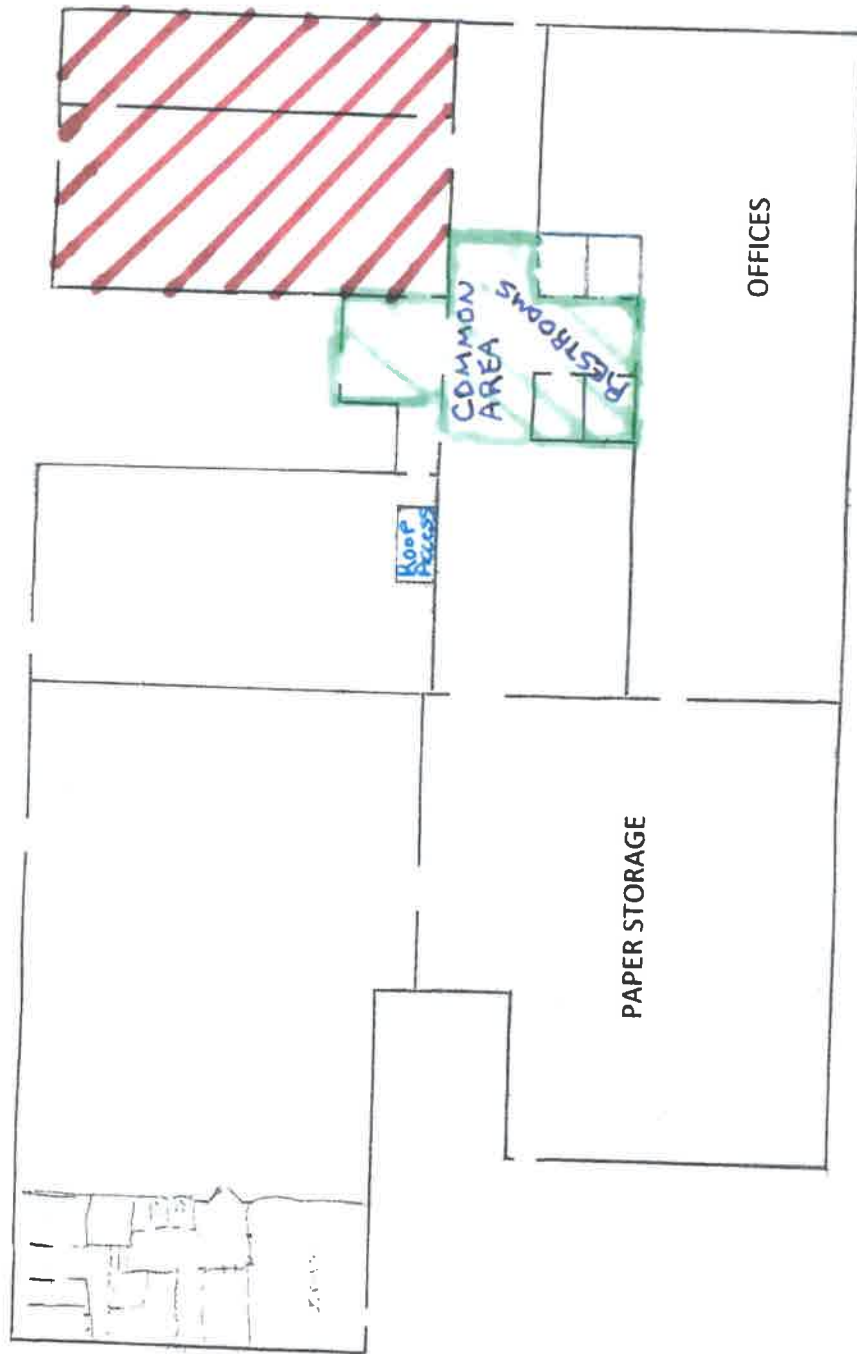
E 14th Street

EXHIBIT "A"

CHATTANOOGA GOODWILL INDUSTRIES

8,600 Approximate Square Feet of Dedicated Space (Red Cross-Hatched Area)

450 Approximate Square feet of Common Area (Green Cross-Hatched Area)



Orchard Knob Ave

Hawthorne Street

Main Street