

RESOLUTION NO. 29373

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE CHARLES H. COOLIDGE MEDAL OF HONOR HERITAGE CENTER, INC., IN SUBSTANTIALLY THE FORM ATTACHED, FOR A TERM OF ONE (1) YEAR, AT THE RATE OF ONE DOLLAR (\$1.00) PER YEAR, WITH THE OPTION TO RENEW FOR ONE (1) ADDITIONAL YEAR, FOR APPROXIMATELY SIX HUNDRED (600') SQUARE FEET OF A BUILDING AT 1170 S. WATKINS STREET, A PORTION OF TAX MAP NO. 156C-C-012, FOR THE STORAGE DISPLAY CASES OBTAINED FROM THE CHATTANOOGA HISTORY CENTER.

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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 the Charles H. Coolidge Medal of Honor Heritage Center, Inc., in substantially the form attached, for a term of one (1) year, at the rate of \$1.00 per year, with the option to renew for one (1) additional year, for approximately 600 sq. ft. of a building at 1170 S. Watkins Street, a portion of Tax Map No. 156C-C-012, for the storage display cases obtained from the Chattanooga History Center.

ADOPTED: March 20, 2018

/mem

## LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Chattanooga, Tennessee, a municipal corporation (hereinafter referred to as “Lessor”), and the Charles H. Coolidge Medal of Honor Heritage Center, Inc., a Tennessee nonprofit corporation, whose address is 368 Northgate Mall Drive, Chattanooga, Tennessee 37415 (hereinafter referred to as “Lessee”).

### R E C I T A L S

WHEREAS, Lessee desires to lease facilities from Lessor to be used exclusively for storage of display cases; and

WHEREAS, Lessor has the appropriate authority to, and hereby agrees to, lease to Lessee approximately 600 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.

- (a) Leased Premises. Lessor leases to Lessee approximately 600 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, and more particularly depicted by the two darkest shaded locations on **Exhibit “A”** attached hereto and incorporated herein by reference (the “Storage Area”). Lessee shall be entitled only to escorted access to the Storage Area. To gain access to the Storage Area, the Lessee may submit a request via e-mail to Richard Beeland at [rbeeland@chattanooga.gov](mailto:rbeeland@chattanooga.gov), Gail

Hart at [ghart@chattanooga.gov](mailto:ghart@chattanooga.gov), or to Ted Broyles at [tbroyles@chattanooga.gov](mailto:tbroyles@chattanooga.gov). Lessee understands and agrees that the Storage Area has roof leaks. Notwithstanding this disclosure by Lessor, Lessee has requested to store its display cases in the Storage Area. In no event shall Lessor be responsible for any damage, destruction or loss of any property stored by Lessee in the Storage Area, and Lessee shall bear all risk of loss to property stored therein. Because the Storage Area requires escorted access, no keys will be provided to Lessee. Hours of operation for access to the Storage Area shall be Monday through Friday from 8:00 a.m. to 4:30 p.m.

(b) Parking. Lessee shall have use of any available parking spaces that are not under the covered canopy.

SECTION 2. Use of the Storage Area. It is expressly agreed to and understood by the parties that the Storage Area shall be used exclusively for storage of Lessee's display cases. Lessee shall not utilize the Storage Area 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 in the Storage Area nor allow alcoholic beverages to be sold or consumed in the Storage Area.

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 (1) year, and shall not renew automatically, but may be renewed for one (1) additional one (1) year period upon mutual agreement of the parties. 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 Storage Area exclusively for storage of the display cases. All rentals payable by Lessee to Lessor under this Lease shall be paid to Lessor at the address herein designated in SECTION 28.

SECTION 5. Improvements. Lessee agrees that no improvements, additions, or alterations (“Improvements”) shall be made to the Storage Area without obtaining Lessor’s written approval. If Lessee desires to make Improvements to the Storage Area, 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 Storage Area. 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 (600 square feet constituting usable leased space) for a total annual amount of \$6,000.00.

SECTION 7. Quiet Possession. The Lessor covenants to keep the Lessee in quiet possession of the Storage Area 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 Storage Area 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 Storage Area 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 Storage Area 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.

SECTION 9. Indemnity, Liability and Liability Insurance.

(a) Indemnity, Liability. Lessee shall conduct his activities in the Storage Area 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 Storage Area. Notwithstanding the foregoing, the Lessee shall not be liable or held to indemnify on liability arising from any part of the Storage Area 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 Gail Hart at [ghart@chattanooga.gov](mailto:ghart@chattanooga.gov).

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 Storage Area, and the Lessee shall bear all risks of loss to its property. If the Storage Area is 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 Storage Area.

(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 Storage Area 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)(3) 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 Storage Area 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. Repairs and Maintenance.

(a) Lessor shall make necessary repairs to the 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 Storage Area 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 Storage Area and will take such steps as often as may be necessary to keep improvements in the Storage Area 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 Storage Area 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 17. Laws and Ordinances. Lessee covenants to comply with all state, county, and city laws and ordinances, including those regarding nuisances insofar as the Storage Area is concerned, and that the Lessee will not by any act of its agents or officers render the Lessor liable therefor.

SECTION 18. Possession. If this Lease should at any time become void or forfeited, no demand shall be necessary to a recovery of possession of the Storage Area, and the Lessor shall be entitled to immediate possession.

SECTION 19. Attorney's Fee for Right to Recover Possession. Should the Lessor at any time rightly seek to recover possession of the Storage Area, 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 20. Right to Enter. The Lessor shall have the right to enter into and upon said Storage Area 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. Damage or Destruction. In the event the Storage Area 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 27 and delays in making of insurance adjustments by Lessor, repair the Storage Area. 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 Storage Area 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 Storage Area 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 22. 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 Storage Area thereby making it physically or financially infeasible for the Storage Area 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 Storage Area 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 Storage Area 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 23. 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 Storage Area, except for causes of force majeure, as defined in SECTION 27; 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 Storage Area to Lessor. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Storage Area by any lawful means and remove Lessee or other occupants and their effects.

SECTION 24. 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 25. Surrender of Storage Area on Termination. Lessee shall peaceably deliver possession of the Storage Area 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 Storage Area on the date termination becomes effective without further notice of any kind and without instituting summary or regular legal proceedings.

SECTION 26. 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 Storage Area, 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 27. 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 28. 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 of ECD  
101 E. 11<sup>th</sup> Street, Suite G4  
Chattanooga, TN 37402

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

**Lessee:** Charles H. Coolidge Medal of Honor Heritage Center, Inc.  
PO Box 11467  
Chattanooga, Tennessee 37401

**With a copy to:** Richard Buhrman  
345 Frazier Avenue, Suite 210  
Chattanooga, TN 37405

SECTION 29. Miscellaneous Provisions.

29.1 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.

29.2 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.

29.3 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.

29.4 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 \_\_\_\_\_, 2018, at Chattanooga, Hamilton County, Tennessee.

**LESSOR:**

CITY OF CHATTANOOGA, TENNESSEE

BY: \_\_\_\_\_  
ANDY BERKE, *Mayor*

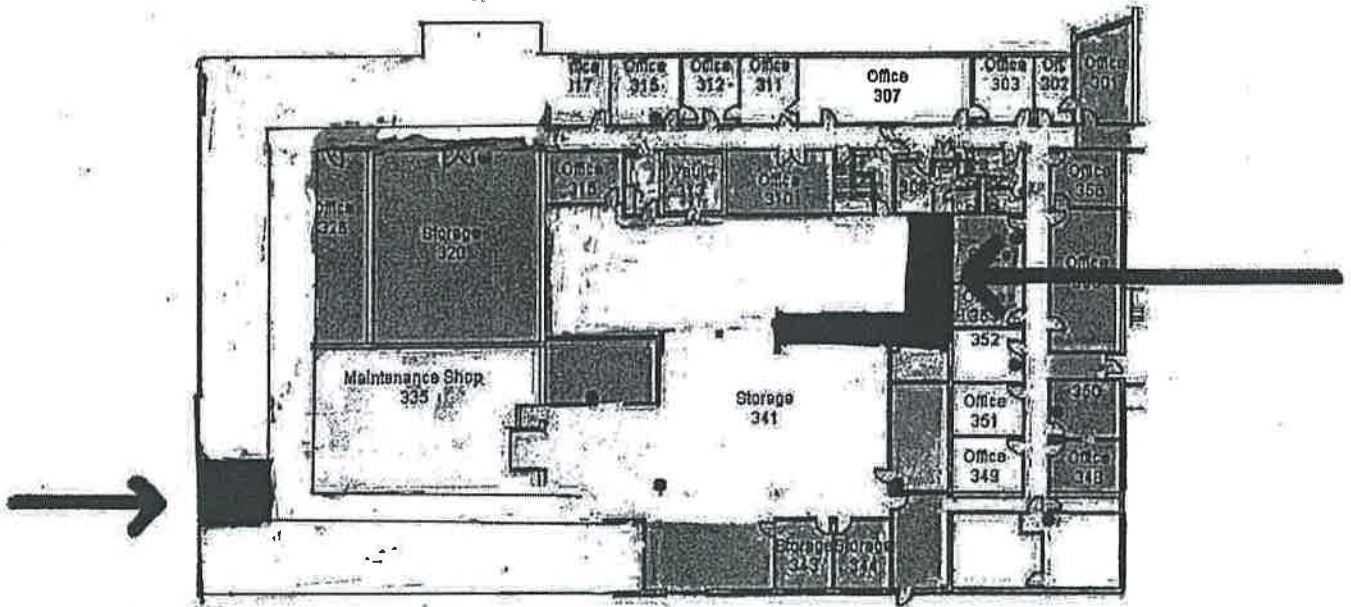
**LESSEE:**

CHARLES H. COOLIDGE MEDAL OF HONOR  
HERITAGE CENTER, INC.

BY: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Name Title



**Escorted Access Storage Area**  
**Two Darkest Shaded Locations**  
**Approximately 600± Square Feet**



**Exhibit "A"**