

DATE: *August 29, 2018*
TO: Mayor and City Council
FROM: Assistant *City* Manager
SUBJECT: E Center Use Agreement – Broad Street Band



RECOMMENDED ACTION

Approve the use agreement with the Broad St. Concert Band at Sugar Hill outlining the terms of use of the Eagle Theatre at the E Center.

BUDGET IMPACT

No change is associated with the action.

DISCUSSION

The proposed use agreement, outlines the terms of the Band's use of the new Eagle Theatre for rehearsal space, storage, as well as provides direction as to ticket sales, staffing, concerts, and annual reporting. They will be assigned a storage space (#P011) for storage of larger musical instruments as well as other music equipment and be able to schedule rehearsals and performances in the Eagle theatre gallery or stage through the programming staff at the facility.

The agreements also spell out the requirements under a general agreement related to city funding. They are:

- a. Conduct a minimum of four (4) concerts or musical performances in the Eagle Theatre or mutually agreed-upon city facility with scheduling of said performances and any related rehearsals coordinated with the Theatre's programming or other appropriate city staff. The chosen performances shall be consistent with the Band's charter documents and shall be subject to approval of the Theatre's programming staff to avoid presentation of inappropriate content.

August 29, 2019

- b. Provide volunteers to perform a total of 60 annual community service hours to support the Theatre operations during non-Guild performances to demonstrate commitment to the arts and its promotion, coordinated through the Theatre programming staff.
- c. The Band's share of net ticket revenues from performances provided by the Band under this Agreement shall be 100%. All concession revenues shall be the city's.
- d. Submit before September 1 funding requests, proposed performance schedule and any request for use of space within the Eagle Theatre for storage, set shop, or other needs.

Attachments

Annual Agreement

Use Agreement

STATE OF GEORGIA
COUNTY OF GWINNETT

AGREEMENT

This Agreement (hereinafter referred to as the “Agreement”) is made and entered into and shall be effective this ___ day of September, 2018, by and between the **CITY OF SUGAR HILL, GEORGIA** (the “City”), a Georgia Municipal Corporation, and **BROAD ST. CONCERT BAND @ SUGAR HILL, INC.** (the “Band”).

WHEREAS, the City desires to promote its downtown and Central Business District through partnerships that will attract residents and visitors to the downtown area of the City and provide enjoyment for the benefit of the City’s citizens; and

WHEREAS, the City desires to promote the arts and cultural attractions within the City and specifically within the downtown area of the City; and

WHEREAS, the City of Sugar Hill Downtown Development Authority has constructed a mixed-use facility in downtown Sugar Hill that contains a performing arts building named the Eagle Theatre (hereinafter “Eagle Theatre”); and

WHEREAS, the City leases and manages the Eagle Theatre and wants to encourage the Band to hold performances at the Eagle Theatre; and

WHEREAS, the Band needs space to store equipment, musical instruments, and rehearse and has entered into a separate agreement with the City to use space within the Eagle Theatre; and

WHEREAS, the Band desires to produce theatrical and performing arts, entertainment, and education for the benefit of the community and the citizens of the City; and

WHEREAS, the City desires for the Band to provide entertainment and education for the citizens of the City; and

NOW THEREFORE, in consideration of the covenants and promises set forth herein, compensation as approved in an annual appropriation of the city council, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **REQUIRED ACTIVITES**. The Band shall provide the following services to the City between September 10, 2018 and July 31, 2019:
 - a. Conduct a minimum of four (4) concerts or musical performances in the Eagle Theatre or mutually agreed-upon city facility with scheduling of said performances and any related rehearsals coordinated with the Theatre’s programming or other appropriate city staff. The chosen performances shall be consistent with the Band’s charter documents and shall be subject to

- approval of the Theatre's programming staff to avoid presentation of inappropriate content.
- b. Provide volunteers to perform a total of 60 annual community service hours to support the Theatre operations during non-Band performances to demonstrate commitment to the arts and its promotion, coordinated through the Theatre programming staff.
 - c. The Band's share of net ticket revenues from performances provided by the Band under this Agreement shall be 100%. All concession revenues shall be the city's.
 - d. Submit before September 1 funding requests, proposed performance schedule and any request for use of space within the Eagle Theatre for storage, set shop, or other needs.
2. **TERM.** The term of this Agreement shall begin upon the effective date as provided above and continue until midnight on the 31st day of August, 2019, unless sooner terminated. This Agreement shall be eligible for annual renewal upon mutual agreement of the Band and the City.
 3. **MARKETING.** The City shall be a sponsor of the shows produced under this Agreement. Therefore, the City's logo shall be incorporated in marketing and promotional materials related to said shows. However, the City shall be required to review and approve the use of its logo on any and all materials before said materials may be publicly released.
 4. **BOARD OF DIRECTORS.** During the duration of this Agreement and any renewal thereto, the City shall have the right to appoint one (1) voting member of the Board of Directors of the Band. The City agrees that the member it appoints shall not be an elected official of the City.
 5. **REPORTS TO CITY COUNCIL.** The Band shall provide a written report to the City Council at least once per year. The report shall be due on or before September 15th of each year. The Band shall send a representative to a council meeting to answer any questions regarding the written report and/or to make an oral report. The written report shall include at a minimum the following: information regarding programs delivered, attendance at each program, programs being planned, fund raising goals and statistics, financials data, community services hours provided to the City (between August 1 and July 31 of the following year), and other pertinent information regarding cultural arts in the City.
 6. **NON-PROFIT REQUIREMENT.** The Band shall at all times during the term of this Agreement operate as a non-profit entity. The City shall have the right to inspect and audit the financial records of the Band at any time in order to ensure compliance with the provisions of this Agreement.

7. **INDEMNITY.** The Band shall indemnify and save harmless the City from and against any and all loss, cost (including reasonable attorney's fees), damage, expense and liability (including statutory liability and liability arising under the Workmen's Compensation Laws) in connection with any and all claims for damages as a result of injury or death of any person or property damage to any property sustained by:
- a. The Band, its partners, customers, invitees, agents, employees, contractors, and subcontractors, their partners, agents, and employees, regardless and irrespective of the cause of such claims for damages; and
 - b. All other persons, including the City's agents and employees, if such injury, death or property damage arises from or in any manner grows out of any act or neglect in any undertaking hereunder by the Band, or any failure of the Band to comply with the provisions of this Agreement.
 - c. In the event that any action or proceeding is brought against the City by reason of any such claim, then the Band, upon notice from the City, shall defend such action or proceeding at the cost of the Band, and the Band shall pay all costs and attorney's fees and any judgment or decree and interest thereon which may be entered against the City. The obligations imposed on the Band by this Paragraph shall survive the termination of this Agreement for any event occurring during the term of this Agreement.
8. **INSURANCE.** The Band shall be responsible for a general liability insurance policy with a minimum policy limit of \$1,000,000.00 per occurrence for bodily injury and \$1,000,000.00 per occurrence for death. Statutory workers' compensation insurance for its employees shall be obtained if required by law. All policies shall insure the City and the Band as their respective interests shall appear and shall contain a replacement cost endorsement. The Band shall keep policies in force during the term of this Agreement and for at least one year thereafter, and submit to the City evidence of renewal prior to the expiration of each term of insurance.
9. **TERMINATION.** Either party may cancel this Agreement at any time for any reason upon providing thirty (30) days written notice to the other party.
10. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement.
11. **NOTICES.** All notices and communications provided for hereunder shall be in writing, sent by registered mail, postage prepaid, and addressed as follows:

(1) **TO THE CITY:**

To the City Council:

Mayor, City of Sugar Hill

5039 West Broad Street
Sugar Hill, Georgia 30518

With copies to:

Jane Whittington, City Clerk
5039 West Broad Street
Sugar Hill, Georgia 30518

Sugar Hill City Attorney
Thompson, Sweeny, Kinsinger & Pereira, P.C.
P.O. Drawer 1250
Lawrenceville, Georgia 30046

(2) TO THE BAND:

The Broad St. Concert Band @ Sugar Hill, Inc.
4955 Alton Tucker Blvd., Suite 600
Sugar Hill, GA 30518
Attn: Jeff Cutchins, CEO
E-mail jeffcutchins@gmail.com

12. **MODIFICATION**. No modification, amendment or alteration of any provision of this Agreement shall be effective unless contained in a written agreement signed by the parties hereto.
13. **FURTHER ASSURANCES**. Upon the request of the City, the Band shall duly sign and deliver, at the cost and expense of the Band such further instruments as may be reasonably necessary or proper to carry out the provisions and purposes of this Agreement.
14. **COUNTERPARTS**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.
15. **ENTIRE AGREEMENT**. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral with respect hereof are expressly superseded hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement under their hands and seals, the day and year first above written.

CITY OF SUGAR HILL, GEORGIA

BY: _____
Steve Edwards, Mayor

ATTEST: _____
Jane Whittington, City Clerk

(Seal)

BROAD ST. CONCERT BAND @ SUGAR HILL, INC.

BY: _____
Jeff Cutchins,
CEO

ATTEST:

BY: _____
Allen Jorgensen
Secretary

(Seal)

CITY OF SUGAR HILL
COUNTY OF GWINNETT
STATE OF GEORGIA

USE AGREEMENT

WHEREAS, the City of Sugar Hill Downtown Development Authority (hereinafter “the DDA”) is the owner of certain real improved property known as 5029 West Broad Street and is commonly known as the E Center Mixed-Use development, which is further identified as Gwinnett County Tax Parcel R7291 085 (hereinafter “the Property”); and

WHEREAS, the DDA has leased portions of the Property to the City of Sugar Hill, Georgia (hereinafter “the City”) for governmental and recreational use; and

WHEREAS, the Property contains a performing arts building, called the Eagle Theatre, which is leased to the City; and

WHEREAS, the Broad St. Concert Band @ Sugar Hill, Inc., a Georgia Domestic Nonprofit Corporation (hereinafter “Band”) is operating within City of Sugar Hill to promote the performing arts; and

WHEREAS, the Band and the City desire to promote the arts at the Property and within the Eagle Theatre by providing performances, concerts and presentations; and

WHEREAS, the Band and the City have entered into a separate agreement for the Band to provide certain services and performances within the Eagle Theatre and other city owned facilities; and

WHEREAS, the Band and the City desire to permit the use of a portion of the Eagle Theatre building to be utilized for exclusive purposes of the Band;

NOW THEREFORE in consideration of the payment of Ten Dollars (\$10.00), the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Band and the City do hereby agree as follows:

1. The Band shall have use of the portion of the Eagle Theatre building, which is shown on the drawing attached hereto as Exhibit A and totaling approximately 1,500 square feet, for the purposes identified in Exhibit A and under the terms and/or conditions of this Use Agreement.

A. The Band shall use the space covered by this Agreement for a rehearsal area and storage of musical instruments and equipment commonly used by performing arts organizations. In order to accommodate other non-Band performances in the Eagle Theatre, the Band shall also work cooperatively to facilitate shared use of the rehearsal area as may be necessary from time to time and subject to supervision of the Band and Theatre Manager.

B. The City may restrict the hours of access or operation of certain activities due to the nature and use of the facility by multiple tenants, lessees, performers, etc.

C. The Band shall not store flammable materials in the area and the use of any such materials shall require the approval of appropriate Theatre or city staff.

D. The Band shall keep the rehearsal area, storage area and adjacent areas clean, neat, and orderly. The Band shall make sure proper precautions are taken to protect the facility and any Band volunteers, including but not limited to, using safety

gear and equipment, ensuring proper ventilation, using any available exhaust systems, and other similar safety precautions.

E. The City has the right to implement additional rules and regulations to govern the use of the space and will do so in coordination with the Band.

2. The term of this Use Agreement shall be from September 10, 2018 through and including July 31, 2019. The parties hereby acknowledge and agree that the rights provided by this Use Agreement are a license for use of the Property and shall not in any manner be construed to provide or convey any type of lease or tenancy rights to the Band. Either party may cancel this Agreement by providing thirty (30) days written notice to the other party.

3. The City shall not provide any janitorial or cleaning services or supplies to the spaces contemplated by this agreement. Such services and supplies shall be the sole responsibility of the Band and subject to limited hours of access as established from time to time by the Theatre programming staff.

4. The City does not guarantee the availability of parking at or nearby the Property. The Band is specifically informed that there is no dedicated parking provided with or as a part of this Agreement. The Band may utilize nearby public parking subject to compliance with all federal, state, and local laws, ordinances, rules and regulations governing such parking. The Band shall not be permitted to reserve any public or on street parking for its exclusive use at any time.

5. The City makes no representations or warranties about the fitness of the Property for the use as desired by the Band.

6. The Band shall, at its expense, procure and, throughout the time that it uses the Property, maintain the following insurance:

A. “All Risk” insurance in an amount adequate to cover the full replacement value of all personal property, decorations, trade fixtures, furnishings, equipment, alterations, and all other contents located or placed on the Property. The sole risk of loss shall be on the Band of any such contents as may be placed on the Property.

B. Comprehensive Public Liability Insurance (also known as General Liability Coverage), on an occurrence basis with minimum limits of liability of not less than One Million Dollars (\$1,000,000.00) for bodily injury, personal injury, death and medical payments to any one person and One Million Dollars (\$1,000,000.00) for bodily injury, personal injury or death to more than one person and Five Hundred Thousand Dollars (\$500,000.00) for damage to property; and

C. Workmen’s Compensation Insurance covering all employees and agents of the Band with respect to whom death or bodily injury claims could be asserted against the Band, the DDA, or the City Band as required by the laws of the State of Georgia; and

D. All of the aforesaid insurance (except the Workmen’s Compensation Insurance) policies shall provide that the DDA and the City are “additional insured” parties, and shall be written by one or more responsible insurance companies in a form satisfactory to the City; all such insurance shall contain endorsements that: such insurance may not be canceled or amended with respect to the City or its designees or the leased Property except upon thirty (30) days prior written notice to the City and any such designees by the insurance company; the Band shall be solely responsible for payment of premiums and the

City or its designees shall not be required to pay any premium for such insurance; in the event of payment of any loss covered by such policy, the City or its designees shall be paid first by the insurance company for the City's loss; the minimum limits of the Comprehensive Public Liability Insurance shall in no way limit or diminish the Band's liability hereunder; if the Band fails to obtain and provide any or all of the aforesaid insurance, the City may, but shall not be required to, purchase such insurance on behalf of the Band and the Band shall pay the cost of such insurance.

7. The Band covenants and agrees that it shall not store within the property any explosive such as dynamite or any highly flammable liquids or substances which would exceed a normal one day supply requirements. The Band further covenants and agrees that it shall not store within the property any dangerous or hazardous chemical, substance, or material except as permitted by any Federal, State, or Local ordinance or Law and any Regulations promulgated thereunder and as otherwise permitted by the insurance underwriters and then such storage shall be in strict compliance with any and all such Federal, State, or Local Laws, Ordinances and Regulations and in particular, any and all requirements of Law governing hazardous chemicals and those Laws relating to or being known as a Fire Code and as required by the insurance underwriters. The Band further covenants and agrees that it shall not dispose of any such hazardous chemicals into the sanitary septic / sanitary sewer system serving the property. The Band shall not dispose of any such hazardous chemicals, materials, or substances in any other manner on the property.

8. The Band agrees to indemnify and hold the City of Sugar Hill Downtown Development Authority and the City of Sugar Hill harmless from any and all claims resulting

against the City of Sugar Hill Downtown Development Authority and/or the City of Sugar Hill for personal injury, property damage or any other claims resulting from the Band's use of the Property.

9. This Agreement may only be modified by written agreement executed by both parties.

10. Notices hereunder shall be in writing and either hand delivered or sent by recognized overnight courier or certified mail, return receipt requested to the parties at the following addresses:

If to the City of Sugar Hill, Georgia:

City of Sugar Hill
5039 West Broad Street
Sugar Hill, Georgia 30518
Attn: Jane Whittington, City Clerk

If to the Band:

The Broad St. Concert Band @ Sugar Hill, Inc.
4955 Alton Tucker Blvd., Suite 600
Sugar Hill, GA 30518
Attn: Jeff Cutchins, CEO
E-mail jeffcutchins@gmail.com

Notices may also be sent by facsimile or electronic means (e.g., email) provided such is followed up with a hard copy sent in the manner set forth above. Notice will be effective upon delivery or refusal of delivery of notice. The addressees and addresses for notice may be changed by giving notice. Until written notice of a change in address is delivered, the last addressee and address stated in this Agreement will continue in effect for all purposes.

11. This Agreement shall be construed under the laws of the State of Georgia.

12. The parties hereto agree and acknowledge that proper jurisdiction and venue for any and all disputes arising out of this Use Agreement shall be in the Superior Court of Gwinnett County, State of Georgia.

IN WITNESS WHEREOF, the parties have hereunto set their hand and affixed their seals
as of the date written below their signatures.

CITY OF SUGAR HILL, GEORGIA

By: _____

Title: _____

Date: _____

THE BROAD ST. CONCERT BAND @
SUGAR HILL, INC.

By: _____

Title: _____

Date: _____

EXHIBIT A

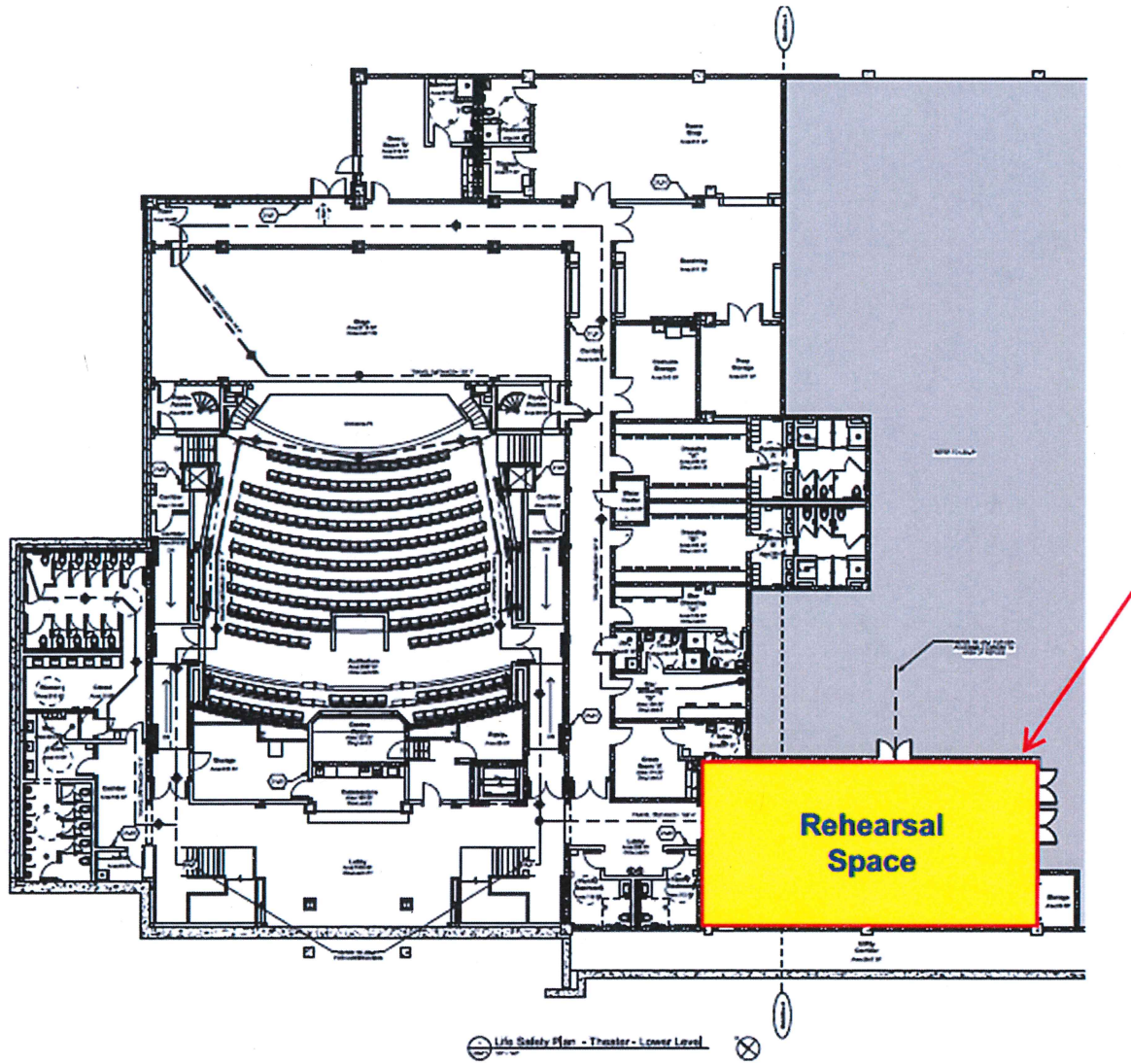


EXHIBIT A

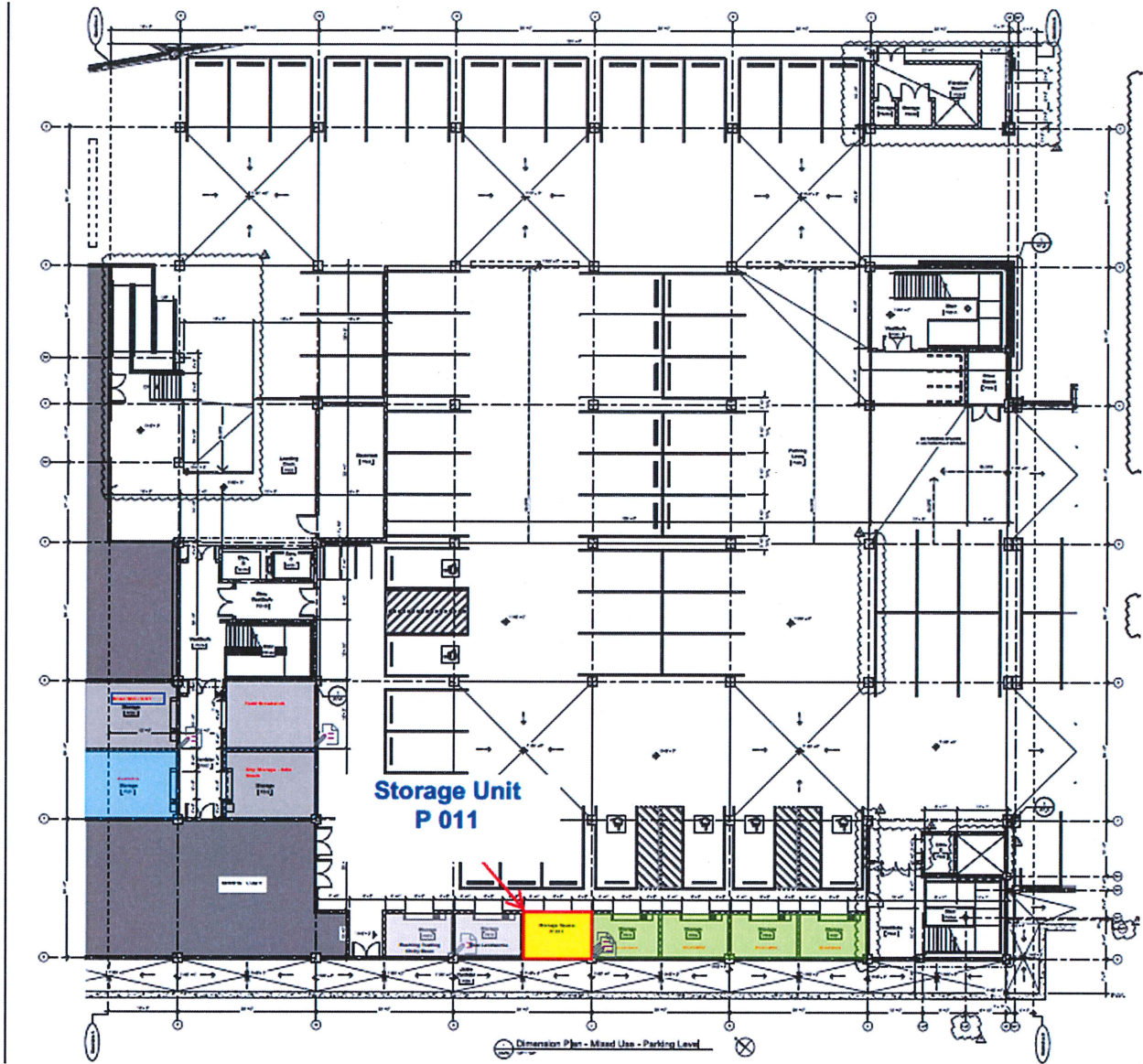


EXHIBIT A

