

Draft: 5.28.2014

## LEASE AGREEMENT

THIS LEASE (the "Lease"), made as of this \_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Burlington, Vermont (the "Landlord"), and [SPE] (the "Tenant") whose address is specified on Attachment A attached to and made a part of this Lease.

W I T N E S S E T H:

### **SECTION 1. Demise; Description of Premises; Landlord's Work; Description of Premises.**

Landlord is the owner of certain land and premises commonly known as "200 Church Street, Burlington, Vermont" (the "Property") and a commercial building and other improvements constructed thereon (the "Building"). The legal description of the Property is attached hereto as Attachment B. For the rent and other charges as provided below and subject to the terms and conditions of this Lease, Landlord rents, and leases to Tenant, and Tenant leases and rents from the Landlord the premises (the "Premises") further described in Attachment A.

### **SECTION 2. Term of Lease.**

(a) Term; Commencement: The Premises are leased to Tenant, subject to all of the terms and conditions of this Lease, for a term as provided in Attachment A. The first day of the Lease term may be referred to as the "Commencement Date."

(b) Option to Renew: Provided that Tenant is not then in default of this Lease, Tenant will have the option to renew this Lease for the renewal terms specified on Attachment A on the terms and conditions provided in this Lease by giving Landlord written notice of its intention to renew as provided in Attachment A. The renewal term is subject to the same provisions, terms and conditions that apply throughout this Lease to the initial Term; provided, however, that: (i) there will not be an additional Option to Renew under the circumstances set forth therefor in Attachment A; and (b) the Minimum Base Rent shall be increased for any renewal term as stated in Attachment A.

### **SECTION 3. Rent; Services.**

All rent and other charges payable to Landlord under this Lease are payable by good check at the address of Landlord or such other address as Landlord may designate in writing without prior demand or setoff, abatement or deduction. Tenant will pay Minimum Base Rent in the amount provided in Attachment A in equal monthly installments in advance on the first day of each calendar month included in the Term commencing with the Commencement Date, unless instructed otherwise by the Landlord.

If the term of this Lease will begin or end on any day of the month other than the first (1st) day, the minimum base rent for the month in which this Lease will commence or terminate will be pro-rated on a per diem basis. All past due sums due to Landlord under this Lease will bear interest

which will accrue from the date due at the Wall Street Journal Prime Rate plus four percentage points, not to exceed the highest rate permitted by law. Such interest is deemed additional rent. Tenant is responsible for all costs of collection, including reasonable attorneys' fees.

#### **SECTION 4. Security Deposit.**

Tenant covenants to pay Landlord upon execution of this Lease the funds, if any, necessary to bring the Security Deposit up to the amount set forth in Attachment A, which shall be held by Landlord without interest as security for the performance by Tenant of all the terms and conditions of this Lease. In the event Tenant fails to perform or observe any of the terms, conditions, covenants or agreements required of Tenant under this Lease, Landlord will retain the security deposit to be applied toward any and all sums owed by Tenant, plus interest and costs of collection, but this remedy will not be Landlord's exclusive remedy. In the case of every such retention during the Lease term, Tenant will pay to Landlord on demand the amount applied or retained to be added to the Security Deposit to restore it to its required amount. Landlord and Tenant agree that the Security Deposit is not to be construed as payment for the last or any month's rent. Landlord will inspect the Premises at the end of the Lease and if the Premises are in the same condition as at the commencement of the term, normal wear and tear excepted, and Tenant has complied with all requirements of the Lease, the Security Deposit will be returned within thirty (30) days of the expiration of the Lease, without interest unless otherwise required by law.

#### **SECTION 5. Operating Expenses, Personal Property Taxes.**

(a) Operating Expenses. In addition to Minimum Base Rent, Tenant will pay to Landlord as additional rent the Operating Expenses of the Building and Property for each year of the Lease Term. Operating Expenses are payable within ten (10) days of invoice date.

Operating Expenses are the costs and expenses of use and occupancy of the Premises, including but not limited to building insurance, property taxes and other assessments by public or private entities, the costs for lawn, ground maintenance and snow removal, and all utilities not separately metered to tenants. Operating Expenses shall not include depreciation or amortization of the Property and Building or any part thereof, replacement or contingency reserves, capital expenditures (including without limitation, construction costs, capital improvements, replacement costs of capital items and professional fees relating thereto, items which under generally accepted accounting principles and practices are normally capitalized, payment of any debt or equity obligations, the cost of accounting and bookkeeping services, legal and other professional fees relating to leasing, or other services not related to the normal operation, maintenance, cleaning, repair and protection of the Property and Building, brokerage fees and commissions.

The Tenant, at its own cost and expense, may, if it shall in good faith so desire, contest by appropriate proceedings the amount of any personal or real property tax. The Tenant may, if it shall so desire, endeavor at any time or times, by appropriate proceedings, to obtain a reduction in the assessed valuation of the Property for tax purposes. In any such event, the Landlord, at the request and expense of the Tenant, will join with the Tenant in said proceedings and the Landlord agrees to sign and deliver such papers and instruments as may be necessary to prosecute such proceedings, the

Tenant shall have the right to contest the amount of any such tax and the Tenant shall have the right to withhold payment of any such tax, if the statute under which the Tenant is contesting such tax so permits. The Tenant shall be entitled to share in any refund or abatement which may be made of any tax or assessment in the same proportion that the same was paid by the Tenant or with the Tenant's funds.

(b) Personal Property Taxes. Tenant is solely responsible for and will pay on a timely basis all taxes imposed on its inventory, furniture, trade fixtures, leasehold improvements (installed by or on behalf of Tenant), equipment or other personal property of Tenant.

#### **SECTION 6. Use.**

(a) Tenant will use the Premises solely for the use set forth in Attachment A and for no other purpose. Any change in the nature or character of Tenant's business without the prior written consent of the Landlord will constitute an Event of Default under this Lease for which no notice or grace period need be given.

(b) Landlord will not be liable for interruption in or cessation of any service to the Premises, except if caused by Landlord's gross negligence, intentional misconduct, or breach or non-payment of expenses for such services, if Landlord is responsible for payment of such costs.

#### **SECTION 7. Insurance.**

(a) Tenant, at its sole cost, covenants to provide on or before the commencement of the Term, and to keep enforced during the Term with insurers reasonably acceptable to Landlord, as primary policies with deductibles and other retentions reasonably acceptable to Landlord. For the indemnification of the Landlord, its officers and managers, agents and employees, comprehensive commercial general liability insurance relating to the demised Premises and its appurtenances on an occurrence basis with combined single limit amount of Two Million and 00/100 Dollars (\$2,000,000.00) against all claims, demands or actions with respect to damage, injury or death made by or on behalf of any person or entity arising from or relating to the conduct of Tenant's business at the Premises, or related to any act or omission of Tenant, its employees, agents, customers, clients, guests, invitees or other persons under its control. Landlord shall be named as an additional insured under such policy which shall provide for thirty (30) days prior notice of cancellation to Landlord. Landlord may, but will not be required to, pay any premium not paid by Tenant on a timely basis. Any such sum paid is payable to Landlord by Tenant on demand. No such payment by Landlord will operate as a waiver of Tenant's breach or default.

(b) Adequate insurance for loss of personal property, trade fixtures and equipment or other property of Tenant.

(c) To the extent permitted by the insurance policies of each, Landlord and Tenant will cause each policy carried against loss, damage or destruction by fire or other casualty to be written in a manner so as to provide that the insurance company waives all rights of recovery by way of subrogation against the other party. This paragraph will not, however, in any manner limit the

liability of Tenant or Landlord for damage to property or persons as a result of its willful acts or gross negligence.

(e) Tenant will have no right in any policy or policies maintained by Landlord and will not be entitled to be a named insured thereunder.

(f) Upon request Tenant will provide Landlord with certificates of insurance evidencing that such insurance is in full force and effect.

(g) Tenant will pay on demand any increases in Landlord's insurance occasioned by Tenant's use of the Premises.

**SECTION 8. Tenant's Further Covenants.** Tenant covenants and agrees:

(a) To pay when due all rents, additional rents, expenses, supplemental charges, utilities, and other fees specified in this Lease.

(b) To maintain the Premises in good condition, normal wear and tear excepted.

(c) Not to install, operate or maintain any electrical equipment which will overload the electrical system, or any part thereof, beyond its reasonable capacity for safe and proper operation as determined by Landlord, or which does not bear underwriter's approval.

(d) Not to use, or permit to be used, the sidewalks, walkways, other common areas outside the Premises for display, sale, or any other similar undertaking without the express approval in writing of Landlord in advance, which approval may be withheld in the sole discretion of Landlord.

(d) Not to suffer, allow, or permit any offensive or obnoxious vibration, noise, odor, or other undesirable effect to emanate from the Premises or any machine or other installation permitted by this Lease.

(e) Not to perform, or permit to be performed, any act or carry on any practice which may damage, mar or deface the Premises, the common areas, Building and the Property.

(f) Not to use or occupy the Premises for any purpose calculated to injure the reputation of the Premises, the Building, the Landlord or the neighborhood in which the same are located, or to impair the present or future value of the Premises and the property.

(g) Not to store materials or equipment outside the Premises.

(h) To keep the Premises equipped with all safety mechanisms required by law or public authority in good working order inspected at least annually.

**SECTION 9. Reserved Rights of Landlord.**

Landlord reserves the right to enter the Premises at reasonable hours on reasonable prior notice (except in emergencies, when no prior notice is required): (a) To make reasonable inspections or to make such repairs, alterations or additions as may be required or permitted under the provisions of this Lease and the leases between Landlord and other tenants in the Building; (b) to exhibit reasonably the same to prospective purchasers; (c) to perform any act related to the safety, protection or preservation of the leased Premises and Building; and (d) during the twelve month period prior to the end of the Lease Term, for the purposes of exhibiting reasonably the Premises to prospective tenants.

**SECTION 10. Quiet Enjoyment and Local Laws.**

Tenant will comply with all laws and ordinances applicable to the use of the Premises, and Landlord covenants that Tenant upon paying the rent, charges and fees provided in this Lease, and complying with the terms and conditions of this Lease, will peaceably and quietly have, hold and enjoy the demised Premises for the term of this Lease.

**SECTION 11. Repairs; Alterations, Improvements, Additions.**

(a) Landlord's Obligations. Landlord shall, upon reasonable notice from Tenant, make necessary structural repairs to the exterior walls and will keep in good order, condition and repair the exterior foundation, windows and roof of the Premises, the common areas, facilities, parking and landscaped areas, and the plumbing, sewage and utility lines whether inside or outside of the Building in which the Premises are located, provided such lines are the property of Landlord.

(b) Tenant's Obligations. Tenant shall, at its own cost and expense: (i) Keep and maintain in good order, condition and repair, the Premises, and each and every part thereof; (ii) repair all damage or injury to the Premises, fixtures, appurtenances and equipment, or to the Building caused by Tenant's installation or removal of Tenant's fixtures, furniture, equipment or other personal property or resulting from the conduct of Tenant, its servants, employees, agents or visitors (such repairs to be of a quality equal to the original work or construction); and (iii) keep the interior of the leased Premises, and the fixtures and appurtenances therein, in as good order and repair as at the date of the commencement of the Lease, excepting ordinary wear and tear, at its own expense.

(c) Tenant's Alterations and Additions. No material fixed alterations, additions, or improvements to the Premises will be made by Tenant without the prior written consent of Landlord, which consent may not be unreasonably withheld. Professional contractors as approved by Landlord will make any alteration in a prompt and workmanlike manner in accordance with the plans and specifications approved by Landlord. Said contractors will have such access to the Building as does not disturb Landlord or other tenants of the building. Tenant will ensure that all alterations meet applicable building codes.

Tenant will pay all costs and expenses in connection with the making of alterations and will discharge any bond or mechanic's liens filed against the demised Premises in connection therewith

within a period of thirty (30) days after Tenant receives notice of the filing of such lien. Tenant will indemnify and hold Landlord harmless from and against any claims arising out of such work.

Tenant will pay all costs incurred by Landlord for clean-up or removal of debris or protection of work requested by Tenant or deemed reasonable and necessary by Landlord, all costs of repair of damage to the Building occasioned by Tenant's alterations, and for any costs to Landlord or other tenants caused by use of the Building or its services by Tenant or Tenant's agents.

Any alteration, addition or improvement made by Tenant after such consent will have been given, and any permanent fixtures installed as a part thereof, including light and electrical fixtures and any built in furniture or equipment that has been permanently affixed to the floors, walls, or ceilings of the Premises shall, at Landlord's option, become the property of Landlord upon the expiration or other sooner termination of this Lease; provided, however, that Landlord will have the right to require Tenant to remove such fixtures at Tenant's cost upon termination of this Lease and Tenant will restore the Premises to a condition that existed prior to the commencement of this Lease.

(d) Signs. Tenant will not erect, or cause to be erected, any signs, advertisements, awnings, displays or banners of any nature in or on the Property, Building, Premises, common areas or where same may be visible from outside the leased Premises other than those specifically approved by Landlord in writing, such approval not to be unreasonably withheld, delayed or conditioned.

#### **SECTION 12. Hazardous Materials.**

Tenant covenants that the Premises will be kept free of hazardous materials, except for materials listed in Tenant's current MSDS binder, a copy of which has been delivered to Landlord, or substitute materials substantially similar to those materials identified in said MSDS binder. Tenant will not use, transport, store, dispose of or in any manner deal with hazardous materials on the leased Premises, except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. The term "hazardous materials" as used in this Lease will include, without limitation, gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other substance or materials defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule or regulation. Tenant will indemnify and hold harmless Landlord from and against any loss or damage whatsoever (including reasonable attorneys' fees) incurred by reason of Tenant's violation of this Section 12, and Tenant's obligation to indemnify will survive expiration or termination of this Lease.

#### **SECTION 13. Fire and Other Casualty; Eminent Domain.**

(a) In the event that the Premises or Building are partially or fully destroyed by reason of fire or other insured casualty, Landlord, if Landlord elects, will promptly and with reasonable speed cause the damage to be repaired at Landlord's expense to the condition of the Premises at the completion of Landlord's work. Rent and other charges will abate in just proportion while the Premises remain wholly or partially untenable, unless the casualty results from the negligence or malfeasance of Tenant or its agents. Rent will be abated if the damage or destruction substantially

prevents Tenant from using the Premises for its stated permitted uses (unless the casualty results from the negligence or malfeasance of Tenant or its agents) or if Tenant is unable to use the premises because of Landlord's failure to maintain or repair any structural elements or exterior walls or ceiling. Landlord will notify Tenant of its election to terminate or repair within forty-five (45) days of Tenant's notice to Landlord of casualty occurring on the Premises or of casualty occurring to the Building. In the event Landlord will elect not to repair, this Lease will terminate as of the date of the casualty, and rent and other charges shall be apportioned to that date.

(b) If the Premises, or any substantial part thereof, are taken by any exercise of the right of condemnation or eminent domain or by agreement between Landlord and any other public authority, this Lease will terminate and expire on the date of such taking, and accrued rent and other charges will be apportioned to that date. If such taking is less than a substantial portion such that Tenant may conduct its business without material diminution, this Lease will continue in full force and effect. Landlord reserves and accepts all rights to any award for the value of land, buildings, improvements, this Lease and loss of rent, provided that nothing in this Lease will preclude Tenant's right to receive relocation funds from the condemning authority, nor damages in respect of its fixtures and tangible personal property.

#### **SECTION 14. Default.**

(a) If the Tenant:

- i. is in default in payment of the rents, Operating Expenses, or other fees or charges and this default continues for more than a period of ten (10) days after notice from Landlord of the same is due and payable; or
- ii. is in default in any of the other covenants and agreements in this Lease contained to be kept and fulfilled on the part of Tenant for a period of thirty (30) days after written notice of such default is given by Landlord to Tenant without action by Tenant to remedy such default (unless a lesser or no notice period is specifically provided in this Lease, in which case no notice nor grace period need be given); or
- iii. files a voluntary petition in bankruptcy or takes the benefit of any insolvency act or is dissolved or adjudicated as bankrupt, or if a receiver is appointed for its business or its assets and the appointment of such receiver is not vacated within sixty (60) days after such appointment, or if Tenant makes an assignment for the benefit of its creditors, or if Tenant's interest in this Lease is sold under execution; or
- iv. abandons or vacates the Premises for more than 14 days;

such actions are considered an Event of Default under this Lease.

Without limiting the foregoing, if pursuant to the United States Bankruptcy Code, Tenant is permitted to assign this Lease notwithstanding the restrictions of this Lease, Tenant agrees that adequate assurance of future performance by the assignee expressly permitted under Code shall be

the deposit of cash security equal to three month's rent plus estimated Operating Expenses for such period, which will be held by Landlord as a Security Deposit, and evidenced by financial statements prepared by an accountant acceptable to Landlord of assignee's sufficient current net worth as reasonably determined by Landlord.

(b) If an Event of Default occurs, Landlord may serve upon Tenant a written notice that this Lease and the rights of Tenant under this Lease will terminate on a date specified, and rights of Tenant will come to an end completely as if such date were the date specified in this Lease for termination, and Tenant will then quit and surrender the demised Premises to Landlord, but Tenant will nevertheless remain liable as set forth in this Lease. If Tenant fails within any twelve (12) month period to make two payments of rent when due, at Landlord's option, the third or any future default is deemed an incurable default for which no notice is necessary.

Upon delivery of the notice of termination and termination as provided above, Landlord may, without further notice, terminate all services, re-enter the demised Premises, and by summary proceedings or otherwise, dispossess Tenant and remove its effects and hold the demised Premises as if this Lease had never been made.

If, without terminating this Lease, Landlord elects to re-enter or take possession pursuant to legal proceedings or pursuant to any notice required by law, Landlord may, without terminating this Lease, re-let the Premises or any part thereof in Landlord's or Tenant's name on such terms as Landlord may deem reasonable. Landlord will not be required to re-let, nor will such re-entry or taking of possession be deemed to terminate this Lease unless accompanied by the notice of termination.

(c) After default made in any of the covenants contained in this Lease, the acceptance of rent or failure to re-enter by the Landlord will not be held to be a waiver of its rights to terminate this Lease, unless notice of such waiver is signed by Landlord, and the Landlord may re-enter and take possession thereof the same as if no rent had been accepted after such default.

(d) In addition, on the happening of any Event of Default, Landlord may, at its option, declare immediately due and payable all the remaining installments of rent, Operating Expenses, additional rent and other charges, fees and penalties provided in this Lease for the remainder of the Lease Term, and any other amount necessary to compensate Landlord for all the detriment to Landlord proximately caused by Tenant's failure to perform its obligations under this Lease, which shall be construed as liquidated damages and will constitute a debt provable in bankruptcy.

(e) Landlord's remedies are cumulative.

(f) Landlord may, but will not be obligated to, cure any default at any time after giving reasonable notice of same to Tenant (except in emergencies, when no notice is necessary). All costs and expenses, with interest, of Landlord incurred by reason of any default and cure, including reasonable attorneys' fees and costs, will be paid to Landlord by Tenant on demand as additional rent.

(g) Tenant expressly waives any right to or defense that it may have to claim a merger, and neither the commencement of any action or proceeding nor settlement nor entering any judgment will bar Landlord from bringing subsequent actions or proceedings from time to time.

(h) In the event Landlord re-enters due to Tenant's default, Tenant's removed property may be warehoused elsewhere at the expense of Tenant. Landlord will have no liability whatsoever for any loss or damage to persons or property resulting from such entry by Landlord.

(i) If the Landlord shall default in the performance or observance of any of the covenants contained in these presents and on the Landlord's part to be performed or observed and shall fail, within thirty (30) days after written notice from the Tenant of such default, to cure such default (unless such failure cannot reasonably be cured within thirty (30) days and the Landlord shall have commenced to cure said default within said thirty (30) days and shall have continued diligently to pursue the curing of the same); then and in any of said cases, the Tenant may, immediately or at any time thereafter and without demand or notice, cure such Landlord's Default and may deduct and set off the amount of such cure by deducting the costs and expenses of such cure from the Rent and the additional rent or otherwise demand payment from the Landlord. Such remedies shall be without prejudice to any other remedies the Tenant might otherwise have hereunder or otherwise at law or in equity.

#### **SECTION 15. Liability and Indemnification.**

(a) Tenant agrees to indemnify Landlord, its agents, councilors, employees, contractors, officers, and managers and save it and them harmless from and against all suits, actions, damages, liability, fines, penalties and expenses of any nature (including attorneys' fees and expenses) to which they or any of them will become subject in connection with loss of life, bodily or personal injury or property damage arising from or out of the use or occupancy of the Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees, or concessionaires, including the common areas, or any default by Tenant in the performance of Tenant's obligations under this Lease, or by any act, omission, carelessness, negligence or misconduct of Tenant or persons or entities under Tenant's control, or occurring in, on, or about the Premises, or from work done in, on or about the Premises unless caused by the gross negligence or willful misconduct of the Landlord, its employees or agents, or caused by any failure of the Landlord to perform its obligations under this Lease or that may otherwise be required by law.

(b) Tenant agrees to indemnify, protect, defend and save Landlord harmless from any and all liabilities, costs and damages (including reasonable attorneys' fees and costs) caused by or arising out of any default hereunder by Tenant, or any sub-tenant or undertenant or other person to whom Tenant has given access to the Premises.

Tenant understands and agrees that the liability of Landlord, its agents, employees, contractors, officers, and managers is limited solely to Landlord's interest in the Building, including insurance policies held by Landlord. Tenant agrees that Tenant's sole remedy in an instance where Tenant disputes the reasonableness of Landlord's discretion or judgment is in the nature of an

injunction, declaratory judgment or specific performance, and Tenant specifically and irrevocably waives any right to monetary damages. Without limiting the foregoing, unless otherwise specifically provided in this Lease, in any instance where Landlord's consent or approval is required, the same may be withheld in Landlord's sole and absolute discretion and made subject to any conditions as Landlord, in its sole and absolute discretion, may impose.

Landlord will not be responsible or liable to Tenant or to those claiming by, through, or under Tenant for any loss or damage to either the person or property of Tenant or those claiming through Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Premises.

Landlord will not be responsible or liable to Tenant or persons claiming through Tenant for any defect, latent or otherwise, in the Building, the Property, the Premises, inside or outside common areas or any of the systems, equipment, machinery, utilities, appliances, structures or apparatus therein, nor will it be responsible or liable for any injury, loss, or damage to any person or to any property of Tenant or persons claiming through Tenant caused by or resulting from bursting, breakage, or by or from leakage, steam or snow or ice, running, backing up, seepage, or the overflow of water or sewerage in any part of said Premises, common areas or the Building or for any injury or damage caused by or resulting from any defect or act or omission in the occupancy, construction, operation or use of any of said Premises, Building, machinery, apparatus, or equipment by any person or by or from the acts of negligence of any occupant of the Premises unless caused by the willful misconduct of Landlord, its employees or agents or the failure of the Landlord to perform its obligations under this Lease or to perform any obligation imposed by applicable law.

Landlord will not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment fixtures or other personal property of Tenant or to Tenant's business, unless caused by the willful misconduct of Landlord, its employees or agents.

Tenant will give prompt notice to Landlord in case of fire or accidents in the Premises or in the Building of which the Premises are a part or of defects therein or in any fixtures or equipment.

In the event of any claim made or suit filed against Landlord with respect to which Tenant is obligated to indemnify Landlord, Landlord will give Tenant prompt written notice thereof. Tenant will have the right to defend or settle the same, with the reasonable consent of the Landlord. Counsel for Tenant is subject to the reasonable approval of Landlord. Landlord and its counsel may participate in the defense of such action to the extent determined by Landlord in its sole discretion. In the event Tenant will fail to hold Landlord harmless from all losses and liabilities as contemplated above, or in the event Tenant does not defend within ten (10) days from notice, Landlord may defend the same.

#### **SECTION 16. Accord and Satisfaction.**

(a) No payment by Tenant or receipt by Landlord of a less amount than the monthly rent, Operating Expense or other fee, charge or penalty in this Lease is deemed to be other than on account of the earliest rent, charge or other fee due, nor will an endorsement or statement on any check or any

letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy. Partial payment will only be construed as an accord and satisfaction if specifically set forth and so designated in a separate instrument signed by Landlord.

(b) In the event this Lease requires Tenant to submit payments monthly for items other than the rent and in the event Tenant submits a payment of less than the total combined amount of all said payments, then Landlord will have the option to credit said payment towards any of said items it so desires, notwithstanding any specifications of Tenant.

**SECTION 17. No Encumbrances by Landlord.**

Landlord represents to, and agrees with, Tenant that: (a) the Premises are presently unencumbered by any mortgage or other lien or any other third party interest of any kind, including but not limited to lien, right to purchase or lease, or other property interest or right; (b) the Premises shall remain so unencumbered throughout the Lease Term.

**SECTION 18. Estoppel Certificates.**

Either party, upon written request of the other, will furnish to the other party, a statement duly executed and acknowledged, to any mortgagee or purchaser, or any other person or entity specified in such request as to: (a) Whether this Lease has been amended and the substance of such amendment; (b) the validity and force and effect of this Lease; (c) the existence of any default hereunder; (d) the existence of any offsets, counterclaims or defenses on the part of the party executing the certification; and (e) any other matters as may reasonably be so requested.

This statement must be furnished within ten (10) days after receipt of the request and the contents are binding upon the party executing the certification.

**SECTION 19. Surrender of Premises; Holding Over.**

(a) At the expiration of this Lease, Tenant will surrender the Premises and peacefully deliver same in the same condition as it was in upon delivery of possession under this Lease, reasonable wear and tear excepted, and will deliver all keys and combinations to locks to Landlord. Before surrendering the Premises, Tenant will remove all personal property including all trade fixtures, and will repair any damage, reasonable wear and tear excepted. Tenant's obligation to perform this provision will survive the termination of this Lease at any date. If Tenant fails to remove its property upon the expiration of this Lease, Landlord may, among other remedies, cause such property to be removed and disposed of with the costs of such removal and disposal to be borne by the Tenant.

(b) Any holding over after the expiration of this Lease or any renewal term will be a tenancy at will, and shall, except for Rent, Operating Expenses and any additional rent or supplemental charges and term, otherwise be on the terms in this Lease so far as is applicable; provided, however, Rent shall be equal to the then current Rent times two unless otherwise agreed in

advance. Operating Expenses, any additional rent and supplemental charges will be determined by Landlord, but in no event will rent be less than the then current Minimum Base Rent. Tenant is liable to the end of the month of any month in which it is holding over.

(c) Tenant will defend and hold Landlord harmless from and against any and all losses, claims and damages (including reasonable attorneys' fees and costs) from failure to surrender the Premises upon the expiration or termination of this Lease, including without limitation, claims made by any succeeding Tenant.

(d) The obligations in this Section will survive the expiration or termination of this Lease.

#### **SECTION 20. Successors and Assigns.**

All rights and liabilities in this Lease given to, or imposed upon, the respective parties will extend to and bind the executors, administrators, successors and assigns of the said parties subject to the covenants and provisions of this Lease, and if there is more than one Tenant, they will all be bound jointly and severally by the terms, covenants and agreements in this Lease. No rights, however, will inure to the benefit of any assignee of Tenant unless Landlord has in each case approved the assignment in writing, as provided in this Lease.

#### **SECTION 21. Assignment, Subletting.**

Except as set forth below, without the prior written consent of Landlord, which may be withheld in the sole discretion of Landlord, neither Tenant nor Tenant's legal representatives or successor(s) in interest will assign, pledge, encumber, mortgage or otherwise transfer (any such action to "assign" or an "assignment") this Lease, by operation of law or otherwise, or sublet the whole or any part of the Premises, or permit the Premises to be used by any other than Tenant, except for a "Permitted Assignment." A Permitted Assignment shall mean an assignment in connection with the sale or disposition of Burlington Telecom and its assets via an arms-length transaction as set forth in an agreement and approved by the Public Service Board of the State of Vermont. Any consent by Landlord to any other act of assignment or subletting applies only to the specific transaction authorized. Such consent will not be construed as a waiver of the duty of Tenant, or the legal representatives or assigns of Tenant, to obtain from Landlord consent to any other or subsequent assignment or subletting, or as modifying or limiting the rights of Landlord under the foregoing covenant by Tenant not to assign or sublet without such consent. No other such assignment will be binding unless and until the assignee or subtenant will deliver to Landlord a fully executed duplicate original of this Lease.

Landlord consents to the sub-leasing of the Leased Premises to the City of Burlington d/b/a Burlington Telecom for the use of the facilities for the operation of the Burlington Telecom System, and to the sub-subleasing by the City of Burlington of a portion of the Premises for use as office space.

Any purported assignment in violation of this Section is voidable at Landlord's election. Any purported assignment or attempted assignment in violation of this Section will constitute an Event of Default for which no notice nor grace period need be given.

Tenant is and remains fully liable for all of Tenant's obligations under this Lease notwithstanding any permitted assignment or sublet of all or a portion of the Premises. Any violation of any provision of this Lease, whether by act or omission, by any assignee, sublessee or undertenant or occupant, is deemed a violation of such provision by Tenant, it being the intention and meaning of the parties that Tenant will assume and be liable, jointly and severally, to Landlord for any and all acts and omissions of any and all assignees, sublessees, undertenants or occupants of Tenant.

If this Lease be assigned, Landlord may and is empowered to collect Minimum Base Rent, Operating Expenses, additional rent and any and all other charges, fees or penalties of any nature as provided in this Lease for payment by Tenant from the assignee. If the Premises or any part thereof be underlet or occupied by any person other than Tenant, Landlord, in the event of Tenant's default, may, and is empowered to, collect rent from the undertenant or occupant; in either of such events Landlord will apply the net amount received by it to the rent in this Lease reserved, but no such collection is deemed a waiver of the covenant in this Lease against assignment and underletting, or the acceptance of the assignee, under Tenant or occupant as Tenant, or a release of Tenant from the further performance of the covenants in this Lease contained on the part of Tenant.

#### **SECTION 22. Non-Waiver.**

(a) No agreement to accept a surrender of the Premises prior to the expiration of the Term is valid unless in writing and signed by an authorized representative of Landlord. The delivery of keys by or on behalf of Tenant for any part of the Premises to any employee of Landlord or to Landlord's agent or any employee of such agent will not operate as a termination of this Lease or as a surrender of the Premises.

(b) The failure of Landlord to seek redress for violation of, or to insist on the strict performance of, any covenant of this Lease or any of the rules and regulations in effect from time to time, whether by express waiver or otherwise, will not prevent a subsequent action, which would have originally constituted a violation, from having all the force and effect of any original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease will not be deemed a waiver of such breach. The failure of Landlord to enforce any of the rules and regulations against Tenant or any other tenant in the Property will not be deemed a waiver of any such rule or regulation.

(c) Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval will not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

**SECTION 23. Joint and Several Liability.**

In the event that two or more individuals, corporations, partnerships or other business associations (or any combination of two or more) will sign this Lease as Tenant or guarantee this Lease as guarantors, the liability of each such individual, corporation, partnership or other business association to pay rent and perform all other obligations hereunder is deemed to be joint and several. In the event that Tenant named in this Lease is a partnership or other business association, the members of which are by virtue of statute or common law subject to personal liability, then and in that event the liability of each such member is deemed to be joint and several.

**SECTION 24. Severability.**

It is the intention of the parties that if any provision of this Lease is capable of two constructions, one of which would render the provision valid, then the provision will have the meaning that renders it valid. If any term or provision of this Lease will to any extent be invalid or unenforceable, the remainder of this Lease will not be affected, and each such remaining term and provision of this Lease shall be and remain valid and will be enforced to the fullest extent permitted by law.

**SECTION 25. [Reserved].**

**SECTION 26. Entire Agreement, Applicable Law.**

This Lease with any attachments hereto contains the entire agreement of the parties with respect to the subject matter hereof, and no representations, inducements, promises or agreements not embodied in this Lease are of any force or effect, unless the same are in writing and signed by or on behalf of the party to be charged. No amendment or modification of this Lease is valid or binding unless in a writing signed on or behalf of the party to be charged. This Lease is governed by and interpreted in accordance with the laws of the State of Vermont.

**SECTION 27. Captions.**

The captions and numbers appearing in this Lease are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any section or paragraph, nor in any way affect this Lease.

**SECTION 28. Notices.**

Any notice required to be given by the terms of this Lease is deemed duly served if sent by certified mail, return receipt requested, as to Landlord and Tenant as provided in Attachment A.

**SECTION 29. Waiver of Jury Trial, Counterclaim.**

In the event Landlord will commence any summary proceedings or action for non-payment of rent or other fees or charges hereunder, Tenant will not interpose any counterclaim of any nature or

description in such proceeding or action, but will advance any claim which it may have in an independent proceeding unless otherwise a compulsory pleading. The parties waive a trial by jury.

**SECTION 30. Relationship of Parties.**

Nothing contained in this Lease is deemed or construed to create any relationship between the parties other than landlord and tenant.

**SECTION 31. No Broker.**

Each of the Tenant and the Landlord represent and warrant to the other that it has not dealt with any broker in connection with the Property, the Premises or this Lease and each of the Tenant and the Landlord hereby agrees to indemnify and hold the other harmless from and against any liability for commissions due any broker because of any dealings it has had with any broker in connection with this Lease.

**SECTION 32. Option to Purchase Upon Default or Non Appropriation.**

Landlord hereby grants to Tenant the exclusive and irrevocable option (the "\$100 Option") to purchase the Property and Building for \$100.00, to be exercised, if at all, within 90 days after the occurrence of any of the following events (each, a "Triggering Event"):

(a) an Event of Default as defined in the Lease Agreement for the Telecom System entered into by and between the Tenant, as lessor, and Landlord, as lessee, dated \_\_\_\_\_, 2014 (the "Telecom Lease");

(b) an Event of Non-Appropriation under the Telecom Lease;

(c) the Landlord enters into a contract for the sale or other disposition of the Telecom System, as authorized by the Burlington Telecom Management and Sale Agreement between Landlord and Tenant, dated \_\_\_\_\_, 2014 (the "Management & Sale Agreement"), and the contract purchase price is less than \$6,000,000.00; or

(d) the Tenant enters into a contract for the sale or other disposition of the Telecom System, as authorized by the Management & Sale Agreement, and the contract purchase price is less than \$6,000,000.00.

The date upon which Tenant chooses to exercise this \$100 Option following the above described events shall be known as the "Exercise Date."

Tenant shall exercise the \$100 Option, if at all, after a Triggering Event by (a) delivering to Landlord written notice of such exercise, or (b) by mailing such notice by registered or certified mail to Landlord at its above-stated mailing address. In the event this \$100 Option is not exercised within 90 days of the occurrence of a Triggering Event, all rights, duties and obligations of the parties with respect to the \$100 Option shall terminate.

The \$100 Option shall be effective from the date this Lease is signed by both parties until the earliest to occur of the following: (a) the closing of any subsequent sale of the Telecom System, by either Landlord or Tenant to a qualified buyer for an amount greater than \$6,000,000; (b) exercise by the Tenant of its FMV Option to purchase the Property and Building for Fair Market Value pursuant to Section 33, below; or (c) expiration of the Lease Term and any Renewal Terms.

Within ninety (90) days after the Exercise Date, the conveyance contemplated herein shall be closed by the delivery of deeds and other instruments and the closing shall take place at the offices of the City in Burlington Vermont, or other such mutually agreeable location within Burlington, Vermont. The title to the Property and Building to be transferred and conveyed shall be of good clear record and marketable title in fee simple and such as title company selected by the Tenant will so insure at regular rates and be free and clear of all tenancies, liens, encroachments and encumbrances created by the Landlord, excepting (1) any defects in title or encumbrances of record existing as of the date of the Lease, (2) the sub-tenancy of the Landlord under any sub-tenancy agreement relating to its operation of Burlington Telecom, (3) any existing tenancy to any third-party to any part of the Building or Property other than that used by the Telecom System, (4) real estate taxes not yet due and payable, (5) encumbrances arising by or through the Tenant, and (6) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property similar in character to the Property and Building, are not for borrowed money, and as do not materially interfere with, or impair the use or value of, the property affected thereby. The Vermont Property Transfer Tax, if applicable, shall be borne by the purchaser.

During the period of time the \$100 Option is in effect, the Landlord shall not sell, convey or transfer the Property.

### **SECTION 33. Option to Purchase At Fair Market Value.**

The Landlord hereby grants to the Tenant the exclusive and irrevocable option during the term of this Lease to purchase the Property and Building at a price equal to their Fair Market Value (the "FMV Option"), such option to be exercised, if at all, any time prior to the 90<sup>th</sup> day prior to the expiration of the Lease Term.

In order to exercise the FMV Option, the Tenant shall provide an irrevocable written notice to the Landlord of its election, which notice shall be received not less than 90 days prior to the end of the Lease Term. In the event the FMV Option is not exercised on or before said date, the FMV Option shall terminate, and all rights, duties and obligations of all parties with respect hereto shall cease.

The purchase price for the Property and Building shall be the Fair Market Value, determined as follows:

If Landlord and Tenant are not able to mutually agree on a fair market value or on a single appraiser whose appraisal they both agree to accept within 20 days of receiving the Tenant's notice, the Landlord and the Tenant shall each select one qualified MAI appraiser or appraisal firm. Each appraiser or appraisal firm shall be duly licensed in the State of Vermont. The parties shall seek to

mutually agree on a third appraiser or appraisal firm. In the event the parties are unable to agree within 60 days of the exercise of the FMV Option, the two appraisal firms selected shall select the third firm. The costs of such firms shall be borne individually by the party selecting the firm and the costs of the third appraisal firm shared equally.

Each of the three appraisers or appraisal firms shall form their professional opinion as to the fair market value of the Property and Building. The highest value and the lowest value shall both be disregarded and the value in the middle shall be deemed the "Fair Market Value."

The title to the Property and Building to be transferred and conveyed shall be of good clear record and marketable title in fee simple, and such title company selected by the Tenant will so insure at regular rates and be free and clear of all tenancies, liens, encroachments and encumbrances created by the Landlord, excepting (1) any defects in title or encumbrances of record existing as of the date of the Lease, (2) the sub-tenancy of the Landlord under any sub-tenancy agreement relating to its operations of Burlington Telecom, (3) any existing tenancy to any third-party to any part of the Building or Property other than that used by the Telecom System, (4) real estate taxes not yet due and payable, (5) encumbrances arising by or through the Tenant, and (6) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property similar in character to the Property and Building, are not for borrowed money, and as do not materially interfere with, or impair the use or value of, the property affected thereby.

If the title to all or part of the Property or Building is unmarketable, the Landlord shall have a reasonable time, not to exceed 90 days after written notice thereof, within which to remedy any such defect, or to obtain title insurance against the same.

Within sixty days after the determination of Fair Market Value, extended by such time, if any, as is necessary to cure defects, etc., the purchase and sale contemplated herein shall be closed by the Tenant paying to the Landlord the Fair Market Value and by the Landlord executing and delivering to the Tenant a transferable and recordable warranty deed that conveys title in the manner set forth above. The Vermont Property Transfer Tax, if applicable, shall be borne by the purchaser.

#### **Section 34. Memorandum of Lease for Recording:**

Neither party may record this Lease. On or before the Commencement Date, the parties agree to record a Memorandum of Lease in the form of Attachment C hereto.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement, as of the date first above-written.

IN PRESENCE OF:

CITY OF BURLINGTON, VERMONT,  
as Landlord

By: \_\_\_\_\_  
Duly Authorized Agent

\_\_\_\_\_  
Witness

[SPV],  
as Tenant

By: \_\_\_\_\_  
Duly Authorized Agent

\_\_\_\_\_  
Witness

STATE OF VERMONT  
CHITTENDEN COUNTY, VT.

At \_\_\_\_\_, in said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2014 personally appeared \_\_\_\_\_ duly authorized agent of the City of Burlington, and he/she acknowledged the foregoing instrument, by him/her sealed and subscribed, to be his/her free act and deed in such capacity, and the free act and deed of the City of Burlington.

Before me, \_\_\_\_\_  
Notary Public

STATE OF VERMONT  
CHITTENDEN COUNTY, VT.

At \_\_\_\_\_, in said County and State, this \_\_\_\_ day of \_\_\_\_\_, 2014, personally appeared \_\_\_\_\_, duly authorized agent of [SPV] and he/she acknowledged the foregoing instrument, by him/her sealed and subscribed, to be his/her free act and deed, and the free act and deed of [SPV].

Before me, \_\_\_\_\_  
Notary Public

ATTACHMENT A  
TO  
LEASE AGREEMENT  
BETWEEN

City of Burlington  
149 Church Street  
Burlington, VT 05401

and

[SPE]  
c/o Lake Champlain Transportation Company  
King Street Dock  
Burlington, VT 05401

dated: \_\_\_\_\_, 2014

TENANT: [SPE] (“Tenant”)

LANDLORD: City of Burlington (“Landlord”)

DESCRIPTION OF LEASED PREMISES: 200 Church Street, Burlington, Vermont. See Attachment B to the Lease for a more particular description of the Premises.

LEASE TERM: [Five years] ending (\_\_\_\_ date\_\_\_\_) (“Initial Term”)

OPTION TO RENEW: Two (2) renewal periods of Five (5) years each

NOTIFICATION TO RENEW: Tenant shall notify Landlord of its irrevocable exercise of the first renewal option on or before one hundred eight (180) days prior to the end of the Initial Term. If Tenant exercises the first renewal option, Tenant shall notify Landlord of its irrevocable exercise of the second renewal option on or before one hundred eight (180) days prior to the end of the renewal term

MINIMUM BASE RENT: During such time as the City of Burlington, d/b/a/ Burlington Telecom, is the sub-tenant under a sub-lease from the Tenant (the “BT Subtenant”), and the Premises are not subject to any property tax, the rental payments due shall be an amount calculated as a contribution to the Landlord in lieu of taxes in the form of a cash payment in an amount equaling the amount of money which would be received by the Landlord in *ad valorem* real estate taxes and personal property taxes equal to the assessed value of the Property multiplied by current fiscal year educational and municipal tax rates as determined by the Landlord.

During such time as the City of Burlington, d/b/a/ Burlington Telecom, is the sub-tenant under a sub-lease from the Tenant, the rental payments and payment of Operating Expenses shall be made to the Landlord by the sub-tenant and shall not be the responsibility of the Tenant.

Upon (i) termination of the sublease between Tenant and the BT Subtenant, or (ii) a change in ownership of, or an exercise of control by a third party over, Burlington Telecom, the base rent shall equal \$120,000 per year, payable in twelve (12) equal monthly installments in advance on the first day of each calendar month included in the Term commencing with the Commencement Date.

In the event that Tenant intends to exercise an option to renew granted hereunder, Tenant shall give the Landlord written notice of Tenant's intent to exercise said option to extend the term of the Lease as provided in Section 2(b) hereof at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration of the then current term. Rent for the extended term shall be that amount then due at the expiration of the Initial Term, increased by an amount equal to the percentage increase in the CPI-U as defined herein for the preceding twelve-month period, but in no event shall such increase exceed five percent (5%) for the preceding twelve-month period.

For these purposes, the CPI-U is defined to be the "Consumer Price Index – All Urban Consumers – Northeast Region –Population Size Class C (50,000 – 500,000), All Items (1982 – 1984 equals 100, hereinafter called the 'Index')," published by the Bureau of Labor Statistics, United States Department of Labor. In the event that the Department of Labor ceases to publish the Index during the extended term or any renewal thereof, Landlord shall select an alternative index and shall so notify Tenant. Said alternative index shall use comparable statistics on the purchasing power of the consumer dollar, including the same or comparable region and population.

SECURITY DEPOSIT: During such time as the City of Burlington, d/b/a/ Burlington Telecom, is the sub-tenant under a sub-lease from the Tenant: \$ \_\_\_\_\_;  
Otherwise \$ \_\_\_\_\_

TENANT'S USE OF PREMISES: any lawfully permitted use, including but not limited to providing telecommunications services.

ATTACHMENT B  
TO  
LEASE AGREEMENT  
BETWEEN

City of Burlington  
149 Church Street  
Burlington, VT 05401

and

[SPE]  
c/o Lake Champlain Transportation Company  
King Street Dock  
Burlington, VT 05401

dated: \_\_\_\_\_, 2014

Legal Description of the Premises

ATTACHMENT A  
TO  
LEASE AGREEMENT  
BETWEEN

City of Burlington  
149 Church Street  
Burlington, VT 05401

and

[SPE]  
c/o Lake Champlain Transportation Company  
King Street Dock  
Burlington, VT 05401

dated: \_\_\_\_\_, 2014

Form of Memorandum of Lease