

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”), is made as of the _____ day of _____, _____ (“Effective Date”), by and between **THE CITY OF BURLINGTON**, a Vermont municipality located in Chittenden County (“Landlord”) and Queen City Kambucha (“Tenant”). Landlord and Tenant are at times hereinafter collectively referred to as “the Parties” or individuals as a “Party.”

Landlord is the owner of certain real property improved with a commercial building (“Building”) known and numbered as 3060 Williston Road, South Burlington, Vermont (the real property and the Building are collectively referred to herein as “Property”). Tenant wishes to lease from Landlord, and Landlord wishes to lease to Tenant, a portion of Property, more specifically described as _____, under and in accordance with the following conditions.

Now, therefore, in consideration of the rents, covenants, and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged and agreed, Landlord and Tenant covenant, warrant, and agree as follows:

1. Lease of Premises. Landlord hereby leases and rents to Tenant, and Tenant hereby takes from Landlord, the following described premises (“Premises”): _____ measuring ± _____ gross square feet of space located on the _____ floor; together with _____; and also together with the right of Tenant, its agents, invitees, licensees, business visitors, and guests, in common with Landlord and the other tenant of Property: (a) to cross and re-cross the driveways, parking lots and walkways on Property for the purpose of ingress and egress from and to Premises; (b) to use parking spaces on Property that have not been allocated to other tenants of Building on a first come, first served basis; and (c) to use the common signage for Property and Building, subject to the requirements of applicable laws and ordinances and the specific provisions of Section 15. Tenant shall not have the right to use the roof, electrical closets, janitorial closets, mechanical rooms, telephone rooms, or any other non-common or non-public area of Building and Property, or otherwise encumber the sidewalks, entrances, passages, vestibules, stairways, corridors or halls in Building and on Property.

2. Term of Lease. Lease shall be effective as of Effective Date and terminate one (1) year later on _____. Tenant may, with Landlord’s prior written approval, which shall not be unreasonably withheld, enter into up to two one-year extensions provided that Tenant is not in default of any terms and conditions of Lease. Notice must be received by Landlord at least 60 days in advance of the Lease termination date. Rent, as further described in section 6, shall increase by 3% with each extension. All other terms and conditions of Lease shall continue to apply unless amended in writing.

3. Use of Premises. Tenant may use Premises for _____, and for no other purpose without Landlord’s prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall, at its expense, obtain and maintain all federal, state and municipal permits and approvals necessary for Tenant to use Premises for such purposes, and shall be required to comply with all conditions of such permits and approvals that relate to its ongoing use and operation of Premises. Tenant will operate Premises in a manner consistent with the character and quality of Building. Tenant shall keep Premises in a neat, clean and safe condition.

4. Parking. Landlord shall provide and maintain _____ unreserved, self-park parking, spaces directly in front of Premises for the exclusive use of Tenant’s employees and invitees.

5. Security Deposit. Tenant shall, on or before Effective Date, pay to Landlord a security deposit in the amount of One Thousand Dollars (\$1,000.00) to be held by Landlord in a separate interest-bearing account as security for the faithful performance of Lease by Tenant. Landlord may use the security deposit to pay for any costs upon default by Tenant under any terms of Lease. Except as provided herein, the security deposit shall be returned to Tenant within thirty (30) days of Tenant vacating Premises. **THIS**

DEPOSIT MAY NOT BE USED BY TENANT FOR PAYMENT OF ANY RENTS, SUMS OR OTHER CHARGES UNDER THIS LEASE. Upon vacating Premises, Tenant shall leave Premises “broom clean” and in the same condition as when accepted, reasonable wear and tear excepted. If Premises is not left in such condition, reasonable charges for repairs and/or cleaning may be withheld from the security deposit upon completion of such repairs or cleaning, or upon obtaining an estimate of the cost of such repairs or cleaning, whichever shall first occur. Should the charges or costs of repairs or cleaning exceed the Tenant’s security deposit, Tenant hereby agrees to pay all excess amounts reasonably incurred for such repairs or cleaning. Landlord shall be permitted to retain any part or all of the security deposit for any unpaid rent, sums or other charges required to be paid to Landlord by Tenant under Lease.

6. Rent. Throughout the first term of Lease Tenant shall pay an annual rent of ten thousand dollars (\$10,000), payable as eight hundred and thirty-three dollars and thirty-three cents (\$833.33) per month (“Rent”). Tenant shall, on or before Effective Date, pay a pro-rated rent in the amount of \$ _____ (for the remainder of _____) to Landlord (“First Month Rent”). Commencing the first day of the month after Effective Date, Tenant shall pay to Rent on or before the first day of the month. First Month Rent and Rent shall be due at the address specified in Section 29, or at such other location as Landlord may hereafter designate in writing. Except as otherwise expressly provided in Lease, any and all rent and other sums payable under Lease (“Additional Rent”) shall be paid without notice, demand, counterclaim, set off, deduction, or defense and without abatement, suspension, diminution, or reduction, and the obligations and liabilities of Tenant under Lease shall in no way be released, discharged or otherwise affected by reason of any occurrence whatsoever. A 3% per month penalty shall accrue on Rent and Additional Rent owed after 30 days.

7. No Waiver; No Accord and Satisfaction. The waiver by Landlord of a breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or of any subsequent breach of the same or any other term, covenant or condition. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant. No covenant, term or condition of Lease shall be deemed to have been waived or modified by Landlord, unless such waiver or modification is in writing and executed on behalf of Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such rent or pursue any other remedy provided in Lease.

8. Termination; Removal and Restoration. On the expiration date or earlier termination of Term, Tenant shall immediately vacate Premises and surrender the same to Landlord, and remove all of its personal property, equipment and trade improvements and fixtures from Premises and Property, pursuant to Section 16, and leave premises in “broom clean” condition.

9. Maintenance and Utilities. Tenant shall be responsible for all utilities (telephone, sewage, storm water, trash removal, janitorial services, water, electric, heat, gas, air conditioning, etc.) and must, prior to Effective Date, have all utilities placed in Tenant’s name. Tenant shall operate and maintain Premises and each and every part thereof at its own cost and expense and in good condition, order and repair. In the event Tenant fails to comply with the requirements of this section, then landlord reserves the right to fulfill Tenant’s obligations and all costs incurred by Landlord in connection therewith shall immediately be paid by Tenant to Landlord as Additional Rent. Landlord shall not be responsible for the failure of water supply, gas, heat, power, electric current, telephone or any other service, or for any damage to property occasioned by the breakage, leakage or obstruction of any pipes or other leakage in or about Premises, unless caused by the gross negligence or willful misconduct of Landlord, its employees, agents or contractors. Landlord shall be responsible for all structural maintenance, including plowing and maintaining the parking lot, and significant repairs to Premises or Property.

10. Taxes. Landlord shall be responsible for all taxes due on Property. Tenant shall be responsible for all personal property taxes assessed against any personal property (including leasehold improvements) of Tenant located in Premises or on Property.

11. Indemnity and Insurance.

- (a) Tenant shall, from and after Effective Date, defend, indemnify and hold harmless Landlord, its officers and employees, from and against all loss, liability, damages, claims, proceedings, costs (including costs of defense and reasonable attorney's and professional's fees incurred in defense or incurred in enforcement of this indemnity), expenses, demands, suits and causes of action (all of the foregoing collectively referred to as "Liabilities") arising out of or in connection with (i) damage to Premises or Property, or death or injury to any person sustained on or about Premises or Property, or arising (directly or indirectly) out of or in connection with Tenant's possession, use, occupation or control of Premises, (ii) damage to any property or death or injury to any person anywhere occasioned, or claimed to have been occasioned, by any willful misconduct or any negligent act or omission of Tenant, its agents, employees, licensees or contractors, and (iii) any breach or default of Lease by Tenant, its agents, employees, licensees or contractors, except to the extent such damage, death, injury or Liabilities are caused by or arise from the willful misconduct or negligence of Landlord.
- (b) Insurance Certificates. Unless waived in writing by Landlord, Tenant shall procure the insurance coverages identified below at Tenant's own expense and furnish Landlord with an insurance certificate listing Landlord as the certificate holder. The insurance certificate must provide the following:
- Name and address of authorized agent.
 - Name and address of insured.
 - Name of insurance company(ies).
 - Description of policies, including coverage type and amounts.
 - Policy Number(s).
 - Policy Period(s).
 - Limits of liability.
 - Name and address of Landlord as certificate holder.
 - Signature of authorized agent.
 - Telephone number of authorized agent.
 - Mandatory notice in accordance with the policy provisions in the event of cancellation/non-renewal.
 - Landlord designated as additional insured under all policies with the exception of professional liability and workers' compensation.

Landlord may require certified copies of any insurance policies entered into by Tenant, and Tenant is responsible for annually verifying and confirming in writing to Landlord that all sub-contractors, agents, operators or workers meet the minimum coverage and limits plus maintain current certificates of coverage, and that all work activities related to Lease shall meet minimum coverage and limits, with any sub-contractors, agents, operators or workers complying with the same insurance requirements as Tenant.

- (c) Policy Provisions. Each of the insurance coverages required below (i) shall be issued by a company licensed by the State of Vermont to transact the business of insurance in the State of Vermont for the applicable line of insurance, and (ii) shall be an insurer with a Best Policyholders Rating of "A-/VIII" or better by the latest *Best Insurance Report*, or has an analogous rating from a comparable rating service approved by Landlord. Each such policy shall contain the following provisions:
- (i) All certificates shall contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed or not renewed without at least thirty (30) days written prior notice to Landlord, or fifteen (15) days for non-payment; and

- (ii) The policies shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives, and shall contain a clause to the effect that such policies and the coverage evidenced thereby shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance. In no event shall the limits of said policies be considered as limiting the liability of Tenant under Lease.
- (d) Insurance Coverages. During the Term, Tenant agrees to purchase and maintain the following types of insurance coverages, consistent with the policies and requirements of the City of Burlington, and provide evidence of continuing coverage to Landlord. Under no circumstances shall Tenant's liability be limited to the amount of insurance carried. Any changes to insurance are at the sole expense of Tenant. Limits of insurance required at the commencement of Term are as follows:
- i. Workers' Compensation. Tenant agrees to provide Workers' Compensation coverage in accordance with the statutory limits as established by the State of Vermont and with a minimum limit for employer's liability no lower than \$500,000/accident (bodily injury by accident) and \$500,000/employee (bodily injury by disease).
 - ii. Employers' Liability Insurance. Tenant shall also maintain Employers' Liability Insurance Coverage with limits of at least:

Bodily Injury by Accident	-	\$1,000,000 each accident; and
Bodily Injury by Disease	-	\$1,000,000 each employee.
 - iii. Commercial General Liability Insurance. Tenant shall provide Commercial General Liability Insurance naming Landlord as additional insured which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, personal injury and advertising liability, contractual liability, fire legal liability, blasting and explosion, collapse of structures and underground damage liability. The Commercial General Liability Insurance shall provide at minimum limits of \$2,000,000 per occurrence, \$2,000,000 aggregate.
 - iv. Commercial Business Automobile Liability Insurance. Tenant shall provide Commercial Business Automobile Liability Insurance naming Landlord as additional insured, which shall include coverage for bodily injury and property damage liability arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each accident.
 - v. Commercial Umbrella Liability Insurance. Tenant shall provide a Commercial Umbrella Liability Insurance Policy to provide excess coverage above the Commercial General Liability, the Commercial Business Automobile Liability, and Employers' Liability on a follow form basis in addition to the minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits stated above shall be \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- (e) Landlord will insure Building against loss by fire and other casualty in such amounts as Landlord may consider reasonable by policies which shall include standard extended coverage endorsements. Tenant shall be responsible for maintaining any and all insurance upon Tenant's property in and upon Premises and Property, by policies that shall name Landlord as an additional insured, as Landlord's interests may appear, and Landlord shall not

be held responsible for any damage thereto. Neither Tenant nor Landlord, nor their respective agents, employees or guests, shall be liable to the others for any loss or damage to Premises or Property by fire or any other cause within the scope of such fire and extended coverage insurance, it being understood that provided any such damage is covered by existing insurance policies, the Parties shall look solely to the insurer for reimbursement for such loss or damage; provided, however, that this provision shall not release Tenant from liability for any damage cause by Tenant that exceeds such insurance coverage or which is not reimbursable by Landlord's insurer.

- (f) **Waiver of Subrogation.** Each of Landlord and Tenant hereby releases the other and their officers, directors, shareholders, agents and employees from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property caused by any of the perils which are insured against under standard policies of fire and casualty insurance (including extended coverage), even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. This provision shall be deemed suspended during any period of time when insurance companies will not issue insurance policies for properties with such a provision in Lease.
- (g) Neither Landlord nor Tenant shall be liable to the other for any business interruption or any loss or damage to property or injury to or death of persons occurring on Premises or adjoining property, or in any manner growing out of or connected with Tenant's use of Premises, whether or not caused by the negligence or other fault of Landlord or Tenant or of their respective agents, employees, subtenants, licensees or assigns. This release shall apply only to the extent that such business interruption, loss or damage to property, or injury to or death of persons is covered by insurance, regardless of whether such insurance is payable to or protects Landlord or Tenant or both. Nothing in this paragraph shall be construed to impose any other or greater liability upon either Landlord or Tenant than would have existed in the absence of this paragraph. This release shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this release shall not affect the right of the insured to recover under such policies. Such clauses shall be obtained by the Parties whenever possible.
- (h) **Termination of Obligation to Insure.** Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein continues throughout Term and shall not terminate until Lease has expired or been terminated, and right to occupy Premises returned to Landlord.

12. Quiet Enjoyment. Upon payment of Rent by Tenant, and upon the observance and performance of all of the agreements, covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy Premises for Term without hindrance or interruption by Landlord or Landlord's agents.

13. Termination.

- (a) Lease may be terminated if any one or more of the following events (hereinafter called "Events of Default") shall occur:
 - i. If default shall be made in the due and punctual payment of any installment of Rent, when and as the same shall become due and payable, and such default shall continue for a period of ten (10) business days after written notice thereof from Landlord; provided, however, that once Landlord has given Tenant two (2) such notices during any twelve (12) month period, Landlord shall not be required to give further written notice, and thereafter the failure by Tenant to pay any installment of rent, when and as the same shall become due and payable, which failure continues for a period of ten (10) business days, shall be an Event of Default without further notice; or

- ii. If default shall be made by Tenant in the performance or compliance with any other provisions of Lease and such default shall continue for a period of thirty (30) days after written notice from Landlord to Tenant specifying the items in default, or in case of a default or contingency which cannot with due diligence be cured within said thirty (30) day period, Tenant fails to proceed within said thirty (30) day period to commence to cure the same and thereafter to prosecute the curing of such default with due diligence (it being understood that the time of Tenant within which to cure shall be extended for such period as may be necessary to complete the same with all due diligence).

Then and in any such event Landlord, at any time thereafter, may give written notice to Tenant specifying such Event of Default or Events of Default and stating that Lease and such Term shall expire and terminate on the date specified in such notice which shall be at least thirty (30) days after the giving of such notice, and upon the date specified in such notice Lease and all rights of Tenant under Lease shall terminate.

- (b) Upon any such expiration or termination of Lease, Tenant shall quit and peacefully surrender the same to Landlord in the same condition as received, reasonable wear and tear excepted, and shall remove all of Tenant's effects therefrom, and Landlord may forthwith reenter Premises and repossess itself thereof (including, without limitation, by changing the locks to Premises) and remove all persons and effects therefrom using such force as may be necessary, and Tenant agrees that such actions shall not constitute, and Tenant further agrees that it shall not claim that such actions constitute, trespass, forcible entry, breach of the peace, detainer or any other tort or violation of any applicable law or statute. At Landlord's option, any goods and effects not so removed shall be deemed abandoned by Tenant and thereupon shall become the sole property of Landlord. In the event Tenant fails to so vacate and surrender Premises, Tenant shall pay all costs reasonably incurred by Landlord in requiring Tenant to vacate, including reasonable attorney's fees and disbursements and, further, will pay Landlord a daily occupancy charge equal to one hundred and twenty-five percent (125%) of Rent pro-rated by thirty (30) days until Tenant vacates Premises as provided in the terms of Lease. Tenant expressly agrees that, for so long as any Event of Default shall exist and be continuing, Landlord shall have the right to immediately regain possession of Premises and to exclude Tenant from further use, occupancy and enjoyment thereof, and Tenant waives any and all claims which it may have against Landlord, regardless of when the same arise, on account of such regaining of possession by Landlord or such exclusion. In the event Tenant shall fail or refuse to vacate Premises without breach of the peace after termination, Landlord may obtain a court order for the payment of rent into court in accordance with the terms of 12 V.S.A. § 4853a. Landlord shall also have all rights and remedies as may be available under applicable law at the time of the occurrence of the Event of Default. In all instances where Landlord takes action to enforce the terms of Lease, Tenant shall be liable to Landlord for all attorney's fees and other costs incurred and Landlord may bring such actions for damages or equitable relief to which Landlord may be entitled under applicable law or at equity.
- (c) Landlord shall also be entitled to the following once Premises are vacated by Tenant after the termination of Lease in an Event of Default or Events of Default: (i) all Rent that shall have been due prior to such vacating plus (ii) all Rent that, but for such termination, would have come due during the remainder of Term less Rent that Landlord shall receive during such period from others to whom Premises are rented. All money owed under (ii) shall come due and payable in monthly installments, in advance, on the first day of each calendar month following termination of Lease and continuing until the date on which Term would have expired, but for such termination, provided, however, that in the event Tenant fails to pay such installments as and when due then the entire amount of such installments shall become immediately due and payable in full, discounted to present value, at the option of Landlord.
- (d) Lease may not be terminated by Tenant, and Landlord may only terminate Lease in an Event of Default.

14. Holding Over. If Tenant remains in possession of Premise,s or any part thereof, after expiration of Term or after the termination of Lease for default, no extension of Lease shall result therefrom unless Landlord agrees in writing to such possession and Landlord and Tenant agree in writing to the terms and conditions of such extension. If Landlord shall not consent to Tenant remaining in possession of Premises or any part thereof after the expiration of Term, or after the termination of Lease for default, or if Landlord and Tenant cannot agree in writing to the terms and conditions of an extension then Tenant shall be a tenant at will for the period from the date of expiration of Term or the termination of Lease for default until the day Tenant surrenders possession of Premises, and Tenant hereby agrees that such tenancy at will shall be upon all the same terms, conditions, and covenants of Lease, except that Rent shall be doubled. This section shall not be construed as giving Tenant any right to hold over after any such expiration or termination. In addition, Tenant agrees to pay Landlord's attorney's fees and related costs if Landlord must take legal action to evict or eject Tenant who is holding over or to collect the holdover amount as set forth in this section.

15. Signs. Tenant shall not install or display any sign, logo or advertising medium on the outside of Premises, Building, or on any portion of Property unless Landlord shall have given its prior written consent to the sign, display or advertising medium, which consent shall not be unreasonably withheld or delayed, and Tenant shall have obtained from all government authorities and agencies with or claiming jurisdiction over Premises all necessary permits and approvals for the proposed sign, display or advertising medium.

16. Alterations. Tenant shall not make or permit any alterations to be made to Premises or Property without the express written permission of Landlord, and Tenant shall present to Landlord a formal written request—including a timeline, plans and specifications for such work—at the time approval is sought. Landlord may take up to 60 days to review and approve any formal requests for alterations and may not unreasonably withhold permission to make such requested alterations. It is Tenant's sole obligation to ensure that any necessary permits are attained prior to commencing alteration work and that any contractors or subcontractors doing work at Premises and/or Property are properly insured, as more fully described in section 11. All trade improvements and fixtures installed by Tenant shall be new or completely reconditioned. All alterations or improvements or alterations made by Tenant shall, unless otherwise agreed in writing, become the property of Landlord at the expiration of Term; provided however that Tenant shall be allowed to remove all trade improvements and fixtures, excluding fully built-in or attached systems, owned and installed by Tenant, provided that removal of said trade improvements or fixtures will do no damage to Premises or Property, or Tenant fully repairs same at removal.

17. Repairs and Replacements. Tenant has inspected and is familiar with the condition of Premises and Property, and Tenant shall take and accept the same "as is" and "with all faults," with no further representation or warranties of any kind (except as otherwise explicitly provided herein) with respect to the quality of Premises and Property or the suitability of Premises or Property for Tenant's intended use.

- (a) **Landlord's Responsibilities.** Landlord shall be responsible for maintaining and repairing the exterior and structural components of Building, and for maintaining in a reasonable state of repair the parking lot and grounds of Property outside Building, and shall maintain and repair any and all mechanical systems or devices serving Building as may be reasonably required to place, keep and maintain the same in good order and state of repair including, without limitation, the heating, ventilating and air conditioning systems, and the electrical and plumbing systems.
- (b) **Tenant's Responsibilities.** Tenant shall be responsible for making all maintenance, repairs and replacements to the interior portion of Premises. Tenant shall, at its own expense, keep and maintain Premises and every part thereof in good order and repair, and in a clean and sanitary condition at all times. Tenant shall remove, store and dispose of all trash and litter in a manner that does not attract pests to Property and does not pollute the soil or stormwater runoff at Property. Tenant agrees to maintain a minimum temperature of at least 55 degrees Fahrenheit within Premises at all times to insure that the mechanical systems servicing Premises are functioning properly. Tenant covenants and agrees to be responsible for any and

all repairs caused by Tenant's failure to properly maintain the temperature in Premises. Landlord will have the right to cause its agents to inspect Premises in a reasonable manner upon reasonable notice, and at all reasonable times to assure that Tenant is complying with its duties to repair, replace and maintain under this section. Any defect or deficiency is Tenant's responsibility as specified herein. Unless the same is corrected and remedied forthwith by Tenant, Landlord shall have the right to correct and remedy the same, at Tenant's expense, and the costs of doing so shall immediately be paid by Tenant to Landlord as Additional Rent.

18. Tenant to Comply with Laws. Tenant shall, at its own cost and expense, comply with any and all laws, statutes, ordinances, rules, regulations, permits and approvals affecting Premises and its use thereof. Tenant shall further so comply with each and every rule, order and requirement of any federal, state, municipal, legislative, executive, judicial, or other governmental body, commissioner or officer or of any bureau or department thereof, whether now existing or hereafter created, having jurisdiction over Premises or any part thereof, or exercising any power relative thereto or to the owners, tenants or occupants thereof. This includes, but is not limited to, compliance with the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008 (and the regulations promulgated thereunder) applicable to the use or occupancy of Premises; and any state, local or federal laws or rules on food (including food byproduct) safety, production and disposal. The foregoing obligation of Tenant shall not however permit Tenant to make, without Landlord's prior written approval, any Alterations to Premises or Property, and Tenant shall comply with all of the requirements of Lease in making any such Alterations.

19. Loud Noises and Noxious Odors. Tenant warrants that there will be no loud noises, or noxious or other odors emanating from Premises.

20. Recording Lease. This lease shall not be recorded. However, the Parties expressly agree to, at the request of either Party, execute a short-form notice of Lease complying with the terms of 27 V.S.A. § 341(c) which may be recorded by either Landlord or Tenant.

21. Environmental Covenants.

- (a) "Hazardous Material" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of Vermont or the United States, including without limitation, any material or substance that is (i) defined or listed as a hazardous waste, extremely hazardous waste, restricted hazardous waste, hazardous substance or hazardous material under any Applicable Law, (ii) petroleum, petroleum by-products, PCB, toxic, noxious or radioactive substances, methane volatile hydrocarbons or industrial solvents, or (iii) asbestos.
- (b) "Applicable Law" or "Applicable Laws" means any and all federal, state and local laws, statutes, codes, rules, regulations, orders, conditions or ordinances imposed or established by any governmental entity, agency or division or any court of competent jurisdiction relative or otherwise applicable to the zoning, environmental condition, construction, leasing or use of Property, Building or Premises now or hereafter promulgated affecting Property, Building or Premises, and those governing the use, clean-up, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of food waste, food production byproduct, or Hazardous Materials including without limitation: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.) as amended by the Superfund Amendments and Reauthorization Act; (ii) the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. § 6691 et seq.); (iii) the Hazardous Materials Transportation Act (42 U.S.C. § 5101 et seq.); (iv) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); (v) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); and (vi) any amendments to (i)–(v) and any regulations adopted and publications promulgated pursuant thereto, or any other similar federal, state, or local environmental laws, ordinances, rules, or regulations whether now or hereafter enacted.

- (c) Tenant hereby agrees that all operations or activities upon, or any use or occupancy of Premises by Tenant, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively "Tenant Affiliates"), throughout Term, shall be in all respects in compliance with all Applicable Laws then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Materials.
- (d) Tenant shall not cause or permit any Hazardous Materials to be generated, used, released, stored, or disposed of in or about Premises, Building, or Property; provided, however, Tenant may use and store reasonable quantities of cleaning and office supplies and other similar materials as may be reasonably necessary for Tenant to conduct normal business operations in Premises. Tenant shall indemnify and hold Landlord, its employees, and agents, harmless from and against any damage, injury, loss, liability, charge, demand, or claim based on or arising out of the presence or removal of, of failure to remove, Hazardous Materials generated, used, released, stored or disposed of by Tenant or any Tenant Affiliate in or about Premises, Building or Property, whether before or after Effective Date.
- (e) In the event Tenant or Tenant Affiliates fail to comply with any Applicable Laws or other requirements regarding protection of the environment, public health, or safety, Tenant further agrees to indemnify, defend and hold Landlord harmless from any and all claims, actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses, including reasonable attorney's fees and expenses, consultant fees, and expert fees together with all other costs and expenses of any kind or nature that arise during or after Term, directly or indirectly, from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Materials in or into the air, soil, surface water or groundwater at, on, about, under or within Property.
- (f) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively "Remedial Work") is required under any Applicable Law, by any judicial order, or by any governmental entity as the result of operations or activities upon, or any use or occupancy of any portion of Property by Tenant or Tenant Affiliates, then, at Landlord's option, either Tenant shall perform or cause to be performed the Remedial Work in compliance with such Applicable Law or Landlord may cause Remedial Work to be performed and Tenant shall reimburse Landlord within ten (10) days of demand therefor. All Remedial Work performed by Tenant shall be performed by one or more contractors, selected by Tenant and approved in advance in writing by Landlord, and under the supervision of a consulting engineer selected by Tenant and approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant, including, without limitation, the charges of such contractor(s), the consulting engineer, and Landlord's reasonable attorney's fees and costs incurred in connection with monitoring or reviewing such Remedial Work. Nothing in the paragraph shall affect any of Landlord's rights (or Tenant's obligations) pursuant to other provisions of Lease.

22. No Waiver; No Accord and Satisfaction. The failure of Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions and agreements of Lease, or to exercise any option herein conferred, shall not be considered as waiving or relinquishing for the future any such terms, covenants or conditions, agreements or options, but the same shall continue and shall remain in full force and effect; and the subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant. No covenant, term or condition of Lease shall be deemed to have been waived or modified by Landlord, unless such waiver or modification is in writing and executed on behalf of Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check

or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in Lease.

23. Landlord's Right of Access. Landlord or Landlord's agents shall have the right to enter Premises in a reasonable manner during normal business hours to examine the same, to show them to prospective mortgagees or purchasers and, within the last six months of Term, to show them to prospective lessees. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligations, responsibility or liability whatsoever, for the care, supervision or repair of Premises or any part thereof, other than as herein expressly provided.

24. Mortgages. At the option of Landlord, Lease shall be subordinate to any mortgage or other security interest by Landlord which from time to time may encumber all or part of Property so long as Landlord's lender shall agree in writing in a form reasonably acceptable to Tenant that such lender will not disturb Tenant's possession and rights under Lease so long as Tenant remains in compliance with Lease.

25. Estoppel Certificate. Each Party shall, within thirty (30) business days after request by the other Party, execute and deliver to the requesting Party, or the party designated by the requesting Party, a statement certifying (i) that Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the modified Lease is in full force and effect); (ii) whether, to the responding Party's knowledge, either Party is in default in performance of any of its obligations under Lease, and, if so, specifying each default; and (iii) any other information reasonably requested concerning Lease.

26. Assignment and Subletting. Neither Tenant nor Tenant's legal representatives or successors in interest shall assign Lease, by operation of law or otherwise, or sublet the whole or any part of Premises without the prior written consent of Landlord. If Landlord consents to an assignment or sublet the Tenant shall be released from its primary obligation to Landlord, but all indemnities intended herein to survive, shall survive.

27. Damages or Destruction. In the event that Premises shall be destroyed or damaged by fire, flood, lightning, wind storm, ice storm, terrorist act, or any similar occurrence or peril beyond Landlord's control, the following terms and conditions shall apply:

- (a) If any portion of Property affecting Tenant's use of Premises is damaged by fire or other casualty, Tenant shall give Landlord written notice of such casualty promptly after Tenant becomes aware of such casualty. If, in the reasonable opinion of Tenant, the damage or destruction renders the remainder of Premises unsuitable for the conduct of Tenant's business for the purposes set forth in Section 3, Tenant may give written notice to that effect to Landlord, whereupon Tenant may, at its election, terminate Lease. If Tenant elects not to terminate Lease, then, within thirty (30) days after Tenant gives Landlord written notice of such casualty or Landlord otherwise becomes aware of such casualty, Landlord shall reasonably estimate, and give Tenant written notice of the time, commencing the date of notice, that Landlord anticipates will be reasonably required to perform the restoration work ("Restoration Period"). If Restoration Period is one hundred eighty (180) days or longer then either Party may terminate Lease by giving written notice to the other Party within ten (10) days after Landlord gives written notice of Restoration Period. Such notice of termination shall be effective on the date thereof, and if Tenant is then occupying Premises, Tenant shall thereafter have a reasonable period of time in which to vacate Premises. If neither Party terminates Lease then Landlord shall, with reasonable dispatch, repair or rebuild so much of Premises and/or Building to substantially their condition prior to the casualty (subject, however, to applicable laws then in existence), and Tenant shall concurrently (to the extent practical and consistent with good construction practices (i) repair and restore so much of Premises as were constructed by Tenant or are the responsibility of Tenant under Lease and (ii) repair and restore its fixtures and personal property.
- (b) If, pursuant to the forgoing, Landlord is required to restore Premises and/or Building and Landlord fails to substantially complete such restoration by sixty (60) days after Restoration

or to such other person, address or number as the Party entitled to such notice or communication shall have specified by notice to the other Party and given in accordance with the provisions of this section. Any such notice or other communication shall be deemed given: (i) if mailed, three days after being deposited in the mail, properly addressed and with postage prepaid; (ii) if sent by courier, the next day after being deposited with the courier, properly addressed and with postage prepaid; (iii) if sent by facsimile, when transmission has been electronically confirmed; and (iv) if sent by email, when transmitted, provided that the sender does not receive an automated delivery failure or “out of office” message.

30. Dispute Resolution.

- (a) Landlord shall make the Director of Aviation available to meet with Tenant within a reasonable time from Tenant’s request to discuss any issues relating to Lease, Premises or Property and Tenant shall make _____ available to meet with Landlord within a reasonable time from Landlord’s request to discuss any issues relating to Lease, Premises or Property, and each Party shall take such action as necessary to address any issues within a reasonable time;
- (b) Either party may enforce Lease in any court of competent jurisdiction under the laws of the State of Vermont.
- (c) Landlord and Tenant waive the right to a trial by jury in any action or proceeding based upon, or related to, the subject matter of Lease. This waiver is knowingly, intentionally, and voluntarily made by the Parties, and the Parties acknowledge that neither Party nor any person acting on behalf of either Party has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Tenant and Landlord further each acknowledge that it has been represented (or has had the opportunity to be represented) in the signing of Lease and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel. Tenant and Landlord further acknowledge that each have read and understand the meaning and ramifications of this waiver provision.

31. Miscellaneous.

- (a) Lease, including the recitals and all exhibits attached hereto, constitutes the entire agreement and understanding of the Parties with respect to the subject matter of Lease, and supersedes all offers, negotiations and any other written or verbal agreements; and any amendment to Lease must be in writing and executed by the Parties to be bound by it.
- (b) During Term, Tenant shall, at its own cost and expense, promptly observe and comply with all present or future, foreseen or unforeseen, laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, county, and municipal governments and of all other governmental authorities affecting Property or appurtenances thereto or any part thereof whether the same are in force at Effective Date or may in the future be passed, enacted or directed. Tenant shall further so comply with each and every rule, order and requirement of any federal, state, municipal, legislative, executive, judicial or other governmental body, commissioner or officer or of any bureau or department thereof, whether now existing or hereafter created, having jurisdiction over Property or any part thereof, or exercising any power relative thereto or to the owners, tenants or occupants thereof including compliance with all regulations and permits for Premises. Tenant shall maintain Premises in conformity with all municipal, state and federal land use permits and approvals governing Premises or Property at any time.
- (c) Any and all records submitted to Landlord, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of Landlord. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified, as shall all other records considered to be exempt under the Act. It is not

sufficient to merely state generally that a document or record is proprietary, a trade secret, or otherwise exempt. Particular records, pages or sections that are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

- (d) If any term of Lease is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from Lease, and the other provisions of Lease shall remain in full force and effect.
- (e) The section headings of Lease have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of Lease.
- (f) Lease has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, Lease shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Landlord or Tenant.
- (g) Each Party acknowledges that neither Party has provided any legal advice to the other regarding the transaction contemplated hereby or in connection with the execution of Lease or any ancillary documents hereto, and each of Landlord and Tenant has had the full opportunity to avail itself of legal and financial representation.
- (h) Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (i) Lease may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.
- (j) Lease is made solely and specifically between and for the benefit of the Parties hereto, and their respective successors and assigns, subject to the express provisions hereof relating to successors and assigns, and except as otherwise expressly set forth herein, no other person, individual, corporation or entity, whatsoever, shall have any rights, interests or claims hereunder or be entitled to any benefits under or on account of Lease as a third party beneficiary or otherwise.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant, as evidenced by the signatures of their duly authorized agents, do hereby execute this Lease Agreement as of the date first set forth above.

IN PRESENCE OF:

LANDLORD

City of Burlington

By: _____
Name:
Title:

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

On this ____ day of _____, _____, personally appeared _____ Authorized Agent of the City of Burlington, to me known to be the person who executed the foregoing instrument, and _____ acknowledged this instrument by _____ signed and sealed, to be _____ free act and deed and the free act and deed of the City of Burlington.

Before me, _____
Notary Public
My commission expires: 2/10/19

TENANT

By: _____
Name:
Title:

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

On this ____ day of _____, _____, personally appeared _____ Authorized Agent of _____, to me known to be the person who executed the foregoing instrument, and _____ acknowledged this instrument by _____ signed and sealed, to be _____ free act and deed and the free act and deed of _____.

Before me, _____
Notary Public
My commission expires: 2/10/19