

## **LICENSE AGREEMENT**

THIS AGREEMENT is made by and between the Church Street Marketplace District Commission, a body organized and existing under the Burlington City Charter (herein referred to as COMMISSION) and the Information Gallery Incorporation (herein referred to as INFORMATION).

WHEREAS, INFORMATION provides information and directions for people visiting the Marketplace and the COMMISSION wishes to retain INFORMATION'S service to the public as part of the Marketplace, and

WHEREAS, INFORMATION provides its own movable facility (herein referred to as KIOSK) which must be complementary in appearance and operation to the Church Street Marketplace; and

WHEREAS, City Charter Sec. 324 authorizes the COMMISSION to lease space in the Marketplace subject to the approval of the Burlington City Council;

NOW, THEREFORE, the parties have agreed to the following terms and conditions of this License Agreement:

1. INFORMATION will locate its KIOSK in the Cherry to Bank Street Block of the Marketplace, between Banana Republic (56 Church Street) and Whim (62 Church Street) centered to the walkway to the parking garage, outside the pedestrian right-of-way and ten (10) feet east of the center strip as shown on the plan attached hereto as Exhibit A from, May 1 through December 30.

2. INFORMATION will use this KIOSK to distribute advertising in addition to providing information and directions. Under no circumstance will shopping malls and strip malls outside the City of Burlington be advertised. INFORMATION agrees to provide a space for and distribute at no charge the promotional brochure for the Church Street Marketplace. INFORMATION may use this kiosk to sell merchandise. Merchandise must be approved in advance by the COMMISSION.

3. For the rights granted pursuant to this Agreement, to begin May 1, 2012 through April 30, 2017, INFORMATION shall pay the COMMISSION One Thousand, Seven Hundred Ninety Two (\$1,792.00) Dollars per year on or before the first of MAY. This payment shall be increased 2% annually, beginning with the period May 1, 2013 through April 30, 2017. At this time electricity will be provided at no additional cost. During the term of this Agreement, if and when capital improvements are planned for this block, the electric fee may no longer be included in the Agreement fee, at the sole discretion of the COMMISSION. Annual payments are as follows and reflect the 2% increase.

2013-2014: \$1,828.00

2014-2015: \$1,865.00

2015-2016: \$1,902.00

2016-1017: \$1,940.00

4. INFORMATION will be responsible for all federal, state and local taxes, assessments and governmental charges incurred in connection with the operation of their business and this Agreement. No other charges or fees shall be imposed by the Commission other than those described in this Agreement.

5. Nonpayment of any amount due on or before the first of MAY will subject this Agreement to automatic revocation and the KIOSK must be removed from the Marketplace by MAY 10<sup>th</sup>.

6. The COMMISSION grants Information the right to use the above mentioned location for a term of five (5) years, commencing May 1, 2012 and terminating on April 30, 2017, or sooner as provided herein.

7. If INFORMATION desires to extend the period of this lease, it shall give written notice of such desire to the COMMISSION one hundred ninety (190) days in advance of expiration of this Agreement. INFORMATION shall have the right, if in compliance with the terms and conditions set forth herein, to renew this License Agreement for a term of five (5) years, subject to agreement between INFORMATION and the COMMISSION on the terms and conditions of such renewal.

8. The COMMISSION grants INFORMATION the right to terminate this Agreement any time, provided INFORMATION shall give written notice of such termination to the COMMISSION ninety (90) days in advance of the termination date as set forth in said notice. The COMMISSION will not refund any portion of the prepaid fee.

9. INFORMATION must maintain its KIOSK in a manner which, in the sole discretion of the COMMISSION, befits the appearance of the Church Street Marketplace.

10. Annually during this Agreement INFORMATION will have the KIOSK inspected in May to assure compliance with COMMISSION'S aesthetic quality.

11. If INFORMATION fails to perform maintenance or repairs to its KIOSK deemed appropriate by the COMMISSION for more than fourteen (14) days after written notice thereof, the COMMISSION may terminate this Agreement as set forth in Paragraphs 29 and 30.

12. INFORMATION shall submit detailed plans and specifications to the COMMISSION for any alterations or improvements to the KIOSK, prior to commencing improvements. No change, other than routine maintenance, shall be made without the written consent of the COMMISSION

13. INFORMATION shall staff the KIOSK seven days per week (Monday through Sunday) beginning the weekend of UVM graduation (approximately the third weekend in May) through the second weekend in November.

14. INFORMATION will not locate the KIOSK on the Marketplace after December 30 or before May 1, unless both parties have agreed in advance.

15. INFORMATION is responsible for all trash removal and will not use Marketplace litter receptacles for disposal.

16. INFORMATION will at all times operate the business in an orderly manner. INFORMATION shall not, with intent to cause public inconvenience or annoyance, engage in fighting or in violent, tumultuous behavior, make unreasonable noise, use abusive or obscene language, make an obscene gesture, obstruct vehicular or pedestrian traffic, or engage in any conduct which is proscribed by Chapter 19 of Title 13 of the Vermont Statutes Annotated.

17. INFORMATION shall not, during the term hereof, on the premises maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable city ordinance, state or federal statute, or controlling bylaw, regulation or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

18. INFORMATION shall maintain in effect throughout the term of this Agreement comprehensive general public liability insurance with responsible insurance underwriters, qualified to transact business in the State of Vermont, naming the COMMISSION and City of Burlington as an additional insured-loss payee and insuring against all legal liability for injuries to persons (including wrongful death) suffered on or about the KIOSK, the affected public right-of-way or as a result of the exercise of rights granted pursuant to this Agreement, in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate.

INFORMATION shall furnish the COMMISSION with a certificate of such insurance upon execution of this Agreement. Such proof of insurance shall be attached to this Agreement as Exhibit B and shall provide that the Commission and the City of Burlington is an additional insured-loss payee under said policy and that policy cannot be canceled or materially modified except upon thirty (30) days' advance written notice to the COMMISSION.

19. INFORMATION shall indemnify, defend and hold the COMMISSION and City of Burlington harmless against all liability, loss, cost, damage or expense sustained by the COMMISSION and/or the City, including attorney's fees and other expenses of litigation arising from the use and operation of the KIOSK in this location.

20. INFORMATION understands that no property rights are created by the maintenance of the KIOSK in this location, other than as specifically defined and limited by this Agreement.

21. INFORMATION understands that if and when capital improvements are scheduled for the Cherry to Bank Street block of the Marketplace that the KIOSK may need to be moved and/or removed to facilitate the capital improvements at the sole discretion of the

COMMISSION and this Agreement may be terminated pursuant to Paragraphs 8 and 30. In the event the COMMISSION decides to construct a permanent kiosk, on the day requests for proposals are officially announced to the public, the COMMISSION shall provide direct notice of the request for proposals to construct and/or staff the permanent kiosk to INFORMATION.

22. INFORMATION will not place anything on the ground around the KIOSK other than a chair for its employee.

23. INFORMATION understands that no animals of any kind may be kept at the KIOSK.

24. INFORMATION will keep the area surrounding the KIOSK clear of trash, debris, snow or ice for a distance of four (4) feet.

25. INFORMATION understands that no exposed inventory stock at or near the KIOSK is allowed.

26. INFORMATION will not use a motor vehicle on the pedestrian portions of the Marketplace at hours other than 7:00 to 10:00 a.m.

27. INFORMATION will not use parking meters, utility poles, trees, or property other than the KIOSK to advertise in any manner.

28. INFORMATION shall not sell or assign its rights pursuant to this Agreement, or permit the use of the premises or any part thereof by any other entity without the express prior written consent of the Commission. Any unauthorized action in violation of this provision shall be void, and shall terminate, at the COMMISSION'S option, INFORMATION'S rights pursuant to this Agreement.

29. DEFAULT

a. This Agreement is made on the express condition that If INFORMATION shall default in the performance of any terms and conditions of this Agreement and the default shall continue for forty-eight (48) hours after written notice of any default in meeting its obligations hereunder is given by the COMMISSION to INFORMATION, then the COMMISSION shall have the option to declare this Agreement ended and to require action as described in Paragraph 30 below. In the event that the COMMISSION gives written notice of its option to declare this Agreement ended, INFORMATION shall cease commercial use of the premises immediately upon receipt of such written notice.

b. In the event the COMMISSION terminates the rights of INFORMATION pursuant to this Agreement for default in the performance of any terms and conditions of this Agreement, then INFORMATION shall be responsible to reimburse the COMMISSION for all of the COMMISSION'S costs including the removal and other costs described above, attorney's fees, litigation fees, sheriff's fees, etc., arising from the COMMISSION'S availing itself of its rights pursuant to this Agreement.

c. Failure of the COMMISSION to declare any default immediately upon occurrence thereof, or delay in taking action in connection therewith, shall not waive such default, but the COMMISSION shall have the right to declare any such default(s) at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

30. TERMINATION OF AGREEMENT. INFORMATION shall at its own expense remove all elements of the premises on December 30 during the term of this agreement and immediately upon expiration or sooner termination of this Agreement. If INFORMATION fails to remove all elements of premises on December 30 each year during the term of this Agreement and immediately upon expiration or sooner termination of this Agreement, the COMMISSION may, at its sole option, take possession and ownership of any elements remaining on the public right-of-way and INFORMATION shall pay to the COMMISSION the cost(s) of their removal and storage, if applicable, plus fifteen percent (15%) payable to the COMMISSION on demand.

AGREED to at Burlington, Vermont this \_\_\_\_ day of May, 2012.

CHURCH STREET MARKETPLACE  
DISTRICT COMMISSION

\_\_\_\_\_ By: \_\_\_\_\_  
Ron Redmond, Executive Director

AGREED to at Burlington, Vermont this \_\_\_\_ day of May, 2012.

INFORMATION GALLERY  
INCORPORATED

\_\_\_\_\_ By: \_\_\_\_\_  
Brant Dinkin, Owner

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Councilors \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_; Bd. of Finance

CHURCH STREET MARKETPLACE DISTRICT COMMISSION--  
AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT  
WITH INFORMATION GALLERY, INC.

In the year Two Thousand Twelve.....

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, the Church Street Marketplace District Commission wishes to provide information and directions for people visiting the Marketplace; and

WHEREAS, Information Gallery, Inc. wishes to provide such service to the Commission; and

WHEREAS, on December 18, 2007 the Church Street Marketplace Commission and Information Gallery, Inc. entered into a five (5) year License Agreement pursuant to which Information Gallery provided a movable kiosk on Church Street from which it distributed advertising, information and directions to people visiting the Marketplace; and

WHEREAS the Church Street Marketplace Commission and Information Gallery, Inc. seek to renew said License Agreement for an additional five (5) years;

NOW, THEREFORE, BE IT RESOLVED that Ron Redmond, Executive Director of the Church Street Marketplace District Commission, is hereby authorized to execute a License Agreement with Information Gallery, Inc., pursuant to which Information Gallery shall provide a movable kiosk from which to distribute advertising, information and directions and sell merchandise subject to the approval of the Church Street Marketplace District Commission, from May 1 through December 30 each year, retroactive to May 1, 2007, for a term of five years, with an initial license fee of \$1,792.00 per year, increasing 2% per year, per the terms and conditions of the Agreement attached hereto, subject to prior review by the City Attorney.