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2 **Resolution Relating to**

**RESOLUTION \_\_\_\_\_**

Sponsor(s): Councilors Shannon,  
Knodell - Board of Finance

Introduced: \_\_\_\_\_

Referred to: \_\_\_\_\_

Action: \_\_\_\_\_

Date: \_\_\_\_\_

Signed by Mayor: \_\_\_\_\_

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6 AUTHORIZATION TO LEASE  
7 THE ELIHU B. TAFT SCHOOL  
8 TO THE UNIVERSITY OF VERMONT  
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12 **CITY OF BURLINGTON**

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14 In the year Two Thousand Fourteen.....  
15 Resolved by the Burlington City Council, as follows:

16  
17 WHEREAS, the Burlington School District (“BSD”) is concerned that the annual and deferred  
18 maintenance costs of maintaining the Elihu B. Taft School exceed the value of the building’s  
19 current use; and

20  
21 WHEREAS, BSD has been engaged in discussions with the University of Vermont (“UVM”)  
22 regarding the long-term lease of the Elihu B. Taft School, located at 14 South Williams Street,  
23 Burlington, Vermont (“Taft”) for educational purposes; and

24  
25 WHEREAS, BSD and UVM have negotiated a long term lease of Taft, subject to approval by  
26 this Council, for an initial term of eighty (80) years with an optional renewal term of an  
27 additional eighty (80) years in exchange for an upfront payment by UVM to BSD of 1.6 million  
28 dollars for the initial term and one dollar per year for the additional eighty year renewal term,  
29 with other conditions and requirements (“Lease”); and

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31 WHEREAS, BSD and UVM have agreed to make the Lease contingent upon approval by the  
32 Vermont Judiciary in a proceeding to be initiated jointly by BSD and UVM, if this Council  
33 approves the Lease, where the Lease will be reviewed pursuant to the requirements and  
34 conditions of the Last Will and Testament of Elihu B. Taft, the individual who bequeathed the  
35 Taft property to the City of Burlington, as determined in Chittenden County Superior Court  
36 Docket No. S1504-06 CnC; and

37  
38 WHEREAS, the Burlington Board of School Commissioners and BSD Administration have  
39 determined that this transaction is in the best interest of BSD and the City; and

40  
41 WHEREAS, although Taft has been designated to the care and custody of the Burlington Board  
42 of School Commissioners (“Board”), it is owned by the City of Burlington (“City”); and

43  
44 WHEREAS, pursuant to Burlington City Charter, Article 22, Section 55, the City Council “shall  
45 have the exclusive power to authorize sale or lease of any real or personal estate belonging to  
46 said city, and all conveyances, grants or leases of any such real estate shall be signed by the  
47 mayor and sealed with the city seal;” and

48  
49 WHEREAS, at its meeting on March 6, 2014, the Burlington Board of School Commissioners  
50 authorized, by public vote, a request to the City Council for approval of the Lease; and  
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\* \* \* \* \*

ORIGINAL

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

RESOLUTION RELATING TO  
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.....

**Adopted by the City Council**

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

**Attest:**

Vol. .... Page .....

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**Resolution Relating to**

AUTHORIZATION TO LEASE  
THE ELIHU B. TAFT SCHOOL  
TO THE UNIVERSITY OF VERMONT

WHEREAS, at its meeting on March 24, 2014, the Burlington City Council Board of Finance, by a three to one vote in favor, approved the Lease and authorized its consideration by the full City Council.

NOW THEREFORE, BE IT RESOLVED that BSD is hereby authorized to enter into the Lease according to the terms outlined above and in the attached draft lease agreement, subject to final approval of the Chief Administrative Officer, and contingent upon the approval of the Vermont Judiciary as discussed above; and

BE IT FURTHER RESOLVED that the Burlington Board of School Commissioners, or their designee, is hereby authorized to further negotiate the terms, as necessary, of the Lease, subject to review and approval of the City Attorney, the Board of Finance and the Chief Administrative Officer, as appropriate; and

BE IT FURTHER RESOLVED that the Mayor of the City of Burlington, Miro Weinberger, is hereby authorized, on behalf of the City, to execute any and all documents necessary to effect the Lease, subject to prior review and approval by the City Attorney and Chief Administrative Officer, as appropriate.

\* \* \* \* \*

**DISTRIBUTION:**

I hereby certify that this resolution has been sent to the following department(s) on

ORIGINAL

RESOLUTION RELATING TO

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Adopted by the City Council

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..... Clerk

Approved....., 20.....

..... Mayor

Vol. .... Page .....

**Attest:**

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LEASE

THIS LEASE is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Burlington, a Vermont municipal corporation with a primary place of business at 149 Church Street in the City of Burlington, County of Chittenden, State of Vermont (hereinafter called "Landlord"), and the University of Vermont and State Agricultural College, a non-profit 501(c)(3) educational corporation and an instrumentality of the State of Vermont with a primary place of business at 85 South Prospect Street in Burlington, Vermont (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, the Landlord is the owner of the land and the Elihu B. Taft School building located at 14 South Williams Street in the City of Burlington ("Premises"); and

WHEREAS, the Landlord acquired the 14 South Williams Street property and constructed the School via the bequest of Elihu B. Taft ("Will"); and

WHEREAS, the Will contains a restrictive covenant relating to the Premises stating that the "homestead premises and any building at any time standing thereon shall ... be kept or used by the City of Burlington for school purposes" ("Will Restrictions" or "Educational Purposes Restriction"); and

WHEREAS, in a Declaratory Judgment issued on September 18, 2008, the Chittenden Superior Court concluded that the City of Burlington may, consistent with the Will Restrictions, "lease the property, with all funds generated by such a lease going to the financial support and maintenance of the district's own schools, to any party who would then use the Premises primarily for school or other educational purposes"; and

WHEREAS, The Burlington School District and its governing body, the Burlington School Board, have determined that their educational purposes can be best served by leasing the Premises on a long-term basis to the University of Vermont; and

WHEREAS, the University of Vermont has informed the Burlington School District that it intends to use the Premises primarily for educational purposes; and

WHEREAS, the University of Vermont and the Burlington School District are educational institutions and share academic purpose and have a history of collaboration with one another and will continue to do so in the future; and

WHEREAS, the parties wish to enter into a long-term lease for the University to lease the Premises from the City of Burlington pursuant to the terms and conditions set forth below.

NOW THEREFORE, for and in consideration of the Premises and of the mutual covenants and promises herein contained, the parties hereby covenant and agree as follows:

1) Demise, Description of Premises.

Landlord does hereby agree to demise, let, rent and lease unto Tenant, and Tenant hereby hires and rents from the Landlord, Landlord's building and land located at 14 South Williams Street in Burlington, Vermont, (the "Premises") and being approximately 45,184 gross square feet of space, as depicted on the Survey dated \_\_\_\_\_ and attached hereto as Exhibit A, and Floor Plans dated \_\_\_\_\_ and attached hereto as Exhibit B, including the parking areas depicted on Exhibit A.

2) Initial Term of Lease; Option to Extend.

Landlord and Tenant agree that they will be bound under the terms and conditions contained herein. The initial Term of the Lease is for eighty years from the Occupancy Date, unless sooner terminated or otherwise extended as herein provided.

Notwithstanding the foregoing, Tenant may have limited access to the Premises ninety days prior to the Occupancy Date to run utilities and perform fit up and other related work, etc. provided such work does not interfere with Landlord's use and occupancy of the Premises.

So long as Tenant is not in default when the Lease is renewing, the Lease shall automatically renew for an additional period of eighty years. If Tenant does not want to renew the Lease, then Tenant shall provide Landlord one year's notice of its intention to not renew the Lease (the "Notice to Terminate").

Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease at any time with twelve months prior written notice to Landlord. In the event Tenant exercises its right to terminate the Lease, then all obligations of Tenant shall cease as of the date the Lease terminates, however, upon termination by Tenant, Landlord shall be entitled to keep and not be required to return to Tenant any portion of the one-time lump sum payment of \$1,600,000 described below in Section 3(i).

Also notwithstanding the foregoing, Landlord shall have the right to terminate this Lease pursuant to Section 19, Default, and Section 31, Notices, if, pursuant to the terms and conditions outlined herein, Tenant ceases to utilize the Premises for educational purposes and thus, pursuant to the restrictions outlined in the Last Will and Testament of Elihu B. Taft, attached hereto as Exhibit C and recorded in Volume 115 at page 55 of the City of Burlington Land Records, places Landlord's right(s) of possession and/or ownership in jeopardy.

3) Base Rent.

During the Term, Tenant agrees to pay to Landlord, as follows:

- i) Base Rent at the rate of \$20,000 per year for the initial Term. Tenant shall pre-pay the annual Base Rent for the initial Term in a one-time lump sum payment of \$1,600,000 no later than thirty (30) days after the date the contingency outlined below in Section 4, Contingencies, is satisfied.
- ii) If the Lease is extended for an additional eighty years, then Tenant shall pay to Landlord Base Rent at the rate of \$1.00 per year no later than July 1 of each year of the Term.

4) Contingencies.

This Lease and all the provisions herein, including payment of rent, are contingent upon a Court Judgment declaring that this Lease, and all of its terms and conditions, are consistent with and permitted under the terms of the Will. Landlord and Tenant shall jointly participate in a request to the Chittenden County Superior Court to reopen Chittenden County Superior Court Civil Division Docket No. S1504-06 CNC, in order to address this Lease and all of its terms, or, in the alternative, initiate a new action to review the terms of this Lease. If a final Court Judgment is issued that is satisfactory to both Landlord and Tenant and declares that this Lease and all of its terms are permitted under the terms of the Will, this contingency is satisfied, and all the terms and conditions of this Lease shall then become effective. If a final Court Judgment is issued that declares that this Lease and its terms are not permitted under the Will, this Lease shall immediately become null and void.

5) Occupancy Date.

The Occupancy Date shall be the date that the Tenant physically occupies the Premises. Landlord shall vacate the Premises and the Premises shall be available for Tenant's occupancy no later than one year after the first June 30 that occurs after the contingency outlined above in Section 4, Contingencies, has been satisfied, unless the parties agree in writing to an earlier occupancy. Landlord shall send Tenant written notice at least sixty days prior to the date on which it will vacate the Premises and the date by which the Premises will be available for occupancy by the Tenant. The parties shall execute a written certificate acknowledging the agreed upon Occupancy Date within thirty days thereof. The condition of the Premises as of the Occupancy Date shall be as follows: 1) the Premises shall be in a condition that is immediately available for occupancy by Tenant; 2) all utilities shall be operable; 3) all walls, ceilings, floors, windows and trim shall be without significant damage; and 4) no structural component of the Premises shall require immediate substantive repair. Notwithstanding the foregoing, Tenant shall pay the Base Rent no later than thirty (30) days after the date the contingency outlined above in Section 4, Contingencies, is satisfied as set forth in Section 3, Base Rent, above.

6) Parking.

Included in this Lease is the parking area now in existence on the Premises ("Parking Area"). The Parking Area shall be used exclusively by Tenant, its invitees and guests as an accessory and in service to the educational use. The Parking Area, or any portion thereof, may not be subleased or rented to any entity not utilizing the Building on the Premises for educational use without the prior written consent of the Landlord which shall not be unreasonably withheld. Withholding of such consent shall be deemed reasonable if Landlord deems any such sublease violative of the Will.

7) Utilities.

The Tenant shall be solely responsible to pay for all Utilities serving the Premises, including, but not limited to, electricity, water, sewer and gas, etc.

8) Taxes.

After the Occupancy Date, the Tenant shall be responsible for ~~and~~ pay all future municipal, county, state or federal taxes assessed against the Premises and/or Tenant's leasehold interest or any fixtures, furnishings, equipment, stock-in-trade or other ~~personal~~ property of any kind owned, installed or used in or on the Premises. Tenant may challenge the lawfulness of any such assessment. Tenant is currently exempt from real estate taxes as set forth in 16 V.S.A. App. Section 1-15.

9) Use of the Property, Academic Cooperation and Condition of Premises.

Tenant shall use the Premises primarily for educational and for lawful purposes related thereto and in conformance with the Final Declaratory Judgment in a related case entitled In Re Estate of Elihu B. Taft, Docket No. S1504-06, CNC, dated September 18, 2008, which is attached as Exhibit D and in conformance with any judgment and/or decision issued in accordance with the contingency outlined in Section 4, Contingencies, of this Agreement. Tenant shall not use the Premises for any illegal purpose, or in violation of any valid regulation of any governmental body, nor in any manner to create nuisance or trespass.

In furtherance of both parties continued goal of academic cooperation, once Tenant determines the academic programs to be conducted within the Premises, the Tenant and the Landlord shall cooperate in good faith to establish a committee with two representatives appointed by each party, to explore integrated programs in which Tenant's University students might interact with Burlington School District students.

If Tenant uses the Premises in a manner that necessitates application for zoning or planning approval or compliance with other municipal, state or federal regulations, or installation of additional or new fixtures, systems or improvements at any time during the Term or any renewals thereof, Tenant will prosecute and bear the cost of such applications, installation and/or changes necessary to obtain compliance and approval and Landlord will cooperate and join in such proceedings as owner thereof but at Tenant's expense (including attorney's fees).

10) Representations and Warranties.

Each signatory to this Lease warrants and represents that he or she has been duly authorized to execute this Lease on behalf of the party, that all required notices, votes and actions were taken by the party to enter into this Lease, and that this Lease is a valid and binding obligation of the party.

11) Insurance.

The Tenant covenants to provide on or before the Occupancy Date and to keep enforced during the Term or any renewal term:

- (a) Pay for and maintain a policy or policies of commercial general liability insurance issued by companies licensed in Vermont, for third party claims or demands for bodily injury to or death of any person, and damage to or destruction or loss of property, which occur in or around the Premises or arise out of the operations of Tenant, such policies shall be in such amounts as the coverage maintained on comparable properties in Vermont, but in any event, in an amount not less than

\$5,000,000.00 for injury to or death of any one or more persons in any single accident, and not less than \$5,000,000.00 for damage to or destruction of property. Such policy or policies shall name Landlord as an additional insured. All liability coverage as provided by the Tenant shall be designated as "primary" and non-contributory. Tenant shall undertake an evaluation of such policies every five (5) years and shall modify the coverage amounts, if necessary, to be consistent with the coverage maintained on comparable properties in Vermont at that time but shall not reduce the coverage amounts below the minimum coverage amounts outlined above. Upon demand by Landlord, Tenant shall deliver a certificate annually evidencing that such insurance coverage is in full force and effect. Should any of the described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provision. Should Tenant's use and occupancy of the Premises make it prudent in the Landlord's reasonable judgment to require special insurance coverage, Landlord may notify Tenant of the additional insurance requirements and Tenant shall promptly obtain such policies.

(b) Tenant shall insure the Premises for loss, damage or destruction by fire and other casualty, including fire, vandalism, malicious mischief, flood, earth movement, sprinkler leakage and all other perils covered by an "all risk" policy for one hundred percent (100%) of full insurable replacements costs. Additionally, Tenant shall provide additional building coverage known as "ordinance or law" to provide for increase cost of construction related to required building code upgrades, demolition expenses and to compensate for the undamaged portion of the building in the event the damage warrants the destruction of the remaining structure. Such policy or policies shall name Landlord as a loss payee/mortgagee. Tenant shall deliver a certificate of insurance annually evidencing that such coverage is in full force and effect.

(c) To the extent permitted by such policies and without voiding the insurance provided thereby, the Landlord and Tenant hereby waive their rights of subrogation. This section shall not, however, in any manner limit the liability of the Tenant or the Landlord for damage to property or persons as a result of the negligence on the part of either party. Already providing a COI.

C) Tenant shall provide evidence of statutory workers' compensation insurance coverage and employers liability with minimum policy limits of \$500,000/\$500,000/\$500,000.

12) Repairs and Maintenance- Landlord's Obligations.

Except as stated elsewhere in the Lease, Landlord shall have no obligation for maintenance, repair or replacement of any portion of the Premises throughout the Term.

13) Force Majeure.

Throughout the Term, Landlord or Tenant shall not be required to perform any term, condition, or covenant in this Lease, so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, epidemics, cyclones, floods, drought, or by reason of war, declared or undeclared revolution, civil commotion or strife, acts of public enemies,

blockade or embargo, or by reason of any new law, proclamation, regulation, ordinance or demand by any government authority, and any other cause not reasonably within the control of Landlord or Tenant and which, by the exercise of due diligence, Landlord or Tenant is unable, wholly or in part, to prevent or overcome. In the event of a force majeure, Landlord shall not be required to reimburse Tenant for any portion of the up-front rent payment described above in Section 3 (i) or be required to reimburse Tenant for any fit-up costs or any other costs incurred by Tenant.

14) Quiet Enjoyment.

Landlord covenants that the Tenant upon paying the rent and complying with the provisions of this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term of this Lease.

15) Alterations, Improvements, and Additions.

No notice or approval of Alterations, Improvements and Additions is necessary throughout the Term. All built-in fixtures installed in the Premises by Tenant shall be removed by Tenant at the end of the Lease Term or automatically become the property of Landlord; Tenant shall also be entitled to remove the following from the Premises, which shall not be considered fixtures and shall remain at all times the personal property of Tenant: all furniture, fixtures, office machinery and equipment purchased and/or installed by Tenant but excluding those items already present on/at the Premises as of the Occupancy Date of the Lease Term and/or that equipment or systems necessary for the operation of the Building, including, but not limited to, all electrical, plumbing, fire and/or environmental safety equipment and all components of the heating and cooling systems. The removal of any fixtures by Tenant shall not, however, result in or cause any damage to the Premises that could affect its structural integrity or prevent the immediate reoccupation of the Premises by Landlord at the termination or expiration of this Lease. Any damage to the Premises resulting from or caused by the removal of any fixtures by Tenant shall be immediately and completely repaired and restored by Tenant at Tenant's cost to a condition befitting and/or consistent with the character, style and craftsmanship of the building and Premises. If Tenant fails to repair/restore any damage caused by the removal of fixtures prior to the date this Lease or any extension thereof is terminated or expired, Landlord shall have the right to either repair said damage or cause said damage to be repaired by a contractor of its choosing and invoice Tenant the costs of said repairs which Tenant shall promptly pay. If Landlord intends to repair/restore any damage, then Landlord must first provide Tenant notice of Landlord's intentions along with estimates for the repair/restoration work and Tenant must approve such estimates before Landlord proceeds. Tenant shall be responsible for the costs of any measures or actions utilized by Landlord, including all reasonable attorneys' fees, to recoup payment from Tenant on any invoice for said repairs that Tenant refuses or fails to promptly pay to Landlord. The Tenant shall be responsible for obtaining and paying for, any necessary governmental permits or approvals and the construction of all alterations, improvements and additions shall be in compliance with all applicable governmental laws and regulations. Tenant's responsibilities and obligations outlined herein to repair and/or repay Landlord for damage caused by the removal of fixtures shall survive termination or expiration of the Lease and any extension thereof.

16) Signage; Naming of Building.

Tenant shall, at Tenant's sole cost and expense, have the right to place its own

identification sign(s) in such locations as determined in the sole discretion of Tenant. Tenant shall, at its own expense, obtain the necessary permits and comply with local and state laws regulating its signs.

The Building is currently named the "Elihu B. Taft School" and Tenant covenants to not change the name of the Building throughout the Term or remove/cover-up the existing sign engraved into the Building. Tenant, may, however, assign a name to the academic unit or program(s) operating from the Premises and Tenant may erect such signage depicting the academic unit or program name(s) in its sole discretion.

17) Hazardous Materials.

- (a) Tenant shall not use, transport, store, dispose of or in any manner deal with hazardous materials on the Premises or any adjacent lands and premises of Landlord (collectively the "Property"), except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. The term "hazardous materials" as used in this Lease shall include, without limitation, gasoline, petroleum products, explosives, radioactive materials, or any other substances or materials defined as a hazardous or toxic substance or material by any federal, state or local law, ordinance, rule or regulation.
- (b) Lessee is on notice and understands that the Premises contains asbestos. Lessee agrees that is it satisfied that appropriate containment and control measures are in place as of the rent Occupancy Date with regards to said asbestos. Lessee assumes all responsibility for appropriate containment and control measures following Occupancy Date and as of that date, shall indemnify and hold harmless Landlord for any and all claims for bodily injury and/or damages arising out of any act or omission connected in any way to said asbestos except for those claims arising out of negligent actions of Landlord relating to said asbestos.
- (c) Excepting Section 17(b), above, Landlord unconditionally and irrevocably indemnifies and agrees to defend and hold harmless Tenant and its officers, employees, agents, contractors and those claiming by, through or under Tenant, from and against all loss, cost and expense (including attorneys' fees) of whatever nature suffered or incurred by Tenant on account of the existence at or on the Property, or the release or discharge at, on, from or to the Property, prior to the Occupancy Date or thereafter if such release or discharge is caused by the Landlord, its officers, employees, agents or contractors, of any hazardous material, including any claims, costs, losses, liabilities and expenses arising from the violation (or claimed violation) of any law, rule, regulation or ordinance or the institution of any action by any party against Tenant, Landlord or the Property based upon nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of any hazardous material by Landlord or the imposition of a lien on any part of the Property under any law pursuant to which a lien or liability may be imposed on Tenant due to the existence of any hazardous material. Landlord unconditionally and irrevocably guarantees the payment of any fees and expenses incurred by Tenant in enforcing the liability of Landlord and this indemnification should

Tenant prevail in such action. If any Remedial Work is required because of, or in connection with, any occurrence or event covered by the indemnity set forth in this Section 17(c), Landlord shall perform or cause to be performed the Remedial Work in compliance with the applicable law, regulation, order or agreement. If Landlord elects to perform the Remedial Work, all Remedial Work shall be performed by one or more contractors selected by Landlord and approved in advance in writing by Tenant and under the supervision of a consulting engineer, selected by Landlord and approved in advance in writing by Tenant. Otherwise, Tenant shall select the contractor(s) and the consulting engineer. All costs and expenses of such Remedial Work shall be paid either directly, or in the form of reimbursement to Tenant, by Landlord including without limitation, the charges of such contractor(s) and the consulting engineer, and Tenant's reasonable attorneys' fees and costs incurred in connection with monitoring or review of such Remedial Work. If Landlord shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Tenant may cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be covered by the indemnity set forth in this Section 17(c). All such costs and expenses shall be due and payable upon demand therefore by Tenant.

- (d) The obligations of Landlord and Tenant under this Section 17 shall survive the termination of this Lease.

18) Eminent Domain.

During the Term, if the whole of the Premises or such portion which materially adversely affect the Tenant's use and enjoyment of the Premises is taken in a condemnation proceeding or by any right of eminent domain, this Lease, at the option of Tenant, shall terminate on the date of such taking. The Tenant shall have no interest in any damages awarded in compensation for any taking in condemnation or eminent domain with respect to the value of the Property. The Tenant may maintain a separate action against the condemning or taking party for any damages sustained by Tenant by reason of said condemnation or proceeding for the taking of Tenant's leasehold estate, including personal property, trade fixtures and business loss. In addition, any payments of rent made by Tenant which were on account of any period subsequent to the effective date of any condemnation shall be promptly returned to Tenant.

19) Tenant Default.

If any one or more of the following events ("Events of Default") shall occur:

(a) if the Tenant shall fail to pay any Base Rent, or other sum payable hereunder as the same becomes due and payable within ten days after written notice from Landlord; or

(b) if the Tenant shall fail to use the Premises for educational purposes as set forth in the Will, Deed or any and all Court decisions/judgments interpreting the Will and/or Deed, and such failure shall continue for more than thirty days after the Tenant receives notice from Landlord or knowledge of such failure; provided, however, that if such default cannot reasonably be cured within said thirty day period, no Event of Default shall occur if Tenant commences to cure within said

thirty day period and diligently pursues such cure; or

(c) if the Tenant shall fail to perform any material term or condition set forth herein, and such failure has not been cured or corrected within thirty days after Tenant shall have received written notice of such failure, or in the case of a failure not reasonably susceptible of cure or correction within thirty days, Tenant has failed to promptly commence such cure or correction and to accomplish such cure or correction with a reasonable period of time, then Tenant shall be in default hereunder.

Then and in such event, regardless of the pendency of any proceeding which has or might have the effect of preventing the Tenant from complying with the terms of this Lease, the Landlord may at any time thereafter, during the continuance of any such default, give a written termination notice to the Tenant specifying the Event of Default and a date (not less than ten days from the date of giving such notice) on which this Lease shall terminate, and on such date, subject to the provisions of this Lease relating to the survival of Tenant's obligations, the term of this Lease shall terminate by limitation and all rights of the Tenant under this Lease shall cease and Landlord shall have all rights permitted by law or this Lease, or to which it may be entitled at law or in equity.

20) Landlord's Default.

If Landlord shall fail to perform any material term or condition set forth herein, and such failure has not been cured or corrected within thirty days after Landlord shall have received written notice of such failure, or in the case of a failure not reasonably susceptible of cure or correction within thirty days, Landlord has failed to promptly commence such cure or correction and to accomplish such cure or correction with a reasonable period of time, then Landlord shall be in default hereunder. Upon the occurrence of such default, Tenant shall have all rights permitted by law or this Lease, or to which it may be entitled at law or in equity.

21) Liability and Indemnification.

(e) Tenant shall indemnify Landlord and save Landlord harmless from suits, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal injury or property damage arising from 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, and Tenant shall indemnify Landlord and save Landlord harmless from such suits, actions, damages, liability and expense, including reasonable attorneys fees, arising out of or caused by such breach, act or omission, except to the extent arising from any act or omission of Landlord or its agents, contractors, employees, servants, invitees, licensees, or concessionaires, or from a breach by Landlord of its obligations under this Lease.

(f) Tenant shall give prompt notice to Landlord in case of fire or accidents on the Premises or of defects therein or in any fixtures or equipment.

(g) Landlord shall indemnify Tenant and save Tenant harmless from suits, actions, damages, liability and expense in connection with loss of life, bodily or personal injury or property damage arising from any act or omission of Landlord, its agents, contractors, employees, servants, invitees, licensees, or concessionaires, or a breach by Landlord of its obligations under this Lease, and Landlord shall indemnify Tenant and save Tenant harmless from such suits, actions, damages, liability and expense, including reasonable attorney's fees, arising out of or caused by such breach, act or omission, except to the extent arising from any act or omission of Tenant or its agents, contractors, employees, servants, invitees, licensees, or concessionaires, or by a breach by Tenant of its obligations under this Lease.

(h) Tenant shall indemnify Landlord and save Landlord harmless from any suits, actions, damages, liability and expense in connection with any loss or damage to Tenant's property or fit-up within the Premises prior to the Initial Term set forth in Section 2 above.

22) Subordination, Attornment and Collateral Assignment.

Tenant shall not mortgage, grant a security interest in, or assign its interest in this Lease to any entity except as provided below in Sections 25 and 26.

23) Surrender of Premises.

At the expiration or termination of the Term or any extension thereof, Tenant shall surrender the Premises and shall deliver all keys and combinations to locks to Landlord. Before surrendering said Premises, Tenant shall remove all personal property including all trade fixtures. Tenant's obligation to perform this provision shall survive the Term. If Tenant fails to remove its property upon the expiration of the Term, Landlord may, among other remedies, cause such property to be removed and disposed of with the reasonable costs associated with such removal and disposal, including Landlord's reasonable attorneys' fees (if necessary), to be borne by the Tenant. The condition of the Premises at the time of surrendering shall be as follows: 1) the Premises shall be in a condition that is immediately available for occupancy by Landlord; 2) all utilities shall be operable; 3) all walls, ceilings, floors, windows and trim shall be without significant damage; and 4) no structural component of the Premises shall require immediate repair.

24) Successors and Assigns.

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of the Tenant unless the assignment to such assignee has been approved by Landlord in writing.

25) Assignment, Subletting.

Tenant shall not assign this Lease, or sublet the Premises nor any part thereof without the written consent of the Landlord; provided, however, that any decision whether to grant such consent shall not be unreasonably delayed upon the Landlord having been provided adequate information to make an informed judgment that any assignee or subtenant has the financial ability to carry out the terms and obligations of this Lease, or the terms of the proposed sublease, and upon securing written confirmation from Tenant that it shall remain fully liable for the performance of this Lease. It shall be within Landlord's sole discretion whether to consent to any assignment or sublease of the Premises.

26) Non-Waiver.

- (i) No agreement to accept a surrender of the Premises prior to the expiration of the Term shall be 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 or partner of Landlord or to Landlord's agent or any employee of such agent shall not operate as a termination of this Lease or as a surrender of the Premises.
- (j) The failure of Landlord or Tenant to seek redress for violation or breach of or to insist on the strict performance of, any covenant of this Lease whether by express waiver or otherwise, shall not be construed as a waiver of any subsequent violation or breach or the same covenants.
- (k) Landlord's consent to, or approval of, any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

27) Burlington Telecom Memorandum of Understanding.

Landlord and Tenant agree that this Lease is subject to a Memorandum of Understanding ("MOU") entered into between the Burlington Board of School Commissioners ("Board") and the City of Burlington d/b/a Burlington Telecom ("BT") on July 18, 2008 and attached hereto as Exhibit E. The equipment addressed in the MOU currently in the basement of the Building at the time of execution of this Lease shall remain and all proceeds under the MOU will continue to be paid to the Board until such time as the equipment is removed by BT or the MOU is terminated.

Landlord shall indemnify Tenant and save Tenant harmless from suits, actions, damages, liability and expense in the event of third party challenge and/or claim premised on the MOU being violative of the Will's Educational Purposes Restriction.

The Landlord will be solely responsible for any real estate taxes imposed upon the Premises as a result of the MOU and Burlington Telecom's occupancy.

28) Severability.

It is the intention of the parties hereto that if any provision of this Agreement is capable of

two constructions, one of which would render the provision valid, then the provision shall have the meaning which renders it valid. If any term or provision or any portion thereof of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

29) Entire Agreement, Applicable Law.

This Lease with any exhibits and riders attached hereto contains the entire agreement of the parties and no representations, inducements, promises or agreements not embodied herein shall be of any force or affect, unless the same are in writing and signed by or on behalf of the party to be charged. The captions of particular sections are inserted as a matter of convenience and in no way affect or define the scope or intent of this Lease or any provision thereof. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Vermont.

30) Captions.

The captions and numbers appearing herein 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.

31) Notices.

Any notice required to be given by the terms of this Lease shall be in writing and sent by Certified Mail, Return Receipt Requested. Notices shall be deemed given three (3) days after the date deposited in the United States mail, postage prepaid, if sent by certified mail

If to Landlord:

City of Burlington  
149 Church Street  
Burlington, Vermont 05401

AND

Burlington School District  
Office of the Superintendent  
150 Colchester Avenue  
Burlington, Vermont 05401

If to Tenant:

University of Vermont and State Agricultural College  
c/o Campus Planning Services  
109 South Prospect Street  
Burlington, VT 05405  
Attn.: Director

32) Recording.

Landlord and Tenant agree that this Agreement shall not be recorded. At Tenant's option and expense, a memorandum of lease may be recorded in accordance with 27 V.S.A. § 341(c).

33) Waiver of Jury Trial.

The parties hereto waive a trial by jury on any and all issues arising in connection therewith, or the Tenant's use or occupancy of the Premises.

34) Brokerage.

Landlord and Tenant both represent that they have not dealt with any broker in this transaction and agree to indemnify and hold harmless the other party against any claims related thereto in connection with this transaction.

The parties hereto have executed this Lease as of the date first above written.

LANDLORD:  
CITY OF BURLINGTON

TENANT:  
UNIVERSITY OF VERMONT AND STATE  
AGRICULTURAL COLLEGE

By: \_\_\_\_\_  
Miro Weinberger, Mayor, Its Duly Authorized  
Agent

By: \_\_\_\_\_  
David V. Rosowsky, Provost & Senior Vice  
President, Its Duly Authorized Agent

ACKNOWLEDGED:

By: \_\_\_\_\_  
Vice President

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this \_\_\_\_\_ day of March, 2014, personally appeared Miro Weinberger, Mayor and Duly Authorized Agent of the City of Burlington and he acknowledged the foregoing instrument, by him subscribed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:

STATE OF VERMONT  
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this \_\_\_\_ day of March, 2014, personally appeared David V. Rosowsky, Provost and Senior Vice President, Duly Authorized Agent of the University of Vermont and State Agricultural College, and he acknowledged the foregoing instrument, by him subscribed, to be his free act and deed and the free act and deed of the University of Vermont and State Agricultural College.

Before me, \_\_\_\_\_  
Notary Public  
My commission expires:

EXHIBIT A  
Survey

EXHIBIT B  
Floor Plans

EXHIBIT C  
Last Will and Testament of Elihu B. Taft

EXHIBIT D  
Final Declaratory Judgment

EXHIBIT E  
Memorandum of Understanding with Burlington Telecommunications

