

GROUND LEASE

This Ground Lease (the "Lease") is entered into by and between The President and Fellows of Middlebury College, a Vermont educational institution with its principal place of business in Middlebury, Vermont (the "Landlord"), and the Town of Middlebury, Vermont a municipality with its principal place of business in Middlebury, Vermont (the "Tenant").

Background

- A. The Landlord owns a parcel of open land located off of South Street Extension in Middlebury, Vermont (the "Property").
- B. The Tenant wishes to rent a portion of the Property for the purposes of operating a municipal dog park.
- C. The Landlord has agreed to lease a portion of the Property to the Tenant on terms and conditions described in this Lease.

Agreement

In consideration of the background described above, and the mutual covenants and agreements set forth in this Lease, the Landlord and the Tenant hereby agree as follows.

Section 1. **Lease of Premises.** The Landlord hereby leases to the Tenant, and the Tenant hereby rents from the Landlord, the land designated as "Lease Area", containing approximately 2 acres, depicted on the attached Exhibit A (map showing land on Collins Drive, Town of Middlebury, Addison County, Vermont). The Land and any improvements hereafter constructed or made by the Tenant on the Land, including, without limitation, the Project (as defined below) and the "Improvements", are sometimes referred to together in this Lease as the "Premises". The Premises include the following: a roughly rectangular piece of land bordered by lands leased to Porter Medical Center and Porter Hospital's air lift pad.

The Premises are leased and accepted by Tenant subject to all: (i) leases, covenants, restrictions, and easements of record; and (ii) zoning regulations, ordinances, building restrictions, regulations, and permits of any governmental authority having jurisdiction over the Premises.

The Premises are also leased subject to, and the Landlord hereby reserves, the right of the Landlord, and its employees, agents, licensees, contractors, and tenants, to enter on the Premises in order to connect on to any present or future water, sewer, electrical, telephone, telecommunication, gas, or other utility lines serving or passing over, on, or under the Premises

and to install, repair, maintain, and replace any such connections. This reserved right may be exercised at any time and for the benefit of the Property and any other land, whether or not the land is currently owned by the Landlord, and the Landlord shall have the right to assign all or any portion of these reserved rights to any third party. If the Landlord exercises its right to hook into utility lines at the Premises, the costs of maintaining, repairing, and replacing the utility lines shall be equitably shared by the Landlord and the Tenant.

Section 2. **Interest In Improvements.**

a. During the Term of this Lease, the Tenant shall have a leasehold interest in the Land. Upon any termination of this Lease, whether by expiration of the Term, by reason of damage pursuant to **Section ___** or condemnation pursuant to **Section ___**, by reason of default, or by reason of any other cause whatsoever, then all of the Tenant's rights, title, and interest in and to the Premises shall cease and terminate and title to the Improvements then located on the Land shall automatically vest in the Landlord. No further deed or other instrument shall be necessary to confirm such vesting in the Landlord. Upon any termination of this Lease, however, the Tenant, upon request of the Landlord, shall execute, acknowledge, and deliver to the Landlord a deed confirming that all of the Tenant's rights, title, and interest in and to the Premises have expired and that title to the Improvements has vested unconditionally in the Landlord.

b. All personal property then on the Land (other than that owned by occupants) shall be removed by the Tenant at its sole cost and expense within thirty (30) days following the expiration or earlier termination of this Lease, and title to any personal property not so removed shall automatically vest in the Landlord upon any termination of this Lease and possession of the personal property shall be surrendered by the Tenant to the Landlord. No bill of sale or other instrument shall be necessary to confirm vesting in the Landlord of title to such personal property; however, upon any termination of this Lease, the Tenant, upon request of the Landlord, shall execute, acknowledge, and deliver to the Landlord a bill of sale confirming that all of the Tenant's rights, title, and interest in the personal property have vested in the Landlord.

Section 3. **Term of Lease.**

a. The Premises are hereby leased to Tenant, subject to all of the terms and conditions contained in this Lease, for a term of five (5) years (the "Term") that will commence on January 1, 2016 (the "Commencement Date"), and shall expire on December 31, 2020, unless terminated earlier in accordance with the terms and conditions of this Lease.

b. For the purpose of this Lease, the term "Lease Year" refers to the period beginning on January 1 and ending on December 31 of each year of the Term or any extension thereof.

c. Provided that the Tenant is not then in default in the performance of any of the terms and conditions of this Lease, the Tenant shall have the option to renew this Lease for one additional term of five (5) years commencing on the expiration of the initial Term. In order to

exercise this option to renew, the Tenant shall give the Landlord written notice of such exercise no later than six (6) months prior to the expiration of the initial Term. In the event that the Tenant exercises this option to renew, the renewal shall be on the same terms and conditions as are applicable during the initial Term, provided, however, that (i) the Rent for the renewal term shall be One Dollar (\$ 1.00) per annum and (ii) this option to renew shall not be included in the terms of this Lease for any renewal or extension term.

Section 4. **Use of Premises.**

a. The Tenant shall use the Premises for the purpose of operating a municipal dog park and for no other purpose without the prior written consent of the Landlord, which consent may be denied in the Landlord's sole discretion, except as provided in Section 19 below for a Leasehold Mortgage. No use of the Premises shall be allowed that derogates from the general purpose of the Tenant or that might jeopardize the Tenant's qualification under Section 501(c) of the Internal Revenue Code of 1986, as amended from time to time. The Tenant shall have the right to enforce its existing ordinances and rules and to adopt new or amended ordinances and rules governing use of the Premises.

b. The Tenant shall construct a fence around the entire park. The location of the fence will follow, as closely as is practicable, the boundaries shown on Exhibit A, but will be subject to adjustment by mutual agreement of the parties.

c. The Tenant shall keep the Premises in a neat, clean, and safe condition. In occupying the Premises, the Tenant shall not overburden or exceed the capacity of the utility services installed in the buildings or other Improvements. In no event shall the Tenant do or permit any act or thing that might: (i) impair the value or usefulness of all or any part of the Premises; (ii) adversely affect the rate of fire, liability, and other insurance of the Landlord on the Premises; or (iii) constitute a public or private nuisance or waste or violation of law. The Tenant shall not use any portion of the Premises for the storage, manufacture, or use of flammable materials or Hazardous Material (as defined in **Section** below).

Section 5. **Rent.**

a. During each year of the Term, the Tenant agrees to pay to the Landlord, without demand or set off, in lawful money of the United States, at the address specified in this Lease, or at such other location as the Landlord may hereafter designate in writing, Base Rent for the Premises in the amount of One Dollar (\$1.00) per annum.

b. The annual Base Rent shall be paid in full in advance. The first payment of Base Rent shall be due and payable on or before the Commencement Date. Each subsequent annual payment of Base Rent shall be due and payable in advance on each anniversary date of the Commencement Date.

c. The Base Rent (if any), the Additional Rent (as defined below), and all other sums payable under the Lease 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 the Tenant under the Lease shall in no way be released, discharged, or otherwise affected by reason of any occurrence whatsoever, except as otherwise expressly provided in this Lease.

d. During the Term of this Lease, the Tenant shall also pay as additional rent ("Additional Rent") all sums, Impositions (as defined in the **Section** below), costs, expenses, and other payments that the Tenant is required to pay, either to the Landlord or to others, under the terms of this Lease. In the event of any non-payment of Additional Rent, the Landlord shall have all rights and remedies provided for in this Lease for the non-payment of Base Rent. The Base Rent and the Additional Rent shall sometimes be referred to together in this Lease as the "Rent".

Section 6. **Tenant's Taxes.** The Tenant shall pay when due all taxes assessed against the Tenant on account of the Tenant's personal property at the Premises and the Tenant's use and occupancy of the Premises under this Lease. The term "when due," as used in this Lease, means on or before the date that the Tenant will incur penalties for the failure to pay those taxes.

Section 7. **Real Estate Taxes; Impositions.**

a. During the Term of this Lease, the Tenant will, at its sole cost and expense, pay and discharge, on or before the last day upon which the same may be paid without interest or penalty for late payment, all taxes, assessments, and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are sometimes collectively referred to as "Impositions"), that shall, pursuant to present or future law or otherwise, during the Term be levied or assessed upon the Premises or any part thereof, or the rents and income received by the Landlord under this Lease or received by from the Tenant from subtenants of the Premises, except income taxes assessed against the Landlord or estate, succession, or similar taxes. The Tenant shall pay all interest and penalties imposed upon the late payment of any Impositions that it is obligated to pay hereunder. If the Premises are separately assessed by the Town of Middlebury, the Tenant shall pay all Impositions, including property taxes, directly to the Town. If the Premises are not separately assessed by the Town, the Tenant shall pay the Impositions to the Landlord no later than fifteen (15) days prior to the date on which the Impositions are due and payable to the Town.

b. If the Tenant shall fail to pay any Imposition required to be paid by it on or before the last day upon which the same may be paid without interest or penalties, then the Landlord may pay the same, together with all interest and penalties lawfully imposed upon the late payment, and the amounts so paid shall become immediately due and payable by the Tenant to the Landlord with interest at the rate provided in **Section** below from the date paid by the Landlord until the date repaid by the Tenant.

c. Promptly following any request from the Landlord, the Tenant shall provide to the Landlord written evidence of its payment of any Impositions.

d. The Tenant, at the Tenant's own cost and expense, may, in good faith, contest or appeal the validity or amount of any Imposition required to be paid by the Tenant; provided, however, that the Tenant shall either pay the Imposition on or before the date due, under protest if appropriate, or bond the Landlord against any damage or liability that may arise out of the contest or appeal. The Tenant shall actively and diligently prosecute any such context or appeal and shall indemnify, defend, and hold the Landlord harmless from and against any loss, cost, damage, liability, interest, attorneys' fees, and other expenses arising out of contesting or appealing the Imposition. Any abatement of Impositions obtained as a result of any such contest or appeal shall be the Tenant's property.

Section 8. **Utilities.**

a. The Tenant shall pay any and all charges for water, sewer, gas, electricity, telecommunication, cable, rubbish removal, recycling, and all other utilities and services serving the Premises (if any). Where such utility services are separately metered for the Premises, the Tenant shall arrange for utility services directly with the utility service provider. Where such services are not separately metered for all or any portion of the Premises, the Landlord shall bill the Tenant on a monthly basis for the Tenant's pro rata portion of charges for utility services, and the Tenant shall reimburse the Landlord within ten (10) days after receipt of an invoice from the Landlord. The Landlord reserves the right to separately meter any utility services not currently separately metered and thereafter the Tenant shall pay to the Landlord or to the suppliers of such services the charges for such services based upon the Tenant's usage.

b. The Tenant shall be responsible, at its sole cost and expense, to repair, maintain, and replace any utility lines and equipment installed to serve the Premises.

c. The Tenant shall also, at its sole cost and expense, procure any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such utility or service to the Premises. The Tenant expressly agrees that the Landlord is not, nor shall it be, required to furnish to the Tenant or any other occupant of the Premises during the Term any water, sewer, gas, heat, electricity, light, power, steam, air-conditioning, or any other facilities, equipment, labor, materials, or services of any kind whatsoever.

d. The Tenant, at its sole expense, shall provide appropriate containers for rubbish and recycling and shall be responsible for arranging for the collection of rubbish and recyclables from the Premises.

Section 10. **Liability Insurance.**

a. The Tenant, at the Tenant's own cost and expense, will maintain throughout the Term the following insurance coverage:

i. A policy or policies of commercial general liability insurance, including contractual liability coverage and a broad form endorsement, on an occurrence basis insuring the Landlord and the Tenant against claims or demands for personal injuries to or death of any person, and damage to or destruction or loss of property, that may or may be claimed to have occurred on the Premises. Such policies shall cover such risks and be in such amounts as the Landlord from time to time may reasonably request, but in any event with a combined single limit for bodily injury and property damage per occurrence of not less than Two Million Dollars (\$2,000,000.00).

ii. A policy or policies of commercial motor vehicle liability insurance insuring the Landlord and the Tenant against claims or demands for personal injuries to or death of any person, and damage to or destruction or loss of property, that may or may be claimed to have occurred on the Premises or in the vicinity of the same. Such policies shall cover such risks and be in such amounts as the Landlord from time to time may reasonably request, but in any event with a combined single limit for bodily injury and property damage per occurrence of not less than One Million Dollars (\$1,000,000.00).

iii. Worker's compensation insurance as required by Vermont law.

b. The Tenant shall deliver to the Landlord certificates of the required insurance coverage and evidence of payment of all premiums promptly upon demand by the Landlord, which certificates shall show the Landlord and the Landlord's mortgagee as an additional insured and shall provide that no cancellation, reduction in amount, or material change in coverage shall be effective until at least thirty (30) days after receipt of written notice thereof by the Landlord. The minimum limits shall be increased on each five (5) year anniversary of the Commencement Date to such higher amounts as are customarily carried by owners of similar properties in the Addison County, Vermont area.

c. The Tenant shall comply with the rules and requirements of all insurance companies having policies of any kind whatsoever in effect covering the Premises.

Section 11. **Permits and Approvals.**

a. The Tenant shall be solely responsible for obtaining all permits, licenses, and approvals required for the operation of the Premises as a municipal dog park. The construction of the fence and any other improvements shall comply with all applicable laws and with all existing permits and approvals applicable to the property.

The Tenant shall familiarize itself with the Premises and any restrictions upon the use of the Premises.

Section 12. **Alterations and Additions.**

a. Except for the initial construction of the fence pursuant to **Section 4(b)** above, the Tenant shall not make or permit to be made any alterations, additions, or improvements in or to the Premises or any part thereof that will cost more than Fifteen Thousand Dollars (\$15,000.00) without first obtaining the written consent of the Landlord, which consent the Landlord agrees not to unreasonably withhold, condition, or delay, provided that the Tenant has fully complied with each and every term, covenant, and condition in this Lease and, with respect to such alterations, additions, changes, or improvements, has provided the Landlord with such liability insurance policies and/or surety bonds as the Landlord may reasonably request.

d. Any and all alterations, additions, and improvements made by the Tenant at any time, and all governmental approvals therefor, shall be the property of the Tenant, subject, however to the provisions of **Section** above; provided, however, that it is expressly understood and agreed that any trade fixtures or other fixtures added by the Tenant shall remain the property of the Tenant and may be removed by the Tenant, at the Tenant's expense, upon the expiration or earlier termination of the Lease, provided that any damage caused thereby is immediately repaired by the Tenant.

e. The Tenant, at its own cost and expense, will cause any and all mechanics' liens that may be filed against the Premises to be paid and satisfied of record within thirty (30) days after the Landlord sends the Tenant written notice of the filing of any notice of lien against the Premises or other property of the Landlord, for or purporting to be for labor or materials alleged to be furnished or to be charged by or for the Tenant at the Premises, or will bond such mechanics' liens and use its best efforts to have such liens discharged by an order of a court of competent jurisdiction within this thirty (30) day period.

f. Any alterations, improvements, or other work, once begun, must be prosecuted with reasonable diligence to completion and, subject to the provisions of subsection (e) above, be paid for by the Tenant in full, free and clear of liens or encumbrances against the Premises or the Landlord, and must be performed in all respects in accordance with all applicable rules, regulations, laws, or order of any governmental authority. The Tenant shall obtain all necessary inspections and permits prior to making any alterations and shall obtain all necessary inspections and permits prior to using altered premises, at the Tenant's expense. The Landlord shall join in the application for such permits, licenses, or authorizations if necessary, provided, however, that the Landlord shall incur no liability or expense in connection therewith. The Tenant shall be responsible for the making of all alterations to the Premises that are or become necessary to comply with the Americans with Disabilities Act because of any action, use, or characteristic of

the Tenant or in order to accommodate the needs of any employee of the Tenant or any visitor, licensee, or invitee to the Premises.

g. The Tenant hereby agrees to indemnify, defend, and hold the Landlord harmless from and against any and all claims, costs (including attorneys fees), judgments, liens, damages, and liabilities of every kind and description that may arise out of or be connected in any way with the Tenant's construction, alterations, or additions, and to pay or discharge promptly any contractor's, mechanic's, or materialman's lien that may be recorded against the Land or the Improvements.

Section 13. **Condition of Premises; Tenant Takes "As Is"**. The Tenant has inspected and is familiar with the condition of the Premises. The Tenant shall take and accept the Premises and Improvements "as is," with no representations or warranties of any kind with respect to the condition of the Premises or Improvements or the suitability of the Premises or the Improvements for the Tenant's intended use, including the Project.

Section 14. **Maintenance, Repairs, Replacements.**

a. The Tenant shall be responsible for maintenance of the fence and any other improvements located on the Premises, as may be reasonably required to place, keep, and maintain the same in good order and state of repair. The Tenant may undertake such landscaping, mowing, snow and ice removal, and other routine maintenance of the grounds as it deems appropriate, but shall be under no obligation to conduct such maintenance.

b. The Landlord shall have no responsibility for any structural or non-structural maintenance of, repairs to, or replacement of the Premises or any Improvements.

Section 15. **Tenant to Comply with Laws.** The Tenant shall, at its own cost and expense, promptly comply with any and all requirements at any time affecting the Premises imposed by any present or future, foreseen or unforeseen, law, statute, ordinance, or regulation of any governmental authority having jurisdiction over the Premises, whether such requirement is incidental to, or the result of, any use of the Premises or otherwise.

Section 16. **No Waiver.**

a. The failure of the Landlord to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions, and agreements of this 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 receipt of any Rent or any part thereof, whether received from the Tenant or from any one claiming under or through the Tenant or otherwise, shall not be deemed to operate as a waiver of the rights of the Landlord to enforce the payment of Rent previously due or that may thereafter become due, or the right to terminate this Lease and to recover possession of the Premises by summary proceedings or otherwise, as the

Landlord may deem proper, or to exercise any of the rights or remedies reserved to the Landlord under this Lease or that the Landlord may have at law, in equity, or otherwise.

b. The waiver by the Landlord of any breach by the Tenant of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant or condition. No covenant, term, or condition of this Lease shall be deemed to have been waived by the Landlord unless the waiver is in writing and signed by the Landlord. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, other than the failure of Tenant to pay the particular rent or sum so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

Section 17. **Landlords Right of Access.** The Landlord, or the Landlord's agents, shall have the right to enter the Premises in a reasonable manner upon twenty-four (24) hours advance notice to the Tenant to examine the same, and to show them to prospective purchasers, mortgagees, or lessees; provided, however, that the Landlord or the Landlord's agents shall have the right to enter the Premises without notice in emergency circumstances where it is impractical to provide the Tenant with advance notice.

Section 18. **Subordination of Lease.** The Tenant agrees and acknowledges that this Lease, automatically and without further act or instrument, is subordinate to any and all existing mortgages recorded against the Premises, and to all renewals, modifications, consolidations, replacements, or extensions thereof, and further acknowledges and agrees that this Lease shall be automatically subordinate to any future mortgage of record against the Premises or any portion thereof (the "Fee Mortgage"). The Tenant further agrees to execute, within five (5) days after a request from the Landlord, any and all documents required by any lender or mortgagee to confirm such subordination. The Tenant, at the Tenant's expense, shall execute and deliver any estoppel certificates and Subordination and Non-Disturbance Agreements that the Landlord or its lender may reasonably request. The Landlord will use its good faith reasonable efforts to obtain from any mortgagee an agreement in which the mortgagee will attorn to the rights of the Tenant under this Lease.

Section 19. **Destruction of Improvements.**

a. If during the Term any portion of the Improvements on the Premises shall be damaged or destroyed by fire or other casualty, there shall be no abatement of Base Rent or Additional Rent and, whether or not the damage or destruction shall have been insured against, the Tenant shall proceed with reasonable diligence to repair, rebuild, or replace such Improvements.

b. If, however, the Improvements shall be substantially damaged or destroyed by fire or other casualty, the Tenant shall have the right to terminate this Lease, provided that notice thereof is given to the Landlord not later than sixty (60) days after such damage or destruction.

For purposes of this **Section 19**, the term "substantial damage" means damage of such a character as cannot reasonably be expected to be repaired or restored, proceeding with all reasonable dispatch, within two hundred seventy (270) days from the date of such damage. If this right of termination is exercised, this Lease shall cease and come to an end as of the date of such termination, but it shall be a condition to the effectiveness of such termination that the Tenant assign all of its rights to the Landlord in its all-risk (special form) insurance covering the Improvements.

Section 20. **Eminent Domain.**

a. If during the Term all or substantially all of the Land and the Improvements shall be taken in the exercise of the power of eminent domain or by private purchase in lieu thereof, then this Lease shall terminate on the date of vesting of title in the taking authority. The award(s) for any such taking shall be shared by the Landlord and the Tenant based on the relative value of each of their interests in the Premises. Any costs reasonably incurred by the parties in pursuing the eminent domain award shall be a first charge against the award.

b. If during the Term less than all or substantially all of the Land and the Improvements shall be taken in the exercise of the power of eminent domain or by private purchase in lieu thereof, but such portion taken has a material adverse impact on the Tenant's use or intended use of the Premises, then the Tenant shall have the right to terminate this Lease by written notice to the Landlord within ninety (90) days following the date of such taking or purchase. In the case of all other takings of less than all or substantially all of the Land and Improvements or such private purchases thereof, this Lease shall continue in full force and effect and the Tenant shall proceed with reasonable diligence following receipt of the condemnation award to carry out any necessary repair and restoration. Any award from a partial taking shall be paid in the following order of priority: first, to the Tenant for such restoration; and second, the balance to the Landlord and the Tenant in proportion to the value of their relative interests in the Premises so taken. Any costs reasonably incurred by the parties in pursuing the eminent domain award shall be a first charge against the award. If this Lease shall continue in full force and effect following such taking, the Rent shall be permanently abated on a pro rata basis based on the value of the Premises immediately prior to such taking as compared to the value of the remaining Premises immediately after to such taking.

Section 21. **Indemnity.** The Tenant shall indemnify, defend, and save harmless the Landlord from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of every kind and nature, including the Landlord's costs and reasonable attorneys' fees, suffered or incurred as a result of any breach by the Tenant, or the Tenant's agents, servants, employees, visitors, or licensees, of any covenant or condition of this Lease, or as a result of the Tenant's use or occupancy of the Premises, or the carelessness, negligence or improper conduct of the Tenant, or the Tenant's agents, servants, employees, visitors, contractors, or licensees; provided, however, that it is understood and agreed that the obligations of Tenant hereunder shall not extend to the negligence or willful misconduct of the Landlord, or the Landlord's employees, agents, or representatives, or to a breach by the

Landlord of its obligations, covenants, and representations pursuant to this Lease; and further provided that Tenant's maximum liability to Landlord under this paragraph shall not exceed the amount of coverage available under Tenant's liability policy.

Section 22. **Events of Default, Remedies, Damages.**

a. Each of the following shall constitute an Event of Default:

i. The Tenant shall fail to pay when and as due any Rent payable under this Lease, and such default shall continue for a period of ten (10) days after the date due; or

ii. The Tenant shall fail to obtain, maintain, and pay for any insurance coverage required pursuant to **Section** or **Section** of this Lease; or

iii. The Tenant shall fail to perform or comply with any of the agreements, terms, covenants, or conditions in this Lease, other than those referred to in subsection (a)(i) or (ii), for a period of forty-five (45) days after notice from the Landlord to the Tenant specifying the items in default, or in the case of a default or contingency that cannot with due diligence be cured within said forty-five (45) day period, the Tenant shall fail to commence within that forty-five (45) day period the steps necessary to cure the same and thereafter to prosecute the curing of such default with due diligence (it being understood that the time of the Tenant within which to cure shall be extended for such period as may be necessary to complete the same with all due diligence); or

iv. The Tenant shall file a voluntary petition in bankruptcy or shall have a petition in bankruptcy filed against it which is not removed within forty-five (45) days after filing, or shall be adjudicated insolvent, or a receiver or trustee shall be appointed of all or substantially all of the property of the Tenant or the Tenant shall make any assignment for the benefit of the Tenant's creditors, or the Tenant shall vacate the Premises.

b. For so long as an Event of Default shall exist and be continuing, the Landlord may give written notice to the Tenant specifying the Event of Default and stating that the Tenant's rights to the possession, use, and occupancy of the Premises under this Lease shall expire and terminate on the date specified in such notice, which date shall be at least fifteen (15) days after the giving of notice, and upon the date so specified, all rights of the Tenant under this Lease shall so expire and terminate.

c. Upon termination of the Tenant's rights to possession, use, and occupancy of the Premises under this Lease in accordance with the provisions of subsection (b) above, the Tenant shall pay the Landlord an amount equal to any Rent and any damages that shall have been due or sustained prior to such termination, together with all reasonable costs, fees, and expenses (including, but not limited to, reasonable attorneys' fees) incurred by the Landlord to enforce its remedies hereunder.

d. Upon any termination of this Lease pursuant to this **Section**, the Tenant shall immediately vacate the Premises and surrender the same to the Landlord restored to the same condition as received, reasonable wear and tear excepted. If the Tenant fails to vacate and surrender the Premises, the Tenant shall pay all costs reasonably incurred by the Landlord in requiring the Tenant to vacate, including reasonable attorneys' fees and disbursements, and, further, will pay the Landlord a daily occupancy charge equal to one hundred fifty percent (150%) of the average daily rental payable by the Tenant during the most recent Lease Year until the Tenant vacates the Premises as provided in the terms of this Lease. The Tenant expressly agrees that, for so long as any Event of Default shall exist and be continuing, the Landlord shall have the right to immediately regain possession of the Premises and to exclude the Tenant from further use, occupancy, and enjoyment of the Premises, and the Tenant waives any and all claims that it may have against the Landlord, regardless of when the same arise, on account of such regaining of possession by the Landlord or such exclusion. Upon the termination of this Lease, the Tenant, at the Tenant's sole expense, will remove all goods and property not the property of the Landlord. Any damage thereby caused to the Premises shall be promptly repaired by the Tenant, at the Tenant's expense. At the Landlord's option, any goods and effects not so removed shall be deemed abandoned by the Tenant and thereupon shall become the sole property of the Landlord. If the Tenant fails or refuses to vacate the Premises without breach of the peace after termination, the Landlord may obtain a court order for the payment of rent into court in accordance with the terms of 12 V.S.A. § 4853a. The Landlord shall also have all other rights and remedies as may be available under applicable law at the time of the occurrence of the Event of Default.

e. In the event that either the Landlord or the Tenant initiates any proceeding or takes any action to enforce its rights under this Lease, including, without limitation, court action or arbitration, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees. Otherwise, except as otherwise provided in this Lease, each party shall bear its own costs and legal fees.

f. If the Tenant shall fail to maintain all the liability insurance coverages required under **Sections** above and shall fail to re-obtain such insurance before next opening for business or within ten (10) days, whichever is sooner, then the Landlord may, at once or at any time thereafter, give written notice to the Tenant specifying the Event of Default and stating that the Tenant's right of possession shall expire and terminate on the date specified in the notice, which shall be at least ten (10) days after the giving of notice. Upon such notification by the Landlord, the Tenant will at once surrender possession of the Premises to the Landlord and shall remove all of the Tenant's property from the Premises, and the Landlord may forthwith reenter and repossess the Premises and remove all persons and property from the Premises, using such force as may be necessary without being guilty of trespass, forcible entry or detainer, or other tort.

g. If this Lease and/or the Tenant's rights of possession are terminated by reason of the Tenant's default, the Landlord shall use its good faith best efforts to relet the Premises,

provided, however, that the Landlord may relet the Premises or any part thereof, alone or together with other premises, for such term(s) (which may be greater or less than the period which otherwise would have constituted the balance of the Lease term) and on such terms and conditions (which may include concessions of free rent and alterations of the Premises) as the Landlord, in its sole discretion, may determine, but the Landlord shall not be liable or, nor shall the Tenant's obligations hereunder be diminished by reason of, any failure by the Landlord to relet the Premises.

h. If this Lease is terminated by reason of the Tenant's default, the Tenant nevertheless shall remain liable for any Base Rent, Additional Rent, damages, or other amounts that may be due or sustained prior to such default, all costs, fees, and expenses, including, but not limited to, attorneys' fees, brokerage fees, expenses incurred in placing the Premises in rentable condition, and other costs and expenses incurred by the Landlord in enforcing its remedies, or in renting the Premises to others from time to time (all such Base Rent, Additional Rent, damages, costs, fees, and expenses being hereinafter referred to as "Termination Damages"), and additional damages ("Liquidated Damages"), which, at the election of the Landlord, shall be either:

i. An amount equal to the Base Rent, Additional Rent, and other sums and charges which would have become due and during the remainder of the term of this Lease, less the amount of rental, if any, that the Landlord shall receive during such period from others to whom the Premises may be rented (other than any additional rent received by the Landlord as a result of any failure of such other person to perform any of its obligations to the Landlord), in which case such Liquidated Damages shall be computed and payable in monthly installments, in advance, on the first day of each calendar month following Tenant's default and continuing until the date on which the term of this Lease would have expired but for Tenant's default; provided, however, if at the time of any reletting of the Premises there exists other space in the Premises available for leasing, the Premises shall be deemed the last space rented, even though the Premises may be relet prior to such other space. Separate suits or actions may be brought to collect any such Liquidated Damages for any month (s), and such separate suits or actions shall not in any manner prejudice the right of the Landlord to collect any Liquidated Damages for any subsequent month(s) by similar proceedings, or the Landlord may defer any suits or actions until after the expiration of the Lease Term; or

ii. An amount equal to the present value (as of the date of the Tenant's default) of all Base Rent, Additional Rent, and additional sums or charges that would have become due during the remainder of the term of this Lease, which Liquidated Damages shall be payable to the Landlord in one lump sum on demand.

Section 23. **Signs.** The Tenant shall not install or display any sign, logo, or advertising medium on or outside of the Premises, nor any decoration, lettering, or advertising matter on the glass of any exterior window, door, awning, or canopy of the Premises, unless the Landlord shall have given its prior written consent, which consent shall not be unreasonably

withheld, conditioned, or delayed. The Tenant shall obtain, at its sole expense, all necessary permits and approvals for the proposed sign, display, or advertising medium. The Tenant, at the Tenant's sole cost, shall maintain all signs in good order and repair.

Section 24. **Environmental Covenants.**

a. The Tenant hereby agrees that all operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by the Tenant, or its permitted assignees or subtenants, and their respective agents, servants, employees, representatives, and contractors (collectively, the "Tenant Affiliates"), throughout the term of this Lease shall be in all respects in compliance with all Applicable Law 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 Material. The Tenant unconditionally, absolutely, and irrevocably agrees to indemnify, defend, and hold harmless the Landlord, and the Landlord's officers, employees, agents, and contractors, from and against, and to pay in full on demand by the Landlord, all loss, cost, and expense (including, without limitation, attorneys' fees and disbursements and fees of other professionals advising the Landlord) of whatever nature suffered or incurred by the Landlord on account of the existence on the Premises, or the release or discharge from the Premises, of any Hazardous Material, caused by the Tenant, or the Tenant's employees, agents, licensees, subtenants, or contractors, or attributable to the Tenant's use of the Premises. This obligation to indemnify shall include, without limitation, any claims, costs, losses, liabilities, and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against the Tenant, the Landlord, or the Premises based upon nuisance, negligence, or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation, or treatment of and Hazardous Material or the imposition of a lien on any part of the Premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended ("CERCLA"), and the Vermont Waste Management Statutes, Vt. Stat. Ann. Title 10, Ch. 159, or any other laws pursuant to which a lien or liability may be imposed on the Landlord due to the existence of any Hazardous Material.

b. If the Tenant, or any of the Tenant's Affiliates, fail to comply with any Applicable Law 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 attorneys' 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 the term of this Lease, directly or indirectly, from or in connection with the presence, suspected presence, release or suspected release of any Hazardous Material in or into the air, soil, surface water or groundwater at, on, about, under or within the Premises, or any portion of either thereof as a result of such failure by Tenant or Tenant's Affiliates.

c. In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the “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 the Premises 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 the Remedial Work to be performed and Tenant shall reimburse Landlord within ten (10) days of demand therefore. 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 attorneys’ fees and costs incurred in connection with monitoring or review of such Remedial Work. Nothing in this Subsection shall affect any of Landlord’s rights (or Tenant’s obligations) pursuant to the other provisions of this Section ___ above or elsewhere in this Lease.

d. Upon a request from the Landlord, the Tenant shall provide the Landlord, or its consultants, access to any environmental investigation, site assessment, or Remedial Work at the Premises and shall provide the Landlord with copies of all documentation related to any such investigation, assessment, or Remedial Work. The Tenant may not rely on any review by the Landlord, or its consultants, of the Tenant’s environmental work at the Premises.

e. As used in this **Section** and elsewhere in this Lease:

i. the term “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 Government, 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, or (iii) asbestos; and

ii. the term “Applicable Laws” or “Applicable Law” 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 or environmental condition of the Premises, construction, leasing, or use of the Premises or any Improvements, now or hereafter promulgated, affecting the Premises.

Section 25. **Notice of Lease.** The parties expressly agree that, promptly upon the request of either the Landlord or the Tenant, the parties shall execute a short-form notice of lease containing the information required by 27 V.S.A. § 341(c) for recording in the Town of Middlebury land records.

Section 26. **Quiet Enjoyment.** Upon payment by the Tenant of the Rent provided for in this Lease, and upon the observance and performance of all of the Tenant's agreements, covenants, terms, and conditions, the Tenant shall peaceably and quietly hold and enjoy the Premises for the lease term without hindrance or interruption by the Landlord or the Landlord's agents, or anyone claiming contrary to the Landlord, subject, nevertheless, to the terms and conditions of this Lease and mortgages and other matters to which this Lease is subordinate and subject to the Landlord's reserved rights.

Section 27. **Notices.** Any notice or other communication to be given hereunder shall be in writing and mailed or telecopied to such party at the address or number set forth below:

If to Landlord: The President and Fellows of Middlebury College
 Attention: Thomas J. Corbin, Assistant Treasurer
 161 Adirondack Way
 Middlebury College
 Middlebury, Vermont 05753
 Telephone No.: (802) 443-5504
 Telecopier No.: (802) 443-2302

With a copy to: Austin D. Hart.
 Dinse, Knapp & McAndrew, P.C.
 209 Battery Street
 P.O. Box 988
 Burlington, VT 05402-0988
 Telephone No.: (802) 864-5751
 Telecopier No.: (802) 864-1603

If to Tenant Kathleen Swington Ramsay, Town Manager
 Town of Middlebury
 94 Main Street
 Middlebury, VT 05753
 Telephone No.: (802) 388-8100 x201

With a copy to: Benjamin W. Putnam, Esq.
 Neuse, Duprey & Putnam, P.C.
 One Cross Street
 Middlebury, VT 05753
 Telephone No.: (802) 388-7966
 Telecopier No.: (802) 388-9713

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 given in accordance with the provisions of this Section. Any such notice or other communication shall be deemed given: (i) if mailed, when

deposited in the mail, properly addressed and with postage prepaid; or (ii) if sent by telecopy, when transmitted.

Section 28. **Waiver of Rule of Construction.** The parties waive the benefit of any rule that this Lease is to be construed strictly against one party or the other.

Section 29. **Delinquent Rent.** If Tenant shall fail to pay any Rent within ten (10) days of when the same is due and payable hereunder, the unpaid amount shall bear interest from the due date thereof to the date of payment at the rate of 1-1/2% per month; provided, however, that if such rate is higher than the maximum rate of interest allowed under applicable law, the interest payable hereunder shall be the maximum rate allowed.

Section 30. **Holding Over.** If the Tenant remains in possession of the Premises or any part thereof after the expiration of the Term or after the termination of the Lease for default, no renewal or extension of this Lease shall result unless the Landlord agrees in writing to continuation of possession and the Landlord and the Tenant agree in writing to the terms and conditions of such renewal or extension. If the Landlord shall not consent to the Tenant remaining in possession of the Premises or any part thereof after the expiration of the Term or after the termination of the Lease for default or if the Landlord and the Tenant cannot agree in writing to the terms and conditions of a renewal or extension, including agreement as to Rent, then Tenant shall be a tenant at will for the period from the date of expiration of the Term or the termination for the Lease for default until the day that the Tenant surrenders possession of the Premises and the Tenant hereby agrees that such tenancy at will shall be upon all the same terms, conditions, and covenants of this Lease, except that the Base Rent would be one hundred fifty percent (150%) of the Rent in effect immediately prior to such expiration or termination. In addition, the Tenant agrees to pay the Landlord's reasonable attorney's fees and related costs if the Landlord must take legal action to evict or eject the Tenant who is holding over.

Section 31. **Force Majeure.** In the event that the Landlord or the Tenant shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of acts of god or of the state, strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act, or default of the other party, war, fire or other casualty, or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

Section 32. **Successors and Assigns.** All the terms and conditions of this Lease shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto. The term "Landlord" means only the owner of the Premises for the time, and upon any transfer of title to the Premises, the transferor shall automatically be relieved of all further liability under this Lease, and the transferee shall automatically be and become responsible for all obligations of Landlord hereunder. No rights, however, shall inure to the

benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as provided in Section ___ above.

Section 33. **Termination.**

a. On the termination date of the Term, or such earlier termination of this Lease, Tenant shall: (a) immediately vacate the Premises and surrender the same to Landlord; and (b) repair all damage to the Premises and the fixtures and personal property of Landlord located on the Premises caused by Tenant's removal of its equipment and trade fixtures from the Premises, and restore the Premises to the same condition which existed on the Commencement Date, reasonable wear and tear excepted. In addition, in the event Tenant fails to vacate and restore the Premises as set forth herein, Landlord shall be entitled to all remedies set forth in Section ___ of this Lease.

b. The Landlord's and the Tenant's indemnity obligation under Section ___ and Tenant's Environmental Covenants under Section ___ shall survive the termination or expiration of this Lease.

c. In the event that the Tenant terminates this Lease pursuant to Sections ___ or ___, and as a condition to the effectiveness of such termination, the Tenant shall promptly deliver to the Landlord copies of all zoning, environmental and site analysis, soil tests, and title and survey materials prepared by or on behalf of the Tenant in connection with the Premises (with the exception of the Tenant's internal financial analyses, attorney work product, and any other proprietary material prepared by or on behalf of the Tenant), all of which will become the Landlord's property at no cost or expense to the Landlord.

Section 34. **Entire Agreement.** This Lease, together with any exhibits and riders attached hereto, contains the entire agreement of the parties with respect to the leasing of the Premises, and no representations, inducements, promises, or agreements not embodied in this Lease shall be of any force or effect unless they are in writing and signed by or on behalf of the party to be charged.

Section 35. **Applicable Law.** This Lease Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Vermont.

Section 36. **Accord and Satisfaction.** No payment by the Tenant or receipt by the Landlord of a lesser amount than any Rent or other sums due shall be deemed to be other than on account of the earliest stipulated Rent or other sum, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent or any other sums be deemed an accord and satisfaction, and the Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or other sum or pursue any other remedy in this Lease.

Section 37. **Partial Invalidity.** If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 38. **Amendment.** Except as otherwise provided in this Lease, no subsequent alteration, amendment, change, or addition to this Lease shall be binding upon the Landlord or the Tenant unless in writing and signed by the party against whom such alteration, amendment, change, or addition is to be enforced.

Section 39. **Estoppel Certificates.** The Tenant shall, without charge, at any time, and from time to time, within five (5) days after receipt of request therefore by the Landlord, execute, acknowledge and deliver to the Landlord a written estoppel certificate certifying to the Landlord, or any mortgagee, assignee of a mortgagee, or any purchaser of the Premises or any other person designated by the Landlord, as of the date of such estoppel certificate, the following: (1) whether or not the Tenant is in possession of the Premises; (2) whether or not this Lease is unmodified and in full force and effect (or if there has been a modification, that the Lease is in full force and effect as modified and setting forth such modification); (3) whether or not there are then existing any set-offs or defenses against the enforcement of any right hereunder (and, if so, specifying the same in detail); (4) the dates, if any, to which any Rent or other charges have been paid in advance; (5) that the Tenant has no knowledge of any then uncured defaults on the part of the Landlord of the Landlord's obligations under this Lease (or if the Tenant has knowledge of any such uncured defaults, specifying the same in detail); (6) that the Tenant has no knowledge of any event having occurred that authorizes the termination of this Lease by the Tenant (or if the Tenant has such knowledge, specifying the same in detail); and (7) the address to which notices to the Tenant should be sent. Any Landlord or any prospective purchaser or mortgagee of the Premises or any part thereof may rely upon such statement. The Tenant acknowledges that time is of the essence as to the delivery of such statements by the Tenant and that the Tenant's failure or refusal to do so may result in substantial damages to the Landlord resulting from, for example, delays suffered by the Landlord in obtaining financing or refinancing secured by the Premises. In addition, the Tenant's failure or refusal to deliver such certificates within the time period required shall be conclusive evidence as against the Tenant (i) that this Lease is in full force and effect, without modification, except as may be represented by the Landlord, (ii) that there are no uncured defaults in Landlord's performance of obligations, and (iii) that not more than one month's installment of Base and Additional Rent has been paid in advance.

IN WITNESS WHEREOF, the Landlord and the Tenant have caused this Lease to be executed by their respective duly authorized agents as of the ____ day of _____, 20__.

IN THE PRESENCE OF:

LANDLORD

The President and Fellows of Middlebury College

Witness

By: _____
Its Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF ADDISON, SS.**

At _____, in said County, this _____ day of _____ personally appeared _____, _____ and duly authorized agent of The President and Fellows of Middlebury College, and he acknowledged this instrument, by him signed, to be his free act and deed and the free and deed of The President and Fellows of Middlebury College.

Before me, _____
Notary Public
My commission expires: 2/10/2019

TENANT
Town of Middlebury

Witness

By: _____
Its Duly Authorized Agent

**STATE OF VERMONT
COUNTY OF ADDISON, SS.**

At _____, in said County, this ____ day of _____ personally appeared _____, _____ and duly authorized agent of the Town of Middlebury and he acknowledged this instrument, by him signed, to be his free act and deed and the free and deed of the Town of Middlebury.

Before me, _____
Notary Public

My commission expires: 2/10/2019

Exhibit A- Site Plan