



**BEFORE THE CITY COMMISSION  
CITY OF STUART, FLORIDA**

**RESOLUTION NUMBER 90-2012**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING THE AWARD OF RFP No. 2012-108, BUSINESS TELEPHONE & VOICE MAIL SYSTEM TO THE HIGHEST RANKED FIRM, JOY COMMUNICATIONS, STUART, FLORIDA; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.**

\* \* \* \* \*

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA THAT:**

**SECTION 1:** The City Commission of the City of Stuart, Florida approves the award of RFP No. 2012-108, Business Telephone & Voice Mail System to the highest ranked firm responding to the RFP, Joy Communications, Stuart, Florida.

**SECTION 2:** The City Commission authorizes the Mayor and City Clerk and any other necessary City Official to execute the necessary documents, after approval by the City Attorney.

**SECTION 3:** This resolution shall take effect upon adoption.

Res.90-2012

Award RFP 2012-108 for Business Telephone & Voice Mail System

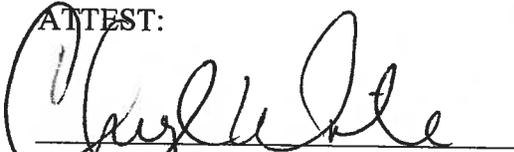
Commissioner Krauskopf offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner McDonald and upon being put to a roll call vote, the vote was as follows:

JAMES A. CHRISTE, JR., MAYOR  
EULA R. CLARKE., VICE MAYOR  
TROY A. McDONALD, COMMISSIONER  
JEFFREY A. KRAUSKOPF, COMMISSIONER  
KELLI GLASS LEIGHTON, COMMISSIONER

YES	NO	ABSENT
✓		
✓		
✓		
✓		
✓		

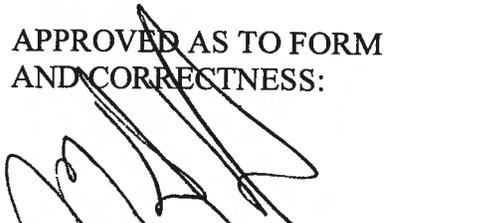
ADOPTED this 24th day of September, 2012.

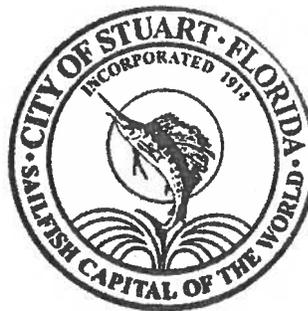
ATTEST:

  
CHERYL WHITE  
CITY CLERK

  
JAMES A. CHRISTIE, Jr.  
MAYOR

APPROVED AS TO FORM  
AND CORRECTNESS:

  
MICHAEL D. DURHAM  
CITY ATTORNEY





Mitel Leasing, Inc. Lease Agreement

LEASE NUMBER 118843 MITEL ACCOUNT NO.

SUPPLIER NAME: Joy Communications
SUPPLIER ADDRESS: 3461 SE Willoughby Blvd.
CITY: Stuart COUNTY:
STATE: FL ZIP: 34994
EQUIPMENT DESCRIPTION: STATED ON ATTACHED SCHEDULE 1

RENT COMMENCEMENT DATE:
SCHEDULE OF PAYMENTS
60 MONTHLY PAYMENTS OF \$ 2,326.93
EXCEPT AS OTHERWISE INDICATED BELOW:
PAYABLE AT SIGNING OF THE LEASE (check one)

Dear Lessee: We have written this lease in plain language because we want you to fully understand its terms. Please read your copy of this lease carefully and feel free to ask us any questions you may have about it.

- 1. LEASE AGREEMENT: You agree to lease from us and we agree to lease to you the equipment listed above...
2. ORDERING EQUIPMENT: You request that we arrange delivery of the equipment to you by the Supplier...
3. NO WARRANTIES: We are leasing the equipment to you "AS IS". WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED...
4. NON-CANCELLABLE LEASE: This lease cannot be cancelled by you, except in the case of non-appropriation of funds.

SEE SECOND PAGE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE

ACCEPTED: MITEL LEASING, INC. LESSOR
BY: [Signature]
TITLE: President DATE: 9/17/12

LESSEE (FULL LEGAL NAME)
City of Stuart, Florida
830 Martin Luther King Blvd
BILLING ADDRESS

DELIVERY AND ACCEPTANCE OF EQUIPMENT
I HEREBY CERTIFY, ON BEHALF OF THE LESSEE, THAT ALL OF THE EQUIPMENT TO BE LEASED HAS BEEN DELIVERED AND INSTALLED.

Stuart FL 34994
PHONE NO. ( ) DATED
BY: [Signature] AUTHORIZED SIGNATURE
Print Name: TITLE

PERSONAL GUARANTY
I guarantee that the lessee will make all payments and pay all the other charges required under this lease when they are due and will perform all other obligations under the lease fully and promptly.

5. **TERM OF LEASE:** The lease term will start on the date that any equipment is delivered to you or your agent ("the Commencement Date") and will continue until you have met all of your obligations under the lease. Advance rentals are not refundable if the lease does not begin for any reason. The payments of rent are payable periodically in advance as stated above or on any schedule to this lease. The first payment is due on the Commencement Date. You will be notified in writing if we change the date of your first payment. Thereafter, consecutive periodic payments will be due on the same day of each period indicated on this Agreement. All payments will be made to us at our address on this lease, or at another address, which we would designate in writing. Your obligation to pay rentals to us is unconditional and is not subject to any reduction, set-off, defense, or counterclaim for any reason whatsoever. You authorize us to insert serial numbers and other identification data about the equipment, as well as other omitted factual matters. If we accepted a security deposit from you, it will be held by us to secure your faithful performance of this lease, and it will be returned or applied as stated in Paragraph 14. You shall pay us a one time administrative fee (not to exceed \$45.00) to reimburse us for our start-up administrative costs.

6. **ASSIGNMENT:** You may not sell, transfer, assign or sublease the equipment. We may, without notifying you, sell, assign or transfer this lease and ownership of the equipment; and you agree that if we do so, the new lessor will have the same rights and benefits that we now have, and the new lessor will not have to perform any of our obligations. You agree that the rights of the new lessor will not be subject to any claims, defenses or set-offs that you may have against us. However, any such assignment, sale, or transfer of this lease or the equipment will not relieve us of our obligations to you under this lease.

7. **OWNERSHIP AND QUIET ENJOYMENT:** We are the owner of the equipment and have title to the equipment. If any other person attempts to claim ownership of the equipment by asserting that claim against you or through you, you agree, at your expense, to protect and defend our title to the equipment. Further, you agree that you will at all times keep the equipment from any legal process or lien whatsoever, and you shall give us immediate notice of any lien whatsoever, and you shall give us immediate notice if any legal process or lien is asserted or made against the equipment. So long as you are not default under any of the terms in this lease, we agree that you shall quietly use and enjoy the equipment.

8. **CARE, USE AND LOCATION; LOSS OF EQUIPMENT:** You are responsible for installing and keeping the equipment in good working order and repair. You are responsible for protecting the equipment from damage, except for ordinary wear and tear, and from any other kind of loss while you have the equipment or while it is being delivered to you. Even if the equipment is damaged or lost, you agree to continue to pay rent. You will keep and use the equipment only at your address shown above, and you will only use it for business purposes and in compliance with all applicable laws. You will not make any alterations or additions to the equipment without our prior written consent (which we will not unreasonably withhold), nor will you permanently attach the equipment to your real estate. You agree that you will not remove the equipment from that address unless you get our written permission in advance.

9. **TAXES AND FEES:** You agree to pay when due all taxes relating to this lease. You also agree that we have the right each year to estimate the yearly personal property taxes that will be due for the equipment and that you will pay us the estimated taxes when we request payment. If we pay any of those taxes, you agree to reimburse us on demand. You also agree that we have the right to sign your name to any document for the purpose of filing, so long as the filing does not interfere with your right to use the equipment.

10. **INDEMNITY:** We are not responsible for any injuries or losses to you or any other person caused by the installation or use of the equipment. You agree to reimburse us for and to defend us against any claims for such losses or injuries. This indemnity shall continue even after the term of this lease has expired.

11. **INSURANCE:** You agree to keep the equipment fully insured against loss until you have met all your obligations under this lease. You agree to maintain at your expense, a general public liability insurance policy, covering both personal injury and property damage, from anyone who is acceptable to us and to provide us, on request, with certificates or other evidence of insurance acceptable to us. If any insurance proceeds are paid as a result of any such loss or damage to the equipment, you agree that such insurance proceeds shall be paid to us to satisfy your rental obligations under the lease. If the equipment is either lost or totally destroyed, and you are not in default under the terms of this lease, instead of continuing to pay us rent you have the option of paying us the then present value of both the unpaid balance of the remaining rent under this lease and the value of our residual interest in the equipment, each computed with a discounted rate of six (6%) percent per year.

12. **DEFAULT AND REMEDIES:** If you do not pay rent when due or if you break any of your promises under this lease, or you become insolvent, assign your assets for the benefit of your creditors, or enter (voluntarily or involuntarily) a bankruptcy proceeding, you will be in default. If your default is caused by failure to make any payment when due, we can, after ten (10) days written notice, enter your premises and deactivate all or a portion of the equipment, or require that you return the equipment to us and pay to us the remaining balance of all of the rental payments due under this lease at present value, using a six (6%) percent per year discount rate. If you fail to return the equipment to us, in addition we can also require that you pay to us our residual interest in the equipment at present value as noted above. You also agree to pay us interest on all sums due us from the date of default until paid at the rate of one and one-half (1-1/2%) percent per month, but only to the extent permitted by law. If your default is caused by your breaking any of your other promises under this lease, we shall be entitled to recover from you all damages caused by that type of default. We can also use any of the remedies available to us under the Uniform Commercial Code or any other law. If we refer this lease to an attorney for enforcement or collection, you agree to pay our reasonable attorney's fees of at least twenty (20%) percent of the remaining balance of all the rental payments, and actual costs. If we have to take possession of the equipment, you agree to pay the cost of repossession, storing, shipping, repairing and selling the equipment. Although you agree that we are not obligated to do so, if we decide to sell the equipment, and we are able to sell the equipment for a price that exceeds the sum of (a) our cost of repossession and sale of the equipment and (b) the residual value of the equipment, present valued as calculated above, then we shall give you a credit for the amount of such excess. You agree that we do not have to notify you that we are selling the equipment.

13. **OTHER RIGHTS:** You agree that any delay or failure to enforce our rights under this lease does not prevent us from enforcing any rights at a later time. Both parties intend this lease to be a valid and legal document, and agree that if any part is determined to be unenforceable, all other parts will remain in full force and effect. If this document is not found to be a lease, then you grant us a security interest in the equipment. You also give us the right to immediately file, at your expense, any Uniform Commercial Code ("UCC") financing statements or related filings, as well as the right to sign your name to any such filings that we make.

14. **REDELIVERY OF EQUIPMENT:** In the event you do not decide not to renew this lease, or purchase the equipment according to the terms of any Purchase or Renewal Option Letter that we have issued to you, then when this lease expires, or is earlier terminated, you shall allow us or our designated agent, upon three (3) days' notice, the right and ability, during normal business hours, to disconnect and remove the equipment. If upon expiration or termination, you do not immediately return the equipment to us, the equipment will continue to be held and leased by you on a month to month basis at the same rental rate in this lease. Upon expiration of your lease, and provided you have fulfilled all of your obligations to us under this lease, we will either refund your security deposit without interest to you or at your direction apply it towards the purchase of the equipment.

15. **LATE CHARGES:** If any part of a payment is not made by you within thirty (30) days of its stated due date, you agree to pay us a late charge of ten (10%) percent of each late payment, but only to the extent permitted by law. You agree to pay us the late charge not later than one month following the date the original payment was due.

16. **ENTIRE AGREEMENT; CHANGES:** This Lease contains the entire agreement between you and us and it may not be altered, amended, modified, terminated or otherwise changed except in writing and signed both by you and us.

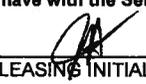
17. **PARTY DISTINCTIONS:** You acknowledge that while we did purchase the equipment for lease to you, that we did not select, manufacture or supply the equipment. You further acknowledge the name of seller and Supplier has been provided to you, and your rights regarding maintenance and warranties are set forth in other agreements.

18. **MISCELLANEOUS:** In the event you fail to comply with any part of this lease, we can, but we do not have to, take any action necessary to effect your compliance upon ten (10) days prior written notice to you. If we are required to pay any amount to obtain your compliance, the amount we pay, plus all of our expenses in causing your compliance, shall become additional rent and shall be paid by you at the time of the next due rental payment. If any notices are required under this lease, they shall be sufficient if given personally or mailed to the address set forth in this lease by certified or registered mail, postage prepaid. This lease is for the benefit of and is binding upon you and your personal representatives, successors and assigns. THIS LEASE SHALL BE BINDING WHEN ACCEPTED IN WRITING BY US AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, PROVIDED HOWEVER, IN THE EVENT THIS LEASE OR ANY OF ITS PROVISIONS CANNOT BE ENFORCED UNDER THE LAWS OF THAT STATE THEN THE LAWS OF THE STATE WHERE THE EQUIPMENT IS LOCATED SHALL GOVERN. YOU AGREE THAT THE COURT OF THE STATE OF TEXAS FOR HARRIS COUNTY OR ANY FEDERAL DISTRICT COURT HAVING THE JURISDICTION IN THAT COUNTY SHALL HAVE JURISDICTION AND SHALL BE THE PROPER LOCATION FOR THE DETERMINATION OF ALL DISPUTES ARISING UNDER THIS LEASE. You agree and consent that we may serve you by registered or certified mail, which shall be sufficient to obtain jurisdiction. Nothing stated in this is intended to prevent us from commencing any action in any court having proper jurisdiction. You waive trial by jury in any action between us.

19. **UCC-ARTICLE 2A PROVISIONS:** You agree that this is a "Finance Lease" under Article 2A of the Uniform Commercial Code, that is, you acknowledge that: (a) we did not select the equipment, we purchased it for lease to you; and (b) you have been given the name of the Entity that supplied the equipment you are leasing from us. We hereby notified you that you have the rights under the agreements that you have with the Selling Entity.

  
CUSTOMER INITIALS

9-25-12  
DATE

  
LEASING INITIALS

9/27/12  
DATE

ATTACHED TO AND MADE PART OF  
LEASE# 118843 DATED September 27, 2012  
BETWEEN THE UNDERSIGNED PARTIES COVERING EQUIPMENT TO BE  
USED BY,

**City of Stuart, Florida**

(Department or Agency)

**CANCELLATION FOR NON-APPROPRIATION OF FUNDS**

1. The lessor and the Lessee understand and agree that the Legislature or other duly authorized official body of the undersigned lessee can cause the said lease to be cancelled as of the end of any budget period, without charge or penalty, if the following events occur.
  - a. The Lessee-user department or agency – is lawfully abolished and no successor to its power and functions is authorized or created; and no funds are appropriated for any program in which the subject equipment is capable of use; or
  - b. No funds are appropriated for the lease, rental, or purchase of subject equivalent equipment and no funds are appropriated for any program in which the subject equipment is capable of use.
2. This lease may be cancelled by the department or agency as of the end of any budget period only on the occurrence of either of the above named events. If so cancelled, Lessee agrees to document the reasons and authority in a written notice by certified mail to the lessor at least 60 days before the end of the budget period.
3. In the event the Lessee lawfully cancels this lease for one of the above named reasons, the Lessor shall be entitled to receive and retain any payments due and owing up to the effective date of cancellation, following which the equipment shall be crated by the Lessee and returned to the Lessor at the Lessee's expense.

ACCEPTED ON Sept 17, 2012

AGREED TO ON Sept 25 2012

LESSOR: Mitel Leasing, Inc.

LESSEE: City of Stuart, Florida

BY: 

BY: 

AMENDMENT NO. 1 TO THE LEASE AGREEMENT

This Amendment No. 1 to the LEASE Agreement between Mitel Leasing, Inc. ("Mitel") and The City of Stuart ("Customer") with an effective date of 9-24-12 (the "Agreement"), is made in duplicate and, notwithstanding its date of execution, is effective as of 9-24-12

RECITALS:

WHEREAS:

- A) The parties entered into the Agreement under which the Customer agreed to purchase Mitel products and/or services in accordance with the terms thereof; and
- B) The parties have mutually agreed to amend the Agreement on the terms and conditions set forth below (the "Amendment");

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as follows:

- A) The foregoing recitals are true and correct and are incorporated herein by reference.
- B) The Agreement is hereby amended as follows:
  - 1) section 18 of the Agreement is hereby amended as follows:  
 The fourth sentence of the first paragraph "THIS LEASE SHALL BE BINDING WHEN ACCEPTED IN WRITING BY US AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, PROVIDED HOWEVER, IN THE EVENT THIS LEASE OR ANY OF ITS PROVISIONS CANNOT BE ENFORCED UNDER THE LAWS OF THAT STATE THEN THE LAWS OF THE STATE WHERE THE EQUIPMENT IS LOCATED SHALL GOVERN. YOU AGREE THAT THE COURT OF THE STATE OF TEXAS FOR HARRIS COUNTY OR ANY FEDERAL DISTRICT COURT HAVING THE JURISDICTION IN THAT COUNTY SHALL HAVE JURISDICTION AND SHALL BE THE PROPER LOCATION FOR THE DETERMINATION OF ALL DISPUTES ARISING UNDER THIS LEASE."  
 is hereby augmented to now read "THIS LEASE SHALL BE BINDING WHEN ACCEPTED IN WRITING BY US AND SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA, PROVIDED HOWEVER, IN THE EVENT THIS LEASE OR ANY OF ITS PROVISIONS CANNOT BE ENFORCED UNDER THE LAWS OF THAT STATE THEN THE LAWS OF THE STATE WHERE THE EQUIPMENT IS LOCATED SHALL GOVERN. YOU AGREE THAT THE COURT OF THE STATE OF FLORIDA FOR MARTIN COUNTY OR ANY FEDERAL DISTRICT COURT HAVING THE JURISDICTION IN THAT COUNTY SHALL HAVE JURISDICTION AND SHALL BE THE PROPER LOCATION FOR THE DETERMINATION OF ALL DISPUTES ARISING UNDER THIS LEASE.
  - 2) section 10 of the Agreement is hereby deleted in its entirety
  - 3) section referencing personal guaranty of the Agreement is hereby deleted in its entirety.
- C) Terms not otherwise defined in this Amendment shall have the meaning set out in the Agreement. Except as amended hereby, the Parties confirm that the Agreement remains in full force and effect in accordance with the terms thereof and the terms not hereby amended shall apply to this Amendment as though stated herein.
- D) If there is any conflict between the terms and conditions of the Agreement and this Amendment, the terms and conditions of this Amendment shall control.
- E) The Agreement, as amended by this Amendment, represents the entire Agreement of the parties on these matters and may not be further modified or amended without the express written consent of the parties.
- F) This Amendment may be executed in counterparts with the same effect as if both parties signed the same document. The counterparts shall be construed together and shall constitute one and the same original agreement. A signature on this Amendment by one party communicated to the other by facsimile transmission will constitute execution of this Amendment

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives as of the date first set out above.

Accepted and Agreed to:

Accepted and Agreed to:

MITEL LEASING, INC.

The City of Stuart

 9/17/12



Lessee (Full Legal Name) City of Stuart, Florida

Account Number \_\_\_\_\_

## SCHEDULE 1 EQUIPMENT ITEMIZATION AND SYSTEM FEATURES

	<u>Description</u>	<u>Quantity</u>
	<b>Mitel MCD/3300 MXe III Controller w/PBX software</b> <ul style="list-style-type: none"> <li>• MCD Digital Link License</li> <li>• Dual system Power Supplies</li> <li>• AMC 3300 ADVANCED Voice Mail</li> <li>• MCD Voicemail Networking</li> <li>• MCD IP Networking license</li> <li>• MCD Remote Management</li> <li>• MCD Enterprise User License</li> </ul>	1
	<b>Mitel 3300 Mxe III Expansion Kit</b>	1
	<b>Mitel Dual T-1 Trunk MMC (1)</b>	1
	<b>Mitel ASU II</b>	1
	<b>Mitel 3300 160G SATA HDD</b>	1
	<b>Mitel MCD Entry Level Bundle</b> <b>Includes: Enterprise User license, NuPoint voice mail, Advanced Unified Messaging</b>	33
	<b>Mitel 24 port ONSp Card</b>	1
	<b>Mitel MCD ONS license</b>	14
	<b>Mitel MCD Mailbox License</b>	1
	<b>Mitel MAS 4.0 Base Software</b>	1
	<b>Mitel NuPoint Record-A-Call</b>	1
	<b>3300 ICP Patch Panel</b>	1
	<b>2-Port FXS/FXO SIP VoIP Gateway</b>	2
	<b>4-Port FXS/FXO SIP VoIP Gateway</b>	2
	<b>Mitel 5330 IP Speakerphone</b> <ul style="list-style-type: none"> <li>• 24 Btn Handsfree Speakerphone</li> <li>• Self-labeling phone</li> <li>• Desi- less phones eliminating the need for any paper labels</li> <li>• Back-lit</li> </ul>	54
	<b>Mitel Live Content Suite</b>	1
	<b>Mitel MCD Standard Level Bundle</b> <b>Includes: Enterprise User license, NuPoint voice mail, Advanced Unified Messaging, UC Advanced, MCA</b>	21
	<b>Mitel HTML User Licences</b>	1

APPROVED AND ACCEPTED BY



Rev10/11

  
 \_\_\_\_\_  
 Customer  
 \_\_\_\_\_  
 Dealer  
 \_\_\_\_\_  
 Date

Lessee (Full Legal Name) City of Stuart, Florida

Account Number \_\_\_\_\_

	<u>Description</u>	<u>Quantity</u>
	<b>Mitel MCD/3300 MXe III Controller w/PBX software</b> <ul style="list-style-type: none"> <li>• MCD Digital Link License</li> <li>• Dual system Power Supplies</li> <li>• AMC 3300 ADVANCED Voice Mail</li> <li>• MCD Voicemail Networking</li> <li>• MCD IP Networking license</li> <li>• MCD Remote Management</li> <li>• MCD Enterprise User License</li> </ul>	<b>1</b>
	<b>Mitel 3300 Mxe III Expansion Kit</b>	<b>1</b>
	<b>Mitel Dual T-1 Trunk MMC (1)</b>	<b>1</b>
	<b>Mitel ASU II</b>	<b>1</b>
	<b>Mitel 3300 160G SATA HDD</b>	<b>1</b>
	<b>Mitel MCD Entry Level Bundle</b> Includes: Enterprise User license, NuPoint voice mail, Advanced Unified Messaging	<b>98</b>
	<b>Mitel 24 port ONSp Card</b>	<b>1</b>
	<b>Mitel MCD ONS license</b>	<b>12</b>
	<b>Mitel MCD Mailbox License</b>	<b>1</b>
	<b>3300 ICP Patch Panel</b>	<b>1</b>
	<b>Mitel 5330 IP Speakerphone</b> <ul style="list-style-type: none"> <li>• 24 Btn Handsfree Speakerphone</li> <li>• Self-labeling phone</li> <li>• Desi- less phones eliminating the need for any paper labels</li> <li>• Back-lit</li> </ul>	<b>97</b>
	<b>Mitel Live Content Suite</b>	<b>1</b>
	<b>Mitel 5304 IP Phone</b> <ul style="list-style-type: none"> <li>• 24 Btn Handsfree Speakerphone</li> <li>• Self-labeling phone</li> <li>• Desi- less phones eliminating the need for any paper labels</li> <li>• Back-fit</li> </ul>	<b>1</b>
	<b>Mitel 5310 Handsfree Full Duplex Speakerphone</b>	<b>1</b>
	<b>Mitel PKM 96 button Console – DSS/BLF</b>	<b>2</b>

APPROVED AND ACCEPTED BY



Rev10/11

*James A. Christie Jr.*  
 \_\_\_\_\_  
 Customer

\_\_\_\_\_  
 Dealer

\_\_\_\_\_  
 Date