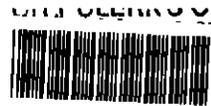


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GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 9th day of June, 2004, by and between **BCV ASSOCIATES, INC.**, a Vermont corporation, (hereinafter referred to as "Grantor"), having an address of ~~431 Pine Street~~, Burlington, VT 05401, and the **STATE OF VERMONT AGENCY OF NATURAL RESOURCES**, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT: *453 Pine River lot*

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al., Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for

[Handwritten signature]

certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;

- (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
 - (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property

for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21)

days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall

be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In

proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

- 15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 9th day of June, 2004

Witness:

BCV ASSOCIATES, INC.

[Handwritten signature]

By: *[Handwritten signature]*
Name: DERRICK DAVIS
Its Duly Authorized Agent

State of Vermont
County of Chittenden

On this 9th day of June, 2004, personally appeared Derrick H Davis, the President of BCV ASSOCIATES, INC., signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of BCV ASSOCIATES, INC.

Before me, *[Handwritten signature]*
Notary Public

My Commission Expires: 2/10/07

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont, in Book _____, Page _____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By:

Its Authorized Representative

Address: _____

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2004, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of _____ [company name] _____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____ [company name].

NOTARY PUBLIC

My Commission Expires: _____.

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EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **BCV ASSOCIATES, INC.**

Property Address: 453 Pine Street (between barge canal and railroad bed)

Property Description:

Being all and the same land and premises conveyed to BCV Associates, Inc., a Vermont corporation by Warranty Deed of BCV Associates, Inc., a New York corporation, dated December 17, 1991 and recorded in Volume 442 at Page 669 of the City of Burlington Land Records.

Also being all and the same land and premises conveyed to BCV Associates, Inc., a New York corporation by Warranty Deed of Christine E. Farrell, dated April 9, 1987 and recorded in Volume 360 at Page 556 of the City of Burlington Land Records, and being more particularly described therein as follows:

"Being all and the same land and premises conveyed to Christine E. Farrell by the following instruments:

1. Warranty deed from Shirley Kaplan Schoenfeld, dated November 20, 1978, recorded in Volume 263, pages 13-15; and,
2. Warranty deed from Florence Kotler, dated November 14, 1978, recorded in Volume 256, pages 570-572;

"both of the Land Records of the City of Burlington, except all of the land and premises conveyed by Christine E. Farrell by the following instruments:

16. Warranty deed from Christine E. Farrell to the State of Vermont, dated March 26, 1986, and recorded in Volume 334, page 31; and,
17. Warranty deed from Christine E. Farrell to 453 Street Associates, Inc., of even dated herewith and recorded in Volume ___[360], page ___[586]; both of the Land Records of the City of Burlington.

"Included herewith is all of my right, title and interest, if any, in and to Barnes Basin, so called.

"In order to comply with the State of Vermont Health Regulations on the subdivision of lands and disposal of waste, including sewage, the grantee shall not construct or erect a structure or building on the parcel of land conveyed herein, the useful occupancy of which will require the installation of plumbing and sewage treatment facilities, without first complying with said State Regulations.

"Grantor disclaims all warranties, express or implied, as to the physical condition of the premises, and in particular as to the presence of any contamination; and the grantee discharges and releases grantor from any and [all] claims it now has or forever shall have against grantor as the result of any contamination of the land and premises herein conveyed."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

BCV ASSOCIATES, INC.

SECRETARY'S CERTIFICATE

I, Lynn Carrell, the duly elected, qualified and acting Secretary of BCV Associates, Inc. (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Directors of the Corporation pursuant to a Unanimous Written Consent in Lieu of Special Meeting(s) dated as of April 1st, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 1st day of April, 2004.


Lynn Carrell, Secretary

BCV ASSOCIATES, INC.

Exhibit A

- RESOLVED: That the Corporation hereby authorizes the "Grant of Environmental Restrictions and Right of Access" (the "Easement") related to property at the Pine Street Barge Superfund Site, identified on the Burlington, Vermont Tax Map as Parcel Number: 053-1-011-000, and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.
- RESOLVED: That Derrick H. Davis, President of the Corporation (the "Authorized Person"), is hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Person is hereby authorized and directed to take such actions and execute such additional documents as such Authorized Person deems necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Person to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Person does not violate any of the terms and conditions of the Corporation's organizational documents or any other agreements to which the Corporation is a party or bound.
- RESOLVED: That any and all such actions taken by the Authorized Person prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

BCV ASSOCIATES, INC.

a corporation formed under the laws of VERMONT

was filed for record in the office on JULY 20, 1990

I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

JUNE 2, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*



501 Pine Street
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GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 9th day of June, 2004 by and between **THE MALTEX PARTNERSHIP**, a Vermont limited partnership (hereinafter referred to as "Grantor"), having an address of The Maltex Building, 431 Pine Street, Burlington, Vermont 05401, and the **State of Vermont Agency of Natural Resources**, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et al., Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with

Attest:

Jo LaMarche
Jo LaMarche, Asst. City Clerk

877 114

the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:
Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;

- (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
- (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
- (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.

4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:

- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
- (d) Grantor shall not use the Property or allow the Property to be used for

residential use or for day care centers for the care of children;

- (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to

VT DEC and EPA; and

- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

- 6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
- 7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
- 8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
- 9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and

this Grant, with respect to such Property.

10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager. Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration. This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.
11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit,

cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.

14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the

Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

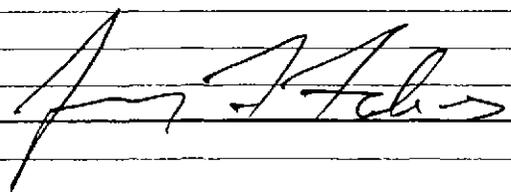
15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

Signature Pages to Follow

877 121

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 9th day of June, 2004

| | |
|---|--|
| Witness: | THE MALTEX PARTNERSHIP |
|  | By:  |
| | Name: <u>Derrick Davis</u> |
| | Its Duly Authorized Agent |

State of Vermont
County of Chittenden

On this 9th day of June, 2004, personally appeared Derrick Davis, the General Partner of THE MALTEX PARTNERSHIP, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of THE MALTEX PARTNERSHIP.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont, in Book _____, Page _____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By:

Its Authorized Representative

Address: _____

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 2004, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of ____ [company name] _____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____ [company name].

NOTARY PUBLIC

My Commission Expires: _____.

877 123

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **THE MALTEX PARTNERSHIP**

Property Address: 501 Pine Street

Property Description:

Being all and the same land and premises conveyed to The Maltex Partnership by Warranty Deed of G.S. Blodgett Company, Inc., dated July 11, 1984 and recorded in Volume 305 at Page 530 of the City of Burlington Land Records and being more particularly described therein as follows:

"Being a portion of the same lands and premises conveyed to the G.S. Blodgett Company, Inc. by the City of Burlington by warranty deed dated December 27, 1967 and recorded in Volume 187 at Page 217 of the Burlington City Land Records. Said land and premises may be more particularly described as follows:

"Beginning at a point which marks the southwest corner of the parcel being conveyed herewith, said point being on the northerly boundary line of land presently occupied by the Burlington Electric Light Department and also, being the southeast corner of the land conveyed to the State of Vermont by the G.S. Blodgett Company, Inc., by warranty deed dated March 30, 1984, and recorded in said land records; thence proceeding easterly along the northerly boundary line of property occupied by the Burlington Electric Department to a concrete monument on the west side of Pine Street, which concrete monument marks the southeast corner of the parcel being conveyed herewith; thence turning to the left and proceeding northerly along the westerly sideline of Pine Street a distance of 400 feet, more or less, to a survey marker, at the northeast corner of the lot herein conveyed; thence turning to the left an interior angle of 89E 35' 00" and proceeding westerly along the northerly boundary line of the land conveyed to the Grantor herein by the City of Burlington, to a point marking the northwest corner of the parcel being conveyed herewith, which point also marks the northeast corner of the parcel conveyed to the State of Vermont by the G.S. Blodgett Company, Inc. in the aforementioned warranty deed; thence turning to the left and proceeding southerly along the easterly boundary line of said parcel conveyed to the State of Vermont, to the point of beginning.

"Said property being conveyed herein is subject to a temporary construction easement in the area of 0.90 acre, more or less, given the State of Vermont by the herein Grantor in the aforementioned warranty deed. Said easement will exist during the construction of the proposed Southern Connector Highway, so-called, for the purposes of muck handling right of and between approximate survey stations 234+60 and 239+15 of the established center line of said highway project.

"The G.S. Blodgett Company, Inc. does further hereby give, grant, sell and convey any and all rights and benefits that it has by virtue of the aforementioned deed from the City of Burlington, which pertain to a rectangular plot of land 92 feet x 60 feet retained by Vermont Gas Systems, Inc., all as set forth in a warranty deed to the City of Burlington, dated March 21, 1967 and recorded in Volume 181, Page 494-496 of said land records, which rectangular parcel is otherwise excepted from this conveyance.

"Meaning to convey hereby all rights and interest the G.S. Blodgett Company, Inc. has in land located easterly of the parcels conveyed to the State of Vermont in the aforementioned deed dated March 30, 1984 as said rights and interests were conveyed to the G.S. Blodgett Company, Inc. in the aforementioned warranty deed from the City of Burlington in Volume 187, Pages 217-219 of said land records.

"This conveyance is further subject to a flowage right in an existing drainage ditch as retained by the City of Burlington, in the aforementioned warranty deed in Volume 187, Pages 217-219."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

**CERTIFICATION OF THE GENERAL PARTNER OF
THE MALTEX PARTNERSHIP**

The undersigned, being the sole General Partner of The Maltex Partnership (the "Partnership"), hereby certifies as follows:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the Partnership is the owner of certain lands and premises identified on the City of Burlington tax map as parcel 053-1-002-000 (the "On Site Property") which property is located within the Site, and is the owner of certain lands and premises identified on the City of Burlington tax map as parcel 053-1-004-000 (the "Off Site Property") which property is located adjacent to the Site (collectively, the On Site Property and the Off Site Property are referred to as the Property); and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action No. _____ (D.Vt.), to which the Partnership is a party, the Partnership agreed to provide a right of access to the Property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on the Property as covenants that will run with the land for the purpose of protecting human health and the environment (collectively, the "Easements").

NOW THEREFORE, Derrick Davis, the sole General Partner of the Partnership, hereby certifies that he may act for and on behalf of the Partnership and is authorized and empowered to execute and deliver to EPA and to the State of Vermont Agency of Natural Resources (the "Grantees") the Easements in substantially the same form as that which were reviewed by the undersigned in connection with the execution of this Certification, and to negotiate modifications to the Easements prior to their execution and delivery in his sole discretion. The undersigned further certifies that he may do and perform such other acts or things and to pay any and all fees and costs as he may in his sole discretion deem reasonably necessary or proper in order to carry into effect the provisions hereof, and that the Grantees may rely on this Certification with respect to any and all actions taken by the undersigned prior to the date hereof and performed on behalf of the Partnership in order to grant and complete the Easements.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand on April 7, 2004.



Derrick Davis, General Partner

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify that the attached is a true copy of the

Tradename Documents

for

THE MALTEX PARTNERSHIP

which appear of record in this department.

March 12, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*



VERMONT SECRETARY OF STATE

Location: 81 River Street Mail: 109 State Street
Montpelier, VT 05609-1104 (802) 828-2386

601434

TRADENAME RE-REGISTRATION

BUSINESS NAME THE MALTEX PARTNERSHIP

Name of the town where the business is located BURLINGTON, VERMONT

Kind of business being transacted PURCHASE & DEVELOP REAL ESTATE

Individual names and residences of all persons, copartners, members or the corporate name and the location of the principal office of such corporation.

(GENERAL PARTNER) DERRICK H. DAVIS, 431 PINE ST, BURLINGTON, VT 05401
name street city state/zip

(LIMITED PARTNER) - SEE ATTACHED LIST
name street city state/zip

name street city state/zip

You must notify this office if you change the business name, change the address or change ownership.

PROCESS AGENT: Each nonresident doing business in this state must appoint a person who resides and whose office or place of business is located in the town wherein the principal office of the business is located, upon whom process against such nonresident may be served in an action founded upon a liability incurred in this state.

agent's name street city VERMONT zip

This application must be signed by one of the persons doing business or an officer of the corporation, in front of a notary public.

Applicant's signature [Signature] Title GENERAL PARTNER

Subscribed and sworn to before me this 5th day of December, 1994

Notary public signature/commission expiration date Donna Audruch 2.10.95

A license or other authority to conduct a business may not be renewed unless the licensee certifies that he or she is in good standing with the Vermont Department of Taxes. Good standing means that no taxes are due, the tax liability is on appeal, the taxpayer is in compliance with the payment plan approved by the Commissioner of Taxes, or the licensing authority determines that immediate payment of taxes would impose an unreasonable hardship (32 V.S.A. Section 3113). The maximum penalty for perjury is fifteen years in prison, a \$10,000 fine, or both. If you don't sign this certificate your tradename cannot be renewed.

I hereby certify, under pains and penalties of perjury, that I am in good standing with respect to or in full compliance with a plan to pay, any and all taxes due the State of Vermont as of the date of this application.

Applicant's signature [Signature] Title GENERAL PARTNER

✓ \$10.00 Fee must be attached.

Schedule A

| | <u>Name</u> | <u>Address</u> |
|--------|--|--|
| (i) | Dr. Richard Bernstein Elizabeth Bernstein | 267 South Cove Road Burlington, VT 05401 |
| (ii) | G.S. Blodgett Company, Inc. J.K. Woods , President Samuel Woods | 50 Lakeside Avenue Burlington, VT 05401 |
| (iii) | Dr. Lewis C. Blowers | R.R. #2, Box 1770 Morrisville, VT 05661 |
| (iv) | John M. Dinse Ann G. Dinse | Harbor Road Shelburne, VT 05482 |
| (v) | Dr. James H. Drews | Box 6420, R.D. #1 Morrisville, VT 05661 |
| (vi) | Robert G. Dunn Francoise P. Dunn | Box 182, R.F.D. #1 Waterbury Center, VT 05677 |
| (vii) | Dean Economou | Notch Brook Road Stowe, VT 05672 |
| (viii) | Dr. James G. Howe Gregory P. Howe | Box 260 Derby, VT 05829 |
| (ix) | Dr. Robert C. Jimerson Lorna Jimerson | R.D. #1, Box 375 Charlotte, VT 05445 |
| (x) | Dr. David Johnson | Route 4, Box 4547 Shelburne, VT 05482 |
| (xi) | Champlain Investment Group James J. Handy, Managing Partner | 201 Crescent Beach Drive BOX 909 Burlington, VT 05402-0909 |
| (xii) | Dr. John E. Mazuzan, Jr. Dr. John E. Mazuzan, III | 82 East Avenue Burlington, VT 05401 |
| (xiii) | Dr. Donald B. Miller, Jr. | Box 175 Jeffersonville, VT 05464 |
| (xiv) | Dr. Frederick M. Perkins | 265 Bentley Lane 6 FELLVIEW DRIVE Jericho, VT 05465 PITTSFORD, NY 14534 |
| (xv) | Post Creek Associates | c/o William G. Post, Jr. Box 1049 369 Burlington, VT 05403 - 0367 |

| | <u>Name</u> | <u>Address</u> |
|---------|---|---|
| (xvi) | Geraldine A. Poulin Robert V. Poulin | 202 Meadowood Drive South Burlington, VT 05401 |
| (xvii) | Dr. Fred Rossman Dr. Stephen P. Adams | R.F.D. #1, Box 250 RFD 3, BOX, 765.3 Hyde Park, VT 05655 MORRISVILLE, VT 05661 |
| (xviii) | Sweet and Burt, Inc. | c/o Mr. Anthony B. Thompson P.O. Box 751 Morrisville, VT 05661 |
| (xix) | Anthony B. Thompson | R.D. #2, Box 450 487 BRUSH HILL RD Stowe, VT 05672 |
| (xx) | J. Larry Williams Berta P. Williams | Mt. Philo Road 70 COPYTEK OFFICE P 100 Shelburne, VT 05482 BOX 426 WILMINGTON, VT 05495 |
| (xxi) | Jonathan K. Woods | 191 South Cove Road Burlington, VT 05401 |



VERMONT SECRETARY OF STATE

Montpelier, Vermont 05602
802-828-2386

TRADENAME REGISTRATION



pd 120

61434

Please print or type, except signatures.

TRADENAME: THE MALTEX PARTNERSHIP

Business location: 171 Battery Street, Burlington, Vermont 05401
(Street) (Town) (State & Zip)

Date business began: April 9, 1984

Nature of Business: purchase and develop real estate

Name and residences of all individuals, co-partners and members or corporate name and address:
(attach list if you need additional space)

| <u>Name</u> | <u>Street</u> | <u>Town</u> | <u>State & Zip</u> |
|-----------------------------|---------------------|-------------|------------------------|
| (General) Derrick A. Davis, | 171 Battery Street, | Burlington, | Vermont 05401 |

(Limited Partners - see attached Schedule A)

PROCESS AGENT: If you are a non-resident doing business in Vermont, you must appoint a VERMONT individual or corporation to act as your process agent.

N/A
(Name) (Street) (Town) (State & Zip)

PLEASE NOTE:

- The purpose of the registration law is to provide a means whereby the public can know who owns, or is responsible for, a business. Therefore, you must notify the Secretary of State of any change of address for the business or process agent or whenever there is a change in ownership, members, or co-partners.
- No person or business can acquire exclusive rights to generic or geographic words.
- Mail original registration to Secretary of State with \$20.00 filing fee.
- A validated copy of this tradename registration will be returned to you as proof of your registration. This registration will be valid for ten years from the date of validation.

(MAIL ONE VALIDATED COPY TO YOUR TOWNCLERK. (FEE \$3.00))
See reverse side for additional information.

I certify that the information stated above by me is true and accurate.

Signature: [Signature] Date: December 11, 1984
Derrick A. Davis (Signature)

Before me: [Signature] 2/10/87
notary public signature date commission expires

For Office Use Only: checked by CP approved by BP

See reverse side for additional information.

12/12/84

Schedule A

| | <u>Name</u> | <u>Address</u> |
|--------|---|--|
| (i) | Dr. Richard Bernstein Elizabeth Bernstein | 267 South Cove Road Burlington, VT 05401 |
| (ii) | G.S. Blodgett Company, Inc. J.K. Woods, President | 50 Lakeside Avenue Burlington, VT 05401 |
| (iii) | Dr. Lewis C. Blowers | R.R. #2, Box 1770 Morrisville, VT 05661 |
| (iv) | John M. Dinse Ann G. Dinse | Harbor Road Shelburne, VT 05482 |
| (v) | Dr. James H. Drews | Box 6420, R.D. #1 Morrisville, VT 05661 |
| (vi) | Robert G. Dunn Francoise P. Dunn | Box 182, R.F.D. #1 Waterbury Center, VT 05677 |
| (vii) | Dean Economou | Notch Brook Road Stowe, VT 05672 |
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| (x) | Dr. David Johnson | Route 4, Box 4547 Shelburne, VT 05482 |
| (xi) | Champlain Investment Group James J. Handy, Managing Partner | 201 Crescent Beach Drive Burlington, VT 05401 |
| (xii) | Dr. John E. Mazuzan, Jr. Dr. John E. Mazuzan, III | 8a2 East Avenue Burlington, VT 05401 |
| (xiii) | Dr. Donald B. Miller, Jr. | Box 175 Jeffersonville, VT 05464 |
| (xiv) | Dr. Frederick M. Perkins | 265 Bentley Lane Jericho, VT 05465 |
| (xv) | Post Creek Associates | c/o William G. Post, Jr. Box 1049 Burlington, VT 05401 |

| | <u>Name</u> | <u>Address</u> |
|---------|--|--|
| (xvi) | Geraldine A. Poulin Robert V. Poulin | 2a02 Meadowood Drive South Burlington, VT 05401 |
| (xvii) | Dr. Fred Rossman Dr. Stephen P. Adams | R.F.D. #1, Box 250 Hyde Park, VT 05655 |
| (xviii) | Sweet and Burt, Inc. | c/o Mr. Anthony B. Thompson P.O. Box 751 Morrisville, VT 05661 |
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| (xx) | J. Larry Williams Berta P. Williams | Mt. Philo Road Shelburne, VT 05482 |
| (xxi) | Jonathan K. Woods | 191 South Cove Road Burlington, VT 05401 |

431 Pine St
(Vt.)

877 78

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SDMS DocID

262702

3:55 P.M

Chap. 231

Return, Copy, Date & Payment Received

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 9th day of June, 2004 by and between **DAVIS DEVELOPMENT CORPORATION**, a Vermont corporation, (hereinafter referred to as "Grantor"), having an address of The Maltex Building, 431 Pine Street, Burlington, VT 05401, and the **State of Vermont Agency of Natural Resources**, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their

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property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104

of the Consent Decree;

- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
 - (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant,

made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.
 - (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for

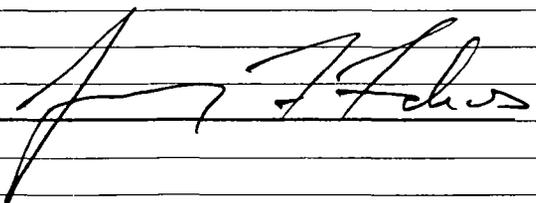
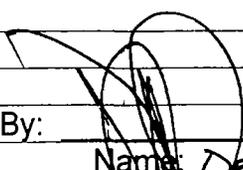
informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.

- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.
15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C.

§1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

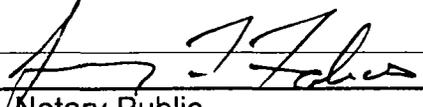
IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 9th day of June, 2004

| | |
|---|--|
| Witness: | DAVIS DEVELOPMENT CORPORATION |
|  |  |
| | By: |
| | Name: <u>Derrick Davis</u> Its Day Authorized Agent |

State of Vermont
County of Chittenden

On this 9th day of June, personally appeared Derrick Davis, the President of DAVIS DEVELOPMENT CORPORATION, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of DAVIS DEVELOPMENT CORPORATION.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont; in Book ____, Page ____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By: _____

Its Authorized Representative

Address: _____

STATE OF _____
COUNTY OF _____

On this ____ day of ____, 2004, before me, the undersigned Notary Public in and for the State of ____, duly commissioned and sworn, personally appeared _____ of __[company name]_____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____[company name].

NOTARY PUBLIC

My Commission Expires: _____.

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: DAVIS DEVELOPMENT CORPORATION

Property Address: 431 Pine Street

Property Description

Being all and the same lands and premises conveyed to Davis Development Corporation by Vermont Development Credit Corporation, by Warranty Deed dated May 4, 1984 and recorded in Volume 305 at Page 119 of the City of Burlington Land Records, and being more particularly described therein as follows:

"Being a part of the same land and premises conveyed to Vermont Development Credit Corporation by Warranty Deed of the Leverage Group, dated January 16, 1979, and recorded in Volume 260 at Page 30 of the Land Records of the City of Burlington, which part herein conveyed consists of that certain 1.1 acres, more or less, unimproved parcel of land fronting about 213.34 feet along the westerly line of a "canal" waterway about 33 feet easterly of the main track line of the "Vermont Railway," near that Lake Champlain shoreline, as depicted and shown of that certain map recorded in Volume 183 at Page 239 of the City of Burlington Land Records."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

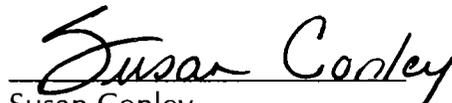
DAVIS DEVELOPMENT CORPORATION

SECRETARY'S CERTIFICATE

I, Susan Conley, the duly elected, qualified and acting Secretary of Davis Development Corporation (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Directors of the Corporation pursuant to a Unanimous Written Consent in Lieu of Special Meeting(s) dated as of April 7, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 14 day of April, 2004.


Susan Conley

DAVIS DEVELOPMENT CORPORATION

Exhibit A

- RESOLVED: That the Corporation hereby authorizes the "Grant of Environmental Restrictions and Right of Access" (the "Easement") related to property at the Pine Street Barge Superfund Site, identified on the Burlington, Vermont Tax Map as Parcel Number: 053-1-010-000, and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.
- RESOLVED: That Derrick H. Davis, President of the Corporation (the "Authorized Person"), is hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Person is hereby authorized and directed to take such actions and execute such additional documents as such Authorized Person deems necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Person to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Person does not violate any of the terms and conditions of the Corporation's organizational documents or any other agreements to which the Corporation is a party or bound.
- RESOLVED: That any and all such actions taken by the Authorized Person prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

THE DAVIS DEVELOPMENT CORPORATION

a corporation formed under the laws of Vermont

was filed for record in the office on August 02, 1983

I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*



128 Lakeside Ave

877 89

U.S. SF



P.M.

SDMS DocID 262703

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 17th day of June, 2004 by and between GP BURLINGTON NORTH, L.L.C., a Rhode Island limited liability company (hereinafter referred to as "Grantor"), having an address of 128 Lakeside Avenue, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to and partially within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al., Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

JUN 18 2004

Vermont Property Transfer Records, G.A. Chap. 231 -ACKNOWLEDGEMENT- Return, Certificate & Payment Received

[Handwritten signature]

Attest: Jo LaMarche, Asst. City Clerk

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the

Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
- (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
- (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.

4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:

- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
- (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
- (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
- (f) Grantor shall not perform or allow to be performed on the Property any *construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to*

such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;

- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and

enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.

7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said

amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.
 - (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the

dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.

- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

- 15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker

Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 15th day of June, 2004.

| | |
|---------------------|---|
| Witness: | Grantor: GP BURLINGTON NORTH, L.L.C. |
| <u>Deborah Gray</u> | By: <u>R.V. Gilbane</u> |
| | Name: <u>R.V. Gilbane</u> |
| | Its Duly Authorized Agent |

State of Rhode Island
County of Providence

On this 18th day of June, 2004, personally appeared Robert V. Gilbane, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| | |
|--|--|
| | Before me, <u>Deborah A. Martin</u> |
| | Notary Public |
| | My Commission Expires: <u>11/16/06</u> |

The undersigned, the holder of a mortgage, dated May 9, 2001 recorded in the Land Records of the City of Burlington, Vermont, in Book 679, Page 437, as amended by a First Amendment to Security Documents dated June 6, 2002 and recorded in Vol. 737 at Page 394 of said Land Records, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

SOVEREIGN BANK

[Signature]

By: [Signature] SUP
Its Authorized Representative
Address: One Financial Plaza
Providence, RI 02903

STATE OF RAHOK ISLAND
COUNTY OF PROVIDENCE

On this 17 day of JUNE, 2004, before me, the undersigned Notary Public in and for the State of RI, duly commissioned and sworn, personally appeared JAMES F. ST THOMAS of Sovereign Bank, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of Sovereign Bank.

[Signature]
NOTARY PUBLIC

My Commission Expires: _____

BARBARA J. THOMAS
NOTARY PUBLIC
My Commission Expires Dec. 21, 2006

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: GP Burlington North, L.L.C.
Property Address: 128 Lakeside Avenue

Property Description:

Being all of the lands and premises of GP Burlington North, L.L.C. situated on the northerly side of Lakeside Avenue, so-called in Burlington, Vermont, more particularly described with reference to a Boundary Survey captioned "Property of General Dynamics Armament Systems, Inc. to be conveyed to GP Burlington North, L.L.C., Lakeside Avenue, Burlington, Vermont" prepared by Krebs & Lansing Consulting Engineers, Inc. dated January 3, 1997 and last revised December 12, 2000 (the "Survey"), which survey was recorded on December 21, 2000 on Map Slide 345-B of the City of Burlington Land Records.

Being a portion of the lands and premises conveyed to Record Owner by Deed of General Dynamics Armament Systems, Inc., dated December 21, 2000 and recorded in Volume 666 at Page 16 of said Land Records, and being more particularly described therein, in part, as follows:

"The Parcel North of Lakeside Avenue (The North Parcel)

"The North Parcel is more particularly describe with reference to the Survey as follows:

"Beginning at a point at the northwest corner of the lands herein described and on the easterly sideline of the lands of the State of Vermont, formerly the Rutland Railroad, said point being marked by a marble monument found in the ground located approximately 33.2 feet easterly of the centerline of the main tracks;

"Thence proceeding N 88° 53' 48" E along the lands of Cloverleaf Properties, Inc. a distance of 458.48 feet to a point, said point marks the northeast corner of the subject premises and is currently under water;

"Thence proceeding S 04° 07' 27: E along the lands of the City of Burlington a distance of 361.69 feet to a point, said point being marked by a 5/8" iron rebar found in the ground;

"Thence proceeding S 04° 15' 00" E along the lands of the City of Burlington a distance of 678.66 feet to a point, said point being marked by an iron pipe set in concrete and said pint marking the northerly limits of Lakeside Avenue;

"Thence proceeding S 89° 00' 00" W along the northerly limits of Lakeside Avenue a distance of 534.17 feet to a point, said point marked by a concrete monument found I the ground and said pint marking the easterly limits of the lands of the State of Vermont, formerly the Rutland Railroad, at approximately 29.5 feet easterly of the centerline of the main tracks;

"Thence proceeding N 00° 20' 59" E along the easterly limits of then lands of the State of Vermont a distance of 648.04 feet to a point, said point being marked by a concrete monument found in the ground and being approximately 36.1 feet easterly of the centerline of the main tracks;

"Thence continuing S 85° 47' 07" W along the lands of the State of Vermont a distance of 3.09 feet to a point, said point being marked by a concrete monument found in the ground and being approximately 33 feet easterly of the centerline of the main tracks;

"Thence continuing N 01° 27' 08" E along the easterly limits of the lands of the State of Vermont a distance of 4.31 feet to a point, said point being marked by a concrete monument found in the ground and being approximately 33.2 feet easterly of the centerline of the main tracks;

"Thence continuing N 00° 14' 12" W along the easterly limits of the lands of the State of Vermont a distance of 385.94 feet to the point of beginning."

Said lands and premises have the benefit of a perpetual pipe line easement that extends from the westerly boundary of the North Parcel to the easterly shore line of Lake Champlain, and across land under the water of said Lake, as described in the Warranty Deed of Bell Aircraft Corporation to General Electric Company dated January 26, 1948 and recorded in Volume 129 at Page 371 of the City of Burlington Land Records.

Said lands and premises have the benefit of rights to railroad side track and tract materials as described in the Warranty Deed of E.B. and A.C. Whiting Company to Burlington Realty Corporation dated June 2, 1941 and recorded in Volume 117 at Page 321 of said Land Records. See also Warranty Deed of Green Mountain Power Corporation to the City of Burlington dated January 27, 1955 and recorded in Volume 146 at Page 381 of said Land Records.

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims bared by operation of the Vermont Marketable Record Title Act, 27 V.S.A §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

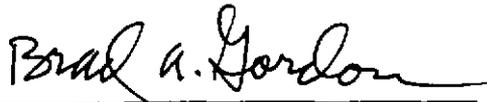
GILBANE PROPERTIES, INC.
CERTIFICATE OF SECRETARY

The undersigned, being the Secretary of Gilbane Properties, Inc., a Rhode Island corporation (the "Corporation") hereby certifies that:

Gilbane Properties, Inc., as the Managing Member of GP Burlington North, L.L.C. is authorized to execute and deliver as such Managing Member on behalf of said limited liability company the Grant of Environmental Restrictions and Right of Access Agreement between GP Burlington North, L.L.C., a Rhode Island Limited Liability Company, the "Grantor" and the State of Vermont Agency of Natural Resources, the "Grantee".

Robert V. Gilbane is, on the date hereof, the duly elected, qualified and acting President of the Corporation, the Managing Member of GP Burlington North, L.L.C., and is authorized to enter into and deliver any and all documents and to do all things necessary in regard to the Grant of Environmental Restrictions and Right of Access Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of this 21st day of June, 2004.



Brad Gordon, Secretary

STATE OF VERMONT

OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify that according to the records of this office

GP BURLINGTON NORTH, LLC

a limited liability company formed under the laws of the State of Rhode Island

was filed for record in this office on December 12, 2000 and that it's most recent report is on file, and that articles of termination have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*



Zero Maple Street
877 141



SDMS DocID

262704

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 4th day of June, 2004 by and between VERMONT RAILWAY, INC., a Vermont corporation (hereinafter referred to as "Grantor"), having an address of One Railway Lane, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action No. 1:99-CV-366 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

19 SF B CITY CLERK'S OFFICE
Received 6-22 2004 at 2:35 PM
and recorded in Vol. 877 on Page
of the State Land Records.
Vermont Property Transfer Tax 32 V.S.A. Chap. 201

-ACKNOWLEDGEMENT-
Return, Certificate & Payment Received

Attest: Jo LaMarche
Jo LaMarche, Asst. City Clerk

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
 - (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;

(g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

(a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and

(b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be

deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.

7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the

Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.
 - (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the

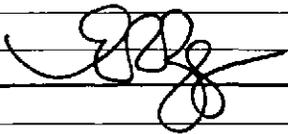
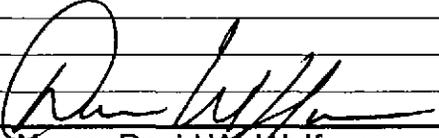
dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.

- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.
15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under

the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 4th day of June, 2004.

| | |
|---|--|
| Witness: | Grantor: VERMONT RAILWAY, INC. |
|  |  |
| | By: Name: David W. Wulfson Its Duly Authorized Agent |

State of Vermont
County of Chittenden

On this 4th day of June, 2004, personally appeared David W. Wulfson, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont, in Book _____, Page _____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By:

Its Authorized Representative

Address: _____

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 2004, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of ____ [company name] _____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____ [company name].

NOTARY PUBLIC

My Commission Expires: _____.

877 150

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **VERMONT RAILWAY, INC.**

Property Address: 0 Maple Street

Property Description:

Being all and the same lands and premises conveyed to Vermont Railway, Inc. by Warranty Deed of George P. Barrett, dated January 23, 1987 and recorded in Volume 357 at Page 207 of the City of Burlington Land Records, which lands and premises are more particularly described as follows:

Being a portion of the land and premises conveyed to George P. Barrett by Warranty Deed of Robert Penniman, said deed dated June 4, 1982 and recorded in Volume 282, Page 423 of the City of Burlington Land Records. Said land and premises are more particularly described in said deed as follows:

"A parcel of land containing 1.7 acres, more or less, and being all and the same land and premises conveyed to Herman E. Warner and Anita E. Warner by Quitclaim Deed of Francis R. Peisch recorded in Volume 243, Page 294 of the City of Burlington Land Records.

"Also being Parcel B as described in a Quitclaim Deed of the Rutland Corporation to Equipco, Inc. dated May 23, 1967, recorded in Volume 181, Page 220 of said Land Records.

"Also conveyed herewith are any and all easements and rights of way as may be more particularly described in a deed from the State of Vermont to the Rutland Corporation recorded in Volume 183, Page 166 of said Land Records.

"Reference is hereby made to the foregoing deeds and map and the records thereof, and to all deeds therein referred to and the records thereof, in aid of this description.

"Robert Penniman hereby quitclaims to George P. Barrett, his heirs and assigns, without warranty of any nature, whatever rights they may have, if any, to a right-of-way by boat through, over and across the waters of the Barge Canal to and from Lake Champlain. The nature of these rights are further described in an agreement between Rutland Railroad Company and Lawrence Barnes and David N. Skillings dated April 15, 1868 and recorded in Volume 4, Pages 311-313 of the City of Burlington Land Records."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

VERMONT RAILWAY, INC.

SECRETARY'S CERTIFICATE

I, Lisa W. Cota, the duly elected, qualified and acting Secretary of Vermont Railway, Inc. (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Board of Directors of the Corporation pursuant to a Unanimous Written Consent in Lieu of Special Meeting(s) dated as of June 11, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 11th day of June, 2004.



Lisa W. Cota, Secretary

VERMONT RAILWAY, INC.

Exhibit A

RESOLVED: That the Corporation hereby authorizes the "Grant of Environmental Restrictions and Right of Access" (the "Easement") related to property at the Pine Street Barge Superfund Site, known specifically as 0 Maple Street, Burlington, Vermont (Tax Map Number: 053-1-009-000), and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.

RESOLVED: That David W. Wulfson, President of the Corporation and Lisa W. Cota, Executive Vice President of the Corporation (the "Authorized Persons"), or either one of them, are hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Persons, or either one of them, are hereby authorized and directed to take such actions and execute such additional documents as such Authorized Persons, or either one of them, deem necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Persons, or either one of them, to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Persons does not violate any of the terms and conditions of the Corporation's organizational documents or any other agreements to which the Corporation is a party or bound.

RESOLVED: That any and all such actions taken by the Authorized Persons, or either one of them, prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

VERMONT RAILWAY, INC

a corporation formed under the laws of Vermont

was filed for record in the office on October 25, 1963

I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*



44 Lakeside Ave
501 Pine (Rear)

880 635

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SFB

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C
A



SDMS DocID 262705

ISAM

Return, Certificate & Payment Received

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Attest

J. LaMarche

Jo LaMarche, Asst. City Clerk

THIS AGREEMENT is made this 14th day of July, 2004 by and between Cloverleaf Properties, Inc., a Vermont corporation (hereinafter referred to as "Grantor"), having an address of 44 Lakeside Avenue, Burlington, Vermont, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is comprised of parcels either nearby or totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site, nearby or on the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et al., Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other

documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
 - (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.
5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:
- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
 - (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the

Consent Decree.

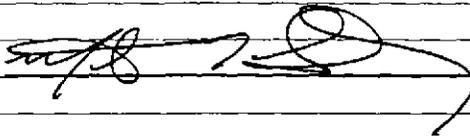
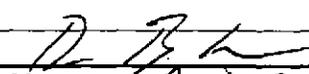
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to

subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

- 15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

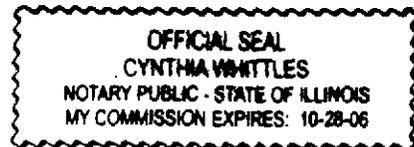
Dated this 14th day of July, 2004

| | |
|--|---|
| Witness: | Grantor |
| | Cloverleaf Properties, Inc. |
|  | By:  |
| | Name: <u>David B. Baker</u> |
| | Its Duly Authorized Agent |

State of ~~Vermont~~ Illinois
County of ~~Chittenden~~ Cook

On this 14th day of July, 2004, personally appeared David B. Baker, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| |
|--|
| Before me, <u>Cynthia Whittle</u> |
| Notary Public |
| My Commission Expires: <u>10/28/06</u> |



The undersigned, the holder of a mortgage dated December 21, 2001, recorded in the Land Records of the City of Burlington, Vermont, in Book 713, Page 524, re-recorded in Vol. 724 at Page 602 and confirmed by Confirmation Agreements dated December 23, 2002 and May 19, 2004 and recorded in Vol. 776 at Page 508, and Vol. 875 at Page 479, respectively, of said Land Records, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

John J. Conly

BANK OF AMERICA, N.A., individually and as Administrative Agent

By: Craig W. McGuire

Its Authorized Representative

Address: 231 S. LaSalle Street
Chicago, IL 60697

STATE OF ILLINOIS
COUNTY OF COOK

On this 9th day of JULY, 2004, before me, the undersigned Notary Public in and for the State of ILLINOIS, duly commissioned and sworn, personally appeared CRAIG MCGUIRE of BANK OF AMERICA, N.A. and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of BANK OF AMERICA, N.A.



Kelly J. Kupke
NOTARY PUBLIC

My Commission Expires: 4-23-2005

880 644

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: CLOVERLEAF PROPERTIES, INC.

Property Address: 44 Lakeside Avenue

Property Description:

Being two parcels of land with buildings and improvements thereon, described as follows:

Parcel One

Parcel One is commonly known and identified as 44 Lakeside Avenue, Burlington, Vermont.

Being all of the same lands and premises conveyed to Grantor by Quit Claim Deed of Blodgett Supply Company, Inc., dated October 16, 1986 and recorded in Volume 345 at Page 322 of the City of Burlington Land Records, and being more particularly described as follows:

1. Being all rights and title which Blodgett Supply Company, Inc. has in and to a certain pier or breakwater extending into Lake Champlain in Burlington in the County of Chittenden and State of Vermont. Being all right and title which was conveyed to Blodgett Supply Company, Inc. by Quit Claim Deed of Lakeside Boat Club, dated August 14, 1959 and recorded in Volume 151 at Page 215 of the City of Burlington Land Records.
2. Being all and the same land and premises conveyed to the Blodgett Supply Company, Inc. by Warranty Deed of The G.S. Blodgett Company, Inc., dated December 30, 1947 and recorded in Volume 129 at Page 339 of the City of Burlington Land Records. Said land and premises being shown on a blueprint recorded in Volume 127 at Page 442 of said Land Records. Also included in this conveyance is a right of way set forth in the aforesaid Warranty Deed running northerly from Lakeside Avenue, all as more fully set forth in said Warranty Deed.

3. Being the undivided one-half interest in lands and premises conveyed to the Blodgett Supply Company, Inc., by Warranty Deed of the G.S. Blodgett Company, Inc., dated December 30, 1947 and recorded in Volume 129 at Page 340 of the City of Burlington Land Records. Said land and premises are shown on a blueprint recorded in Volume 127 at Page 447 of the City of Burlington Land Records.
4. Being all and the same land and premises conveyed to the Blodgett Supply Company, Inc. by Quit Claim Deed of The G.S. Blodgett Company, Inc., dated March 2, 1981 and recorded in Volume 276 at Page 131 of the City of Burlington Land Records. Being all of parcels 2 and 3, shown on a map or plan entitled "Plat of Land of G.S. Blodgett Co., Inc. and Blodgett Supply Co., Inc., Lakeside Ave., Burlington, Vermont," by Trudell Engineers, Inc., dated February 9, 1981 and recorded in Map Book 2 at Page 55 (now Map Slide 115-55) of the City of Burlington Land Records.

Also being a portion of the land and premises conveyed by The G.S. Blodgett Company, Inc. to Cloverleaf Properties, Inc. by Warranty Deed dated December 9, 1987 and recorded in Volume 373 at Page 760 of the City of Burlington Land Records, which portion is described more particularly as follows:

Being a portion of the same land and premises conveyed to The G.S. Blodgett Company, Inc. by Quit Claim Deed of Burlington Realty Corporation, dated April 30, 1942 and recorded in Volume 114 at Page 260 of the City of Burlington Land Records.

Parcel Two

Parcel Two is commonly known and identified as 501 Pine Street, Burlington, Vermont.

Being a portion of the same land and premises conveyed to Cloverleaf Properties, Inc. by Warranty Deed of The G.S. Blodgett Company, Inc., dated December 9, 1987 and recorded in Volume 373 at Page 760 of the City of Burlington Land Records.

Being all and the same land and premises conveyed to The G.S. Blodgett Company, Inc. by Warranty Deed of the City of Burlington, dated December 27, 1967 and recorded in Volume 187 at Page 217 of the City

of Burlington Land Records, EXCEPT for those lands and premises previously conveyed by The G.S. Blodgett Company, Inc. as follows: 1) To the State of Vermont by Warranty Deed dated March 30, 1984 and recorded in Volume 302 at Page 610 of the City of Burlington Land Records; and 2) To The Maltex Partnership by Warranty Deed dated July 7, 1984 and recorded in Volume 305 at Page 530 of the City of Burlington Land Records.

Also being all right, title and interest in land and premises conveyed to The G.S. Blodgett Company, Inc. by Easement Deed of the State of Vermont, dated March 22, 1984 and recorded in Volume 302 at Page 589 of the City of Burlington Land Records.

Parcels One and Two are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

CLOVERLEAF PROPERTIES, INC.

SECRETARY'S CERTIFICATE

I, David B. Baker, the duly elected, qualified and acting Secretary of Cloverleaf Properties, Inc. (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Board of Directors of the Corporation pursuant to a Unanimous Written Consent in Lieu of Special Meeting(s) dated as of July 14, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 14 day of July, 2004.

DBL
Secretary

CLOVERLEAF PROPERTIES, INC.

Exhibit A

RESOLVED: That the Corporation hereby authorizes the "Grant of Environmental Restrictions and Right of Access" (the "Easement") related to properties at the Pine Street Barge Superfund Site, known specifically as 44 Lakeside Avenue and 501 Pine Street, Burlington, Vermont (Tax Map Numbers: 053-1-012-000; 053-2-012-000), and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.

RESOLVED: That Selim A. Bassoul, President of the Corporation and David B. Baker, Secretary of the Corporation (the "Authorized Persons"), or either one of them, are hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Persons, or either one of them, are hereby authorized and directed to take such actions and execute such additional documents as such Authorized Persons, or either one of them, deem necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Persons, or either one of them, to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Persons does not violate any of the terms and conditions of the Corporation's organizational documents or any other agreements to which the Corporation is a party or bound.

RESOLVED: That any and all such actions taken by the Authorized Persons, or either one of them, prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

CLOVERLEAF PROPERTIES, INC

a corporation formed under the laws of Vermont

was filed for record in the office on May 20, 1986

I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*





GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 24th day of June, 2004 by and between CITIZENS PROPERTIES, INC., a Vermont corporation formerly known as Citizens Oil Co., Inc., which was formerly known as Citizens Oil Company, (hereinafter referred to as "Grantor"), having an address of 377 Pine Street, Burlington, VT 05401, (hereinafter referred to as "Grantor"), and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site which lies adjacent to the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

CITY CLERK'S OFFICE
Received 7-16 2004 at 1:22 P.M.
and recorded in Vol. 879 on Page _____
of Burlington Land Records.
Vermont Property Transfer Tax 32 V.S.A. Chap. 231
-ACKNOWLEDGEMENT-
Return, Certificate & Payment Received
Sheehy
P.M. 1

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other

documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children, except that the current residential tenant, Judith Cardinal, may continue her existing lease of a portion of the Property provided no children reside with her, and that at such time as Cardinal's tenancy is terminated, no further residential use shall be allowed;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to

be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor

shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of

this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby

waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 24th day of June, 2004

Witness: CITIZENS PROPERTIES, INC.

Diane M. McCarthy By: Michael E. Jarrett
Name: Michael E. Jarrett
Its Duly Authorized Agent

State of Vermont
County of Chittenden

On this 24th day of June, 2004, personally appeared Michael E. Jarrett, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

Before me, Diane M. McCarthy
Notary Public
My Commission Expires: 2/10/07

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont, in Book: _____, Page _____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By: _____
Its Authorized Representative
Address: _____

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2004, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of _____ [company name] _____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____ [company name].

NOTARY PUBLIC

My Commission Expires: _____.

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **CITIZENS PROPERTIES, INC.**

Property Address: 377 Pine Street

Property Description

Land and premises known and designated as 377 Pine Street, Burlington, Vermont. Being all and the same land and premises conveyed to Citizens Oil Company by Quit Claim Deed of Ernest A. Brodie, Leroy M. Bingham, Byron S. Jones and James H. Middlebrook, dated July 5, 1899 and recorded in Volume 38 at Page 366 of the City of Burlington Land Records. Said premises are further described in a prior deed, dated July 19, 1895 and recorded in Vol. 37 at Page 245 of said Land Records as follows:

"The land and premises situated on the West side of Pine Street and bounded as follows, viz:

"Beginning in the East line of the "basin" so-called at the Southwest corner of land deeded by said Company [Shepard and Morse Lumber Company] to and now owned by Henderson and Gay. Thence Easterly in the South line of said land of Henderson and Gay to a stone monument in the West line of Pine Street. Thence Southerly in the West line of Pine Street one hundred and fifty (150) feet from said stone monument. Thence Westerly in a line parallel with said South line of said Henderson and Gay's land to a point in the East line of said basin one hundred and fifty (150) feet Northerly from the Southeast corner of said basin. Thence Northerly in the East line of said basin one hundred and fifty (150) feet to the point of beginning.

"Subject however to the right of way twelve (12) feet wide, abutting on said Pine Street for a railroad track as reserved in the Deed from Barnes and Skillings to Shepard Davis and Hall dated November 26, 1869 and recorded in Volume 5, page 294 of Land Records of said City of Burlington, to which Deed and the record thereof, reference is hereby made in aid hereof and reserving to this grantor all of the privileges of said right-of-way as appurtenant to the land of said corporation lying South of the parcel herein conveyed."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

F:\WPDOCS\G\GMP\PineSt\Easements\Citizens-2004 revisedclean.doc

**CERTIFICATE OF CHANGE IN NAME OF
OWNER OF REAL ESTATE**

- Name of Owner of Real Estate Prior to Name Change:

CITIZENS OIL COMPANY, INC.

- Name of Owner of Real Estate After Name Change:

CITIZENS PROPERTIES, INC.

Pursuant to 27 V.S.A. § 350, Citizens Properties, Inc. certifies that, by Articles of Amendment filed with the Vermont Secretary of State on November 12, 1996, Citizens Oil Company, Inc. changed the name of the corporation to Citizens Properties, Inc.

Drane M. McCarthy
Witness

CITIZENS PROPERTIES, INC.

By: Michael E. Jarrett
Name: Michael E. Jarrett
Title: President

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, VT, this 21st day of June, 2004, personally appeared Michael Jarrett, on behalf of Citizens Properties, Inc. and being duly sworn he subscribed the foregoing as true.

Before me,

Drane M. McCarthy
Notary Public

My commission expires: 2/10/07

CITIZENS PROPERTIES, INC.

SECRETARY'S CERTIFICATE

I, Charles T Shea the duly elected, qualified and acting Secretary of Citizens Properties, Inc. (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Directors of the Corporation pursuant to a Unanimous Written Consent in Lieu of Special Meeting(s) dated as of June 22, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 22 day of June, 2004.

Charles T Shea
Secretary

CITIZENS PROPERTIES, INC.

Exhibit A

RESOLVED: That the Corporation hereby authorizes the "Grant of Environmental Restrictions and Right of Access" (the "Easement") related to property at the Pine Street Barge Superfund Site, known specifically as 377 Pine Street, Burlington, Vermont (Tax Map Number: 053-1-006-000), and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.

RESOLVED: That Michael E. Jarrett, President of the Corporation (the "Authorized Person"), is hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Person is hereby authorized and directed to take such actions and execute such additional documents as such Authorized Person deems necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Person to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Person does not violate any of the terms and conditions of the Corporation's organizational documents or any other agreements to which the Corporation is a party or bound.

RESOLVED: That any and all such actions taken by the Authorized Person prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

CITIZENS PROPERTIES, INC

a corporation formed under the laws of Vermont

was filed for record in the office on April 28, 1899

I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*





GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 9th day of June, 2004 by and between **THE MALTEX PARTNERSHIP**, a Vermont limited partnership (hereinafter referred to as "Grantor"), having an address of The Maltex Building, 431 Pine Street, Burlington, Vermont 05401, and the **State of Vermont Agency of Natural Resources**, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site which lies adjacent to the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for

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certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;

- (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
- (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
- (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.

4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:

- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
- (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
- (e) Grantor shall not use or allow the use of the groundwater on the Property

- for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
 - (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.
5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:
- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
 - (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21)

days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall

be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

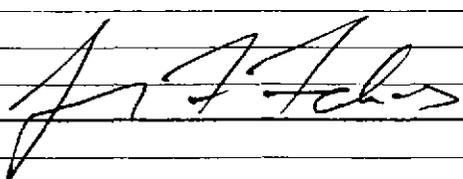
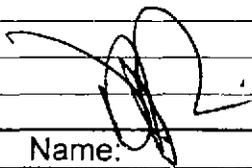
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In

proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

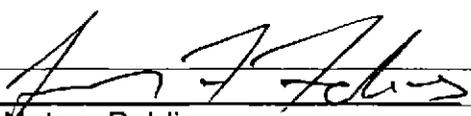
IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 9th day of June, 2004

| | |
|---|--|
| Witness: | THE MALTEX PARTNERSHIP |
|  | By:  |
| | Name: _____ |
| | Its Duly Authorized Agent |

State of Vermont
County of Chittenden

On this 9th day of June, 2004, personally appeared Daniel Davis, the General Partner of THE MALTEX PARTNERSHIP, signer and sealer of the foregoing written conveyance and acknowledged the same to be _____ own free act and deed and the free act and deed of THE MALTEX PARTNERSHIP.

| |
|---|
| Before me,  |
| Notary Public |
| My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of mortgages dated December 8, 1999 and January 27, 2003, and recorded in the Land Records of the City of Burlington, Vermont, in Book 639, Page 697, and Vol. 781, Page 756, respectively by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

Janice Bertrand

CHITTENDEN TRUST COMPANY d/b/a
CHITTENDEN BANK (and successor by
merger to Vermont National Bank)

By: Brian M. Mann

Its Authorized Representative

Address: 2 Burlington Square
Burlington VT

STATE OF VERMONT
COUNTY OF CHITTENDEN

On this 14th day of June, 2004, before me, the undersigned Notary Public in and for the State of Vermont, duly commissioned and sworn, personally appeared Brian M. Mann of CHITTENDEN TRUST COMPANY d/b/a CHITTENDEN BANK, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of CHITTENDEN TRUST COMPANY d/b/a CHITTENDEN BANK.

Janice Bertrand
NOTARY PUBLIC

My Commission Expires: 2/10/07.

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EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **THE MALTEX PARTNERSHIP**

Property Address: 431 Pine Street

Property Description:

Land and premises with improvements thereon known and designated as 431 Pine Street, Burlington, Vermont.

Being all and the same land and premises conveyed to The Maltex Partnership by Warranty Deed of Vermont Development Credit Corporation, dated May 4, 1994 and recorded in Volume 305 at Page 117 of the City of Burlington Land Records, and is described more particularly therein, in part, as follows:

"Being all and the same land and premises conveyed to Vermont Development Credit Corporation by Warranty Deed of the Leverage Group, dated January 16, 1979 and recorded in Volume 260 at Page 30 of the Land Records of the City of Burlington.

"EXCEPTING THEREFROM an unimproved part of said land and premises located about 470 feet west of Pine Street ---- conveyed to the State of Vermont for highway purposes by deed dated October 31, 1983, described as follows:

"Being Parcel #69 consisting of 3.10 acres, more or less, land and rights therein, as shown on Pages 63, 64, 66 and 67 of the plans of Highway Project Burlington M5000(1) as filed in the Office of the Clerk of the City of Burlington and as said Highway Project Plans Pages 37, 63, 64, and 67 have been revised and filed in the Office of the Clerk of the City of Burlington.' "

ALSO EXCEPTING a 1.1 acre unimproved part of said land and premises situated westerly of a canal waterway and easterly of the main track line of Vermont Railway.

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As an aid in identifying the above lands and premises, reference is hereby made to a map recorded in Volume 183 at Page 239 of the Burlington Records.

Reference may also be made to a plan entitled "The Davis Company, Property Lines at 431 Pine St.," prepared by Fred C. Koerner, C.E., dated April, 1984 and recorded at Map Slide 141-25 of the City of Burlington Land Records which depicts the premises known as 431 Pine Street as follows:

Beginning at an existing marble monument in the westerly sideline of Pine Street, said monument marking the northeasterly corner of the property; thence proceeding westerly in a common boundary with property now or formerly of Thomas A. Farrell, Louis E. Farrell, and J. Nelson Farrell a distance of 314.53 feet, more or less, to a point marked by an iron pipe; thence turning and proceeding southerly in a common boundary with property now or formerly of the State of Vermont a distance of 335.30 feet, more or less, to a point marked by an iron pipe; thence turning and proceeding easterly in a common boundary with property now or formerly of Christine E. Farrell a distance of 337.10 feet, more or less, to a point marked by an iron pipe in the westerly sideline of Pine Street; thence turning and proceeding northerly in and along the westerly sideline of Pine Street a distance of 333.50 feet, more or less, to the monument marking the point or place of beginning.

The southern-most 16 2 feet of the above-described property are conveyed by quitclaim only with no warranties of title.

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.



GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

405 Pine Street

Attest: J. Ramarche

THIS AGREEMENT is made this 11th day of June, 2004 by and between S&S VENDING CO., a Vermont corporation (hereinafter referred to as "Grantor"), having an address of 20 Karen Drive, South Burlington, VT 05406, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to and partially within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

REC'D
JUN 11 2004
[Handwritten signature]

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
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3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents,

consistent with Section XXIV (Access to Information) of the Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
- (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
- (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.

4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:

- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
- (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
- (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to

such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;

- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been

modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.

7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of

Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.
 - (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute

shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.

- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 11th day of June, 2004.

Witness:

Grantor: **S & S VENDING CO.**

[Signature]

By: [Signature]

Name:
Its Duly Authorized Agent

State of Vermont
County of Chittenden

On this 11th day of June, 2004, personally appeared Louis G. Farrell, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

Before me, [Signature]
Notary Public
My Commission Expires: 2-10-07

The undersigned, the holder of a mortgage dated August 22, 2001 recorded in the Land Records of the City of Burlington, Vermont, in Book 698, Page 533, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

CHITTENDEN TRUST COMPANY D/B/A
CHITTENDEN BANK

WITNESS:

[Signature]

By:

[Signature]

Its Authorized Representative *Michael Seaver*

Address: *Two Burlington Sq*
Burlington VT

05/01

STATE OF VERMONT
COUNTY OF *Chittenden*

On this *11th* day of *June*, 2004, before me, the undersigned Notary Public in and for the State of Vermont, duly commissioned and sworn, personally appeared *Michael Seaver* of Chittenden Trust Company d/b/a Chittenden Bank and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of Chittenden Trust Company d/b/a Chittenden Bank.

[Signature]
NOTARY PUBLIC

My Commission Expires: *2-10-07*

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EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: S & S VENDING CO.

Property Address: 405 Pine Street

Property Description

A lot of land with all buildings thereon located on Pine Street in the City of Burlington, Vermont being known and designated as 405 Pine Street.

Being all and the same lands and premises conveyed to S & S Vending Co. by Quit Claim Deed of Louis G. Farrell, dated September 12, 2000 and recorded in Volume 658 at Page 679 of the City of Burlington Land Records.

Being all and the same land and premises conveyed to Louis G. Farrell by Second Partial Decree of Distribution in the Estate of Louis G. Farrell issued by the Chittenden Probate Court on October 31, 1983, and recorded in Volume 658 at Page 674 of the City of Burlington Land Records.

Being all and the same land and premises conveyed to Louis E. Farrell, Thomas A. Farrell, and J. Nelson Farrell by the following deeds:

1. Quit Claim Deed of Shepard & Morse Lumber Company, dated March 14, 1942 and recorded in Volume 114 at Page 252 of the City of Burlington Land Records; and
2. Warranty Deed of Maltex Company, dated March 19, 1942 and recorded in Volume 117 at Page 612 of the City of Burlington Land Records.

Thomas A. Farrell and J. Nelson Farrell conveyed their undivided 2/3 interest in the Subject Premises by Warranty Deed dated September 1, 1944 and recorded in Volume 122 at Page 348 of the City of Burlington Land Records, which interests are more particularly described therein as follows:

"First: Our undivided two-thirds interest in that certain lot of land situated on the west side of Pine Street and bounded on the north by land of the Citizens Coal Company, on the east by west line of Pine Street, on the south by land hereinafter described as the second parcel in this conveyance and on the west by the new basin, so-called. Said lot is supposed to have a frontage on

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Pine Street of 155.5 feet, more or less, and on the basin of 150 feet, more or less and a depth, along the north line of 469.4 feet, more or less.

"Being a portion of the same land and premises conveyed to Shepard and Morse Lumber Company by the Shepard and Morse Lumber Company, a Massachusetts corporation, by its Quitclaim deed dated October 12, 1884, and recorded in vol. 17, at page 471 of the City of Burlington land records; and also a portion of the same land and premises which were conveyed to Shepard, Hall and Davis by Barnes and Skillings by warranty deed dated November 26, 1869 and recorded in vol. 5, page 294 of said land records. Being also our undivided two-thirds interest in the land conveyed to Thomas A Farrell and J. Nelson Farrell, and to said Louis E. Farrell by Quitclaim deed from the Shepard and Morse Lumber Company, a Maine corporation, dated March 14, 1942 and recorded in vol. 114 at Page 252 of the City of Burlington land records.

"Reference is made to the following deeds and their records in aid of this description: of Warranty deed of Shepard and Hall to the Shepard and Morse Lumber Company (a Mass. Corporation), dated December 11, 1879, recorded at vol. 16, page 175-6 of said records; and Quitclaim deed of the Mial Davis to Shepard and Hall dated May 1, 1876, recorded at vol. 9 page 420 of said records.

"This conveyance is made subject to a right of way 12 feet wide, for a railroad track, over so much of said land as abuts on the west line of Pine Street, said track to be for the use of all abutters, all as reserved in said deed of Barnes and Skillings, to Shepard, Hall and Davis.

"Second: Our undivided two-thirds interest in a parcel of land of uniform width of 50 feet and depth of 470 feet off the northerly portion of lands and premises conveyed to the Maltex Company by Bertha Wells Jackson and Frank R. Wells by their warranty deed, dated December 24, 1941 and recorded in Book 117, Page 532 of the City of Burlington Land Records and bounded by a line running as follows: Beginning at the northeast corner of said whole parcel of land, which point is in the westerly street line of Pine street; thence southerly in the west line of Pine Street 50 feet; thence westerly parallel with the northerly line of the premises conveyed to the within grantor, as above described, 470 feet; thence northerly parallel with the westerly line of Pine Street to the northerly line of the whole of said premises; thence easterly along the northerly line of the whole of said premises to the place of beginning.

"Reserving and subject to a right of way 12 feet wide across the east end of said land adjoining Pine Street, for a railroad track to be used in common by all parties over whose land the same may be constructed in forming a connection with the Rutland Railroad.

"Also reserving a right of way for railroad tracks and for a driveway over and across a strip of land 30 feet wide (including said 12-foot right of way above) off the east end of said land adjoining Pine Street, the same to be used in common by the grantor and grantees herein and their respective successors, heirs and assigns. Being all of the undivided two-thirds interest of the grantors herein in the land and premises conveyed to said Thomas A. Farrell and J. Nelson Farrell and to the said Louis E. Farrell as tenants in common by a warranty deed from the Maltex Company, a partnership composed of F.H. Shepardson and F.W. Shepardson, dated March 19, 1942 and recorded at vol. 117 page 612 of the City of Burlington land records.

"Said premises are not our homestead or the homestead of either of us."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

S&S VENDING CO.

SECRETARY'S CERTIFICATE

I, **Barbara C. Kohler**, the duly elected, qualified, and acting Secretary of S&S Vending Co. (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Directors of the Corporation pursuant to a Unanimous Written Consent in Lieu of Special Meeting(s) dated as of April 01, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 11th day of June, 2004.



Barbara C. Kohler, Secretary

S&S VENDING CO.

Exhibit A

RESOLVED: That the Corporation hereby authorizes the "Grant of Environmental Restrictions and Right of Access" (the "Easement") related to property at the Pine Street Barge Superfund Site, known specifically as 405 Pine Street, Burlington, Vermont (Tax Map Number: 053-1-005-000), and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.

RESOLVED: That Louis G. Farrell, President of the Corporation and Shannon Farrell, Vice President of the Corporation (the "Authorized Persons"), or either one of them, are hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Persons, or either one of them, are hereby authorized and directed to take such actions and execute such additional documents as such Authorized Persons, or either one of them, deem necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Persons, or either one of them, to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Persons does not violate any of the terms and conditions of the Corporation's organizational documents or any other agreements to which the Corporation is a party or bound.

RESOLVED: That any and all such actions taken by the Authorized Persons, or either one of them, prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT
OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

S & S VENDING CO.

a corporation formed under the laws of Vermont

was filed for record in the office on June 13, 2000

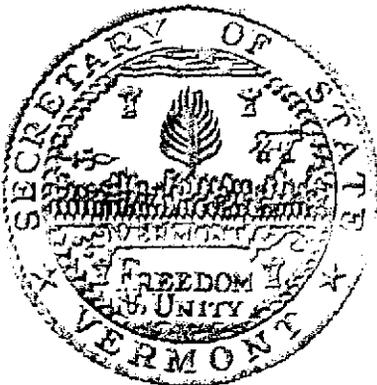
I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



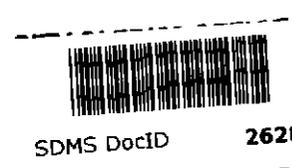
*Deborah L. Markowitz
Secretary of State*



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p. 231

Return, Certificate & Payment Received

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 15th day of July 2007 by and between DENNIS P. HAVEY, (hereinafter referred to as "Grantor"), having an address of 300 Meehan Road, Bristol, VT 05443 and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to and partially within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action No. _____ (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other

documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
- (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
- (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.

4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:

- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (c) Grantor shall not use or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
- (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
- (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will

likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;

- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this

Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.

7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant,

made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

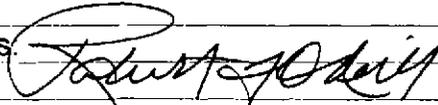
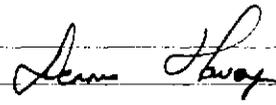
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- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 15th day of July, 2004.

| | |
|--|---|
| Witness:  | Grantor:  |
| | |
| | |
| | Name: DENNIS P. HAVEY |

State of Vermont
County of Chittenden

On this 15th day of July, 2004, personally appeared **DENNIS P. HAVEY**, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of a mortgage dated April 16, 1996 and recorded in the Land Records of the City of Burlington, Vermont, in Book 543, Page 40, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

LASMO Petroleum, Inc.

By:

Its Authorized Representative

Address: _____

STATE OF _____
COUNTY OF _____

On this ____ day of ____, 2004, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of LASMO Petroleum, Inc., and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of LASMO Petroleum, Inc.

NOTARY PUBLIC

My Commission Expires: _____.

880 656

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **DENNIS P. HAVEY**

Property Address: 345 Pine Street

Property Description

A parcel of land containing approximately 7.5 acres, with building thereon, located at 345 Pine Street, Burlington, Vermont.

Being all and the same land and premises as conveyed to Dennis P. Havey by Warranty Deed of LASMO Petroleum, Inc. (formerly Golden Eagle Oil Company, Inc.), dated April 16, 1996 and recorded in Volume 543 at Page 36 of the City of Burlington Land Records, and being more particularly described therein, in part, as follows:

"Being two parcels as described as follows:

"Parcel 1: Being all and the same land and premises conveyed to Green Mountain Petroleum Corporation by Warranty Deed of Champlain Oil Company, Inc. (formerly known as R.T. Platka Fuels, Inc.), dated August 3, 1962, and recorded in Book 162, at Page 713 of the City of Burlington Land Records.

"Parcel 2: Being all and the same land and premises conveyed to Green Mountain Petroleum Corporation by Quit Claim Deed of Charles Samuelson, dated July 17, 1962, and recorded in Book 151, at Page 419 of the City of Burlington Land Records.

"Together with right of way for driveway purposes in common with others from the south end of Champlain Street to the northerly end of the conveyed premises substantially as now existing.

"These lands and premises have the benefit of a permanent easement conveyed by Rutland Railway Corporation to Green Mountain Petroleum Corporation by permanent easement instrument, dated September 27, 1962, and recorded in Book 163, at Pages 145-146 of said land records. This easement was for five petroleum pipelines over the Rutland Railway

Corporation property. A map of this easement is of record in Book 163, Page 153. Also included in the conveyance were such rights as Rutland Railway Corporation had for Green Mountain Petroleum Corporation, its successors and assigns, to construct and maintain a mooring dock and/or a maximum of two dolphins off shore in Lake Champlain west of the westerly terminus of said easement and right to extend the groupings of five pipes along the lakeshore bed to the mooring dock and/or dolphins. Green Mountain Petroleum Corporation, for itself, its successors and assigns, agreed with Rutland Railway Corporation to indemnify Rutland Railway Corporation for any loss or accidents resulting from any mishaps in the use of said pipelines.

"Green Mountain Petroleum Corporation merged into George Hall Corporation as evidenced by a Certificate of Merger, dated April 6, 1973, and recorded in Book 283, at Page 606 of the City of Burlington Land Records. The name was subsequently changed to The Augsbury Corporation.

"Included in this conveyance is the narrow strip of land lying between Parcel 1 and Parcel 2 described herein."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

**PARTIAL DISCHARGE OF MORTGAGE DEED AND CONSENT
AND GRANT OF ENVIRONMENTAL RESTRICTIONS**

KNOW ALL PERSONS BY THESE PRESENTS that LASMO PETROLEUM, INC., a Delaware corporation, in consideration of TEN OR MORE DOLLARS, receipt of which is hereby acknowledged, does hereby release and discharge from the lien of a certain Mortgage Deed given by DENNIS P. HAVEY to LASMO PETROLEUM, INC., dated April 16, 1996 and recorded in Volume 543 at Page 40 of the City of Burlington Land Records (the "Mortgage") relating to property owned by Dennis P. Havey, which property is described in the Mortgage (the "Property"), such easements and rights, including rights of access, all as described and set forth in a Grant of Environmental Restrictions and Right of Access by and between Dennis P. Havey, as Grantor, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont, as Grantee, dated as of March __, 2000, and to be recorded in the City of Burlington Land Records (the "Grant"), and further consents to the granting of, and does hereby grant and subject the Property to, certain easements, rights, obligations, covenants and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions") as set forth and described in the Grant.

The purpose of this instrument being to consent to and grant the Environmental Restrictions as set forth in the Grant, and release from the operation of the above described Mortgage only, the easements, rights of access and Environmental Restrictions as set forth in the Grant, said Mortgage otherwise to remain in full force and effect.

TO HAVE AND TO HOLD the same to the said Grantee, and its successors and assigns forever.

IN WITNESS WHEREOF, LASMO PETROLEUM, INC., has caused this instrument to be signed and sealed by its duly authorized agent, this __ day of March, 2000.

In the Presence of:

LASMO PETROLEUM, INC.

By: _____ L.S.
Its Duly Authorized Agent

STATE OF _____
COUNTY OF _____, SS.

At _____, this __ day of March, 2000, personally appeared _____, duly authorized agent of LASMO PETROLEUM, INC., and he/she acknowledged the foregoing instrument by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of LASMO PETROLEUM, INC.

Before me, _____
Notary Public

My commission expires: _____

(19)
gfb

File
a
of
Vermont



GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

339 Pine Street

Attest:

Jo LaMarche, Asst. City Clerk

THIS AGREEMENT is made this 16th day of June, 2004 by and between CITY OF BURLINGTON, a Vermont municipal corporation (hereinafter referred to as "Grantor"), having an address of City Hall, 149 Church Street, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is nearby the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site which lies nearby the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

JUL 6 10

[Handwritten signature]

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;

- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
 - (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
 - (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.
5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:
- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
 - (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release

under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

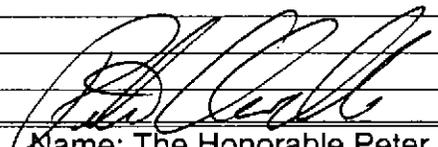
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee

pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 16th day of June, 2004

| | |
|------------------------|---|
| Witness: | Grantor: CITY OF BURLINGTON |
| | |
| <u>Sinda Blanchard</u> | By:  |
| | Name: The Honorable Peter Clavelle |
| | Mayor of the City of Burlington |

State of Vermont
County of Chittenden

On this 16th day of June, 2004, personally appeared The Honorable Peter Clavelle, Mayor of the City of Burlington, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| | |
|--|---------------------------------------|
| | Before me, <u>Sinda Blanchard</u> |
| | Notary Public |
| | My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont, in Book ____, Page ____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By:

Its Authorized Representative

Address: _____

STATE OF _____

COUNTY OF _____

On this ____ day of ____, 2004, before me, the undersigned Notary Public in and for the State of ____, duly commissioned and sworn, personally appeared _____ of __[company name]_____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____[company name].

NOTARY PUBLIC

My Commission Expires: _____.

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **CITY OF BURLINGTON**

Property Address: 339 Pine Street

Property Description

Being all and the same land and premises conveyed to the City of Burlington by Warranty Deed of T.A. Haigh Lumber Co., Inc., dated January 12, 1931 and recorded in Volume 97 at Page 503 of the City of Burlington Land Records and being more particularly described therein, in part, as follows:

"A strip of land of the uniform width of three hundred feet off the southerly side of the parcel of land that was conveyed to T.A. Haigh Lumber Company, Inc. by T.A. Unsworth, trustee, by his deed of warranty dated the 25th day of August 1928 and of record on page 650 of vol. 90 of the land records of the City of Burlington.

"The land and premises hereby conveyed is bounded by a line described as follows:

"Said line commences at a point in the westerly line of Pine Street where said line is intersected by the boundary line between the lands of the grantor and the lands of the E.S. Adsit Coal Company. Said line extends thence three hundred feet northerly on the said westerly line of Pine Street, thence westerly parallel with the said E.S. Adsit Coal Company boundary line four hundred sixty-eight and six tenths feet more or less to the easterly boundary line of said canal premises, being twenty-five feet distant from the center thereof, to the intersection of said easterly boundary line of said canal with the northerly boundary line of E.S. Adsit Coal Company, a distance of three hundred feet; thence easterly along said coal company's north boundary to the west line of Pine Street at the point to beginning."

Also being all the right, title and interest in the so-called North Canal conveyed to Record Owner by Quit Claim Deed of Green Mountain Petroleum Corporation, dated November 30, 1962 and recorded in Volume 151 at Page 449 of the City of Burlington Land Records. Being

that portion of the North Canal which lies westerly of the westerly boundary of land and premises conveyed to Record Owner by T.A. Haigh Lumber Company, Inc. The premises are more specifically defined as being the easterly half of the North Canal running northerly from the Old Lawrence Barnes basin and being the northerly three hundred feet of said North Canal and consisting of approximately 7500 square feet. The land is bounded on the north by land and premises formerly owned by T.A. Haigh Lumber Company, Inc., on the east by land and premises conveyed to the City of Burlington by T.A. Haigh Lumber Company, Inc., on the south by that portion of land and premises conveyed to Green Mountain Petroleum Corporation by Ronard R. Hayward, and on the west by land and premises conveyed to Green Mountain Petroleum Corporation by Charles Samuelson.

EXCEPTING, however, all right, title and interest conveyed by the City of Burlington to Green Mountain Petroleum Corporation by Quit Claim Deed dated November 30, 1962 and recorded in Volume 151 at Page 448 of said Land Records, and being more particularly described in said Quit Claim Deed as follows:

"All of the land and premises situated and being a part of the North Canal, so-called, running northerly from old Barnes basin and basin-canal system, situated between Pine Street in the City of Burlington and waters of Lake Champlain, but not adjacent to said Pine Street of said Lake, more specifically meaning to convey hereby, subject to the reservations hereinafter stated, any and all right, title and interest which the City may have in and to that portion of said North Canal and basin, as was constructed under and pursuant to a certain agreement and deed entitled "Agreement with Barnes and Skilling Relative to Burlington Drawbridge, April 15, 1868," dated February 4, 1869 and recorded in Volume 4 at Pages 311, 312, and 313 of the Land Records of the City of Burlington, which lies southerly on the southerly boundary extended westerly in a straight line, of land and premises conveyed by T.A. Haigh Lumber Company, Inc. to City of Burlington by deed dated January 12, 1931, of record in Volume 97, Pages 503-5 of said Land Records, and which lies westerly of the center line of said North Canal, being a portion of the easterly boundary line of land and premises conveyed to Green Mountain Petroleum Corporation by Charles Samuelson by deed dated July 17, 1962 and recorded in Volume 151 at Page 419 of said Land Records, meaning and intending to convey all of the canal and basin system to and from Lake Champlain from said land and premises conveyed to the City of Burlington by the aforementioned deed of January 12, 1931 and the right

so conveyed in the last mentioned deed for the receiving and discharging of freight, and the laying up of vessels in the winter, and any and all rights that the City of Burlington may have in and to said basin and canal system of any kind or nature whatsoever. Reserving however, the right and privilege of taking and discharging water from that portion of the North Canal that lies westerly of the land and premises conveyed to it by the aforementioned deed of January 12, 1931."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

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zero Pine Street 877 64

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35 P. M
Chap. 231

SDMS DocID 262815

Payment Received

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

THIS AGREEMENT is made this 16th day of June, 2004 by and between the CITY OF BURLINGTON, a Vermont municipal corporation (hereinafter referred to as "Grantor"), having an address of City Hall, 149 Church Street, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and on the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al., Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

EST.
JUN 16 2004

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;

- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
 - (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
 - (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.
5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:
- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
 - (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release

under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee

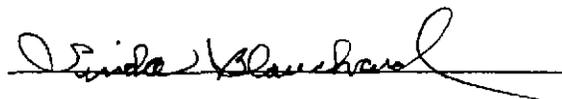
pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

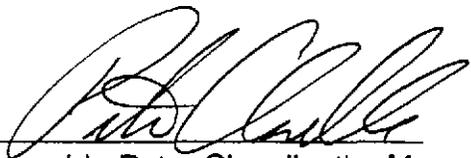
- 15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Witness:

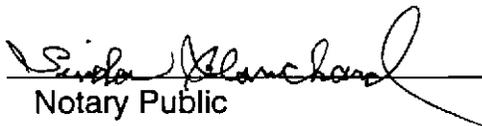
CITY OF BURLINGTON



By: 
The Honorable Peter Clavelle, the Mayor
of the City of Burlington

State of Vermont
County of Chittenden

On this 16th day of June, 2007, personally appeared The Honorable Peter Clavelle, the Mayor of the CITY OF BURLINGTON, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the CITY OF BURLINGTON.

Before me, 
Notary Public

My Commission Expires:
2/10/07

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **CITY OF BURLINGTON**

Property Address: 0 Pine Street

Property Description

Being a portion of the land conveyed to the Record Owner by Quit Claim Deed of the State of Vermont dated August 13, 1999 and recorded on May 29, 2002 in Volume 736 at Page 108 of the City of Burlington Land Records. The property is more particularly described as follows:

Being three parcels of land conveyed to the State of Vermont in connection with the proposed Highway Project Burlington M 5000 (1), and being more particularly described as follows:

Parcel One

Being all and the same land and premises conveyed to Record Owner by Warranty Deed of Vermont Development Credit Corporation, dated October 31, 1983 and recorded in Volume 302 at Page 495 of the City of Burlington Land Records, which land and premises are more particularly described therein as follows:

"Being a part of the same land and premises conveyed to Vermont Development Credit Corporation by the Leverage Group by Warranty deed dated January 16, 1979 and recorded in Book 260, Pages 30-32 of the City of Burlington Land Records, and being more particularly described as follows:

'Being Parcel #69 consisting of 3.10 acres, more or less, land and rights therein, as shown on pages 63, 64, 66 and 67 of the plans of Highway Project Burlington M 5000 (1) as filed in the office of the Clerk of the City of Burlington and as said Highway Project plans, pages 37, 63, 64, and 67 have been revised and filed on the 9th day of September, 1983, in the office of the Clerk of the City of Burlington.

The consideration herein includes compensation for, but not limited to, loss of access to 1.10 acres, more or less, land located left of and between approximate survey stations 245+12 and 247+57 of the established centerline of said Highway Project.

Resolution Relating to

RESOLUTION 6:05

Sponsor(s): Finance Board

Introduced: 06/14/04

Referred to: _____

Action: adopted

Date: 6/14/04

Signed by Mayor: 6/16/04

APPROVAL OF GRANTS OF ENVIRONMENTAL RESTRICTIONS AND RIGHTS OF ACCESS REGARDING PINE STREET BARGE CANAL PROPERTIES

CITY OF BURLINGTON

In the year Two Thousand Four.....

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

That WHEREAS, on September 27, 1999, the City Council authorized the Mayor to execute on behalf of the City of Burlington ("City"), a Consent Decree to be entered in the United States District Court for the District of Vermont in United States of America v. Green Mountain Power Corp., et al., which Consent Decree settled all issues related to the remediation of the Pine Street Barge Canal Superfund Site ("Site"); and

WHEREAS, under the terms of the Consent Decree, the City and other property owners in the vicinity of the Site agreed to provide a right of access to their property for purposes of implementing remedial activities at the Site and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, on March 27, 2000, the City Council authorized the execution of Grants of Environmental Restrictions and Rights of Access for the three (3) parcels owned by the City at that time related to the Site; and

WHEREAS, the City presently owns four (4) separate parcels of property in the vicinity of the Site; and

Resolution Relating to

**APPROVAL OF GRANTS OF ENVIRONMENTAL
RESTRICTIONS AND RIGHTS OF ACCESS
REGARDING PINE STREET BARGE CANAL
PROPERTIES**

WHEREAS, the United States Environmental Protection Agency recently approved the Grants of Environmental Restriction and Right of Access in the form attached hereto, and requested the City and other property owners to execute and record same in the Land Records of the City of Burlington;

NOW THEREFORE, BE IT RESOLVED by the City Council that the Honorable Peter Clavelle, Mayor, be and hereby is authorized to execute on behalf of the City of Burlington the four (4) Grants of Environmental Restrictions and Right of Access and accompanying property transfer tax returns in the form attached hereto, as well as any other documents necessary for the City to comply with its obligations under the Consent Decree.

STATE OF VERMONT

CHITTENDEN COUNTY, ss.

I, Brenda S. Keleher, GAO ~~City Clerk~~ of the City of Burlington within said County and State,
and having by law the custody of the seal, records and files of said City, do hereby certify that I have compared
the foregoing cop.y.. of Resolution Relating to:

Approval of Grants of Environmental Restrictions and
Rights of Access Regarding Pine Street Barge Canal
Properties

was duly warned and adopted,

with the original record thereof now being and remaining in this office, and that the same is a true and
correct transcript therefrom, and of the whole and every part thereof.



IN TESTIMONY WHEREOF, I hereunto affix the seal
of said City and subscribe my name, at Burlington
in said County and State, this ...16th..... day
of..... June....., 20.04..

Brenda S. Keleher
GAO
City Clerk

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VT



SDMS DocID 262816

35 PM

Chap. 231

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Property Transfer Tax
ACKNOWLEDGEMENT
Return, Certificate & Payment Received

THIS AGREEMENT is made this 9th day of June, 2004 by and between **DERRICK H. DAVIS AND SUSAN M. CONLEY, TRUSTEES OF THE DERRICK H. DAVIS CHARITABLE REMAINDER TRUST II**, (hereinafter referred to as the Grantor), having an address of 431 Pine Street, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

453 Pine Street

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site which lies adjacent to the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their

Handwritten notes and signatures in the bottom left corner.

property as covenants that will run with the land for the purpose of protecting human health and the environment.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;

- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
- (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
- (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.

4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:

- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (c) Grantor shall not use or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
- (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
- (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result:
- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the

Consent Decree.

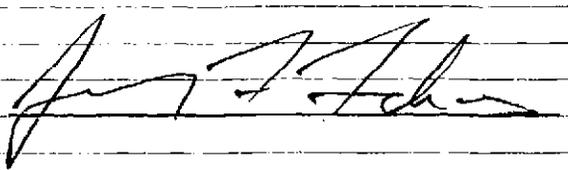
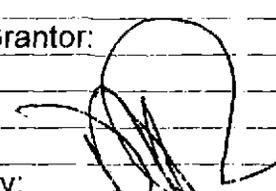
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to

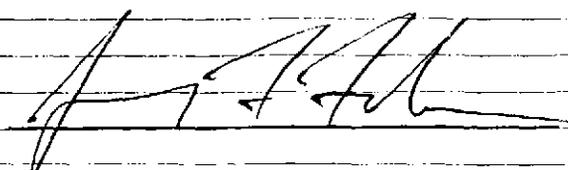
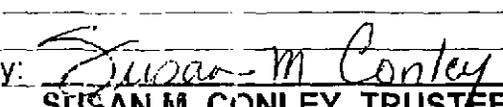
subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

- 15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

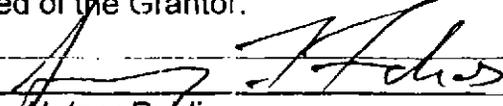
Dated this 9th day of June, 2004.

| | |
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| Witness: | Grantor: |
|  |  |
| | By: DERRICK H. DAVIS, TRUSTEE |

| | |
|---|--|
| Witness: | Grantor: |
|  |  |
| | By: SUSAN M. CONLEY, TRUSTEE |

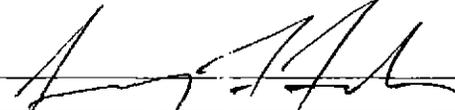
State of Vermont
County of Chittenden

On this 9th day of June, 2004, personally appeared DERRICK H. DAVIS, TRUSTEE OF THE DERRICK H. DAVIS CHARITABLE REMAINDER TRUST II, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| |
|---|
| Before me,  |
| Notary Public |
| My Commission Expires: <u>2/10/07</u> |

State of Vermont
County of Chittenden

On this 10th day of June, 2004, personally appeared SUSAN M. CONLEY, TRUSTEE OF THE DERRICK H. DAVIS CHARITABLE REMAINDER TRUST II, signer and sealer of the foregoing written conveyance and acknowledged the same to be her own free act and deed and the free act and deed of the Grantor.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/06/07</u> |

The undersigned, the holder of a mortgage dated April 9, 1987 recorded in the Land Records of the City of Burlington, Vermont, in Book 360, Page 589, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

Jeanne Bertrand

CHITTENDEN BANK, successor in interest to Vermont National Bank

By: Brian M. Meyer

Its Authorized Representative

Address: 2 Burlington Square
Burlington VT

STATE OF VERMONT
COUNTY OF CHITTENDEN

On this 14th day of JUNE, 2004, before me, the undersigned Notary Public in and for the State of Vermont, duly commissioned and sworn, personally appeared BRIAN M. MEYER of Chittenden Bank, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of Chittenden Bank.

Jeanne Bertrand
NOTARY PUBLIC

My Commission Expires: 2/1/07

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **Derrick H. Davis and Susan M. Conley, Trustees of the Derrick H. Davis Charitable Remainder Trust II**

Property Address: 453 Pine Street

Property Description:

Being all and the same land and premises conveyed to Derrick H. Davis and Susan M. Conley, Trustees of the Derrick H. Davis Charitable Remainder Trust II by Quit Claim Deed from Derrick H. Davis dated December 24, 2001 and recorded in Volume 713 at Page 438 of the City of Burlington Land Records.

Being all and the same land and premises conveyed to Derrick H. Davis by Quit Claim Deed of 453 Pine, LLC, dated December 24, 2001 and recorded in Volume 713 at Page 435 of the City of Burlington Land Records, and being more particularly described therein, in part, as follows:

"Being a parcel of land consisting of 4.8 acres, more or less, as set forth in a survey entitled "Parcel to be Conveyed to 453 Pine Street Associates", by Civil Engineering Associates, Inc., dated February, 1987, and to be recorded in Map Volume ___, page ___ of the Land Records of the City of Burlington. Said parcel is more particularly described as follows:

Beginning at a point on Pine Street, said point marked by a marble monument and being the southeasterly corner of the parcel conveyed herein and the northeasterly corner of property now or formerly owned by the Maltex Partnership, and thence proceeding in a northerly direction N 14° 14" 20' E a distance of 635.33 feet, more or less, to a point marked by an iron pin to be set; thence turning to the left and proceeding in a westerly direction N 75° 26" 35' W a distance of 336.47 feet, more or less, to a point marked by an iron pin; thence turning to the left and proceeding in a southerly direction S 20° 09" 25' W a distance of 7.03 feet, more or less, to a steel pin to be set; thence turning to the left and proceeding in a southerly direction S 11° 15" 15' E a distance of 101.24 feet, more or less, to a steel pin to be set; thence proceeding in a southerly direction S 21° 39" 05' W a distance of 450 feet, more or less, to a steel pin to be set; thence proceeding in a southerly direction S 36° 32" 00' W a distance of 100.63 feet, more or less, to a steel pin to be set; thence turning to the left and proceeding in an easterly direction S75° 50" 20' E a distance of 389.85 feet, more or less, to the point of beginning.

The grantor herein only quit-claims this parcel only with respect to the accuracy of the above-mentioned survey.

In order to comply with the State of Vermont Health Regulations on the subdivision of lands and disposal of waste, including sewage, the grantee shall not construct or erect a structure or building on the parcel of land conveyed herein, the useful occupancy of which will require the installation of plumbing and sewage treatment facilities, without first complying with said State Regulations.

Said parcel of land is subject to certain easements of record and rights-of-way of record for water, sewer, electrical poles and lines.

Grantor disclaims all warranties, express or implied, as to the physical condition of the premises, and in particular as to the presence of any contamination; and the grantee discharges and releases grantor from any and [all] claims it now has or forever shall have against grantor as the result of any contamination of the land and premises herein conveyed."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

**CERTIFICATION OF THE TRUSTEES OF THE
DERRICK H. DAVIS CHARITABLE REMAINDER TRUST II**

The undersigned, being the Trustees of the Derrick H. Davis Charitable Remainder Trust II (the "Trust"), hereby certify as follows:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the Trust is the owner of certain lands and premises known as and numbered 453 Pine Street, identified on the City of Burlington tax map as parcel 053-1-03-001 (the "Property") which Property is located near to the Site; and

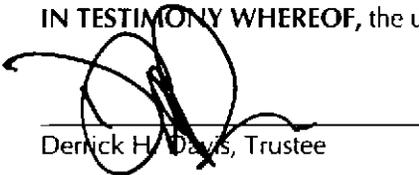
WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action No. _____ (D.Vt.), to which the Trust is a party, the Trust agreed to provide a right of access to the Property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on the Property as covenants that will run with the land for the purpose of protecting human health and the environment (collectively, the "Easements").

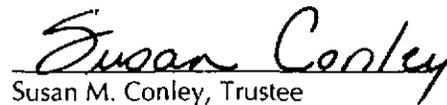
NOW THEREFORE, the undersigned, Derrick H. Davis and Susan M. Conley, Trustees of the Trust, hereby certify that under Section 4.1 of the Derrick H. Davis Charitable Remainder Trust II Agreement dated December 26, 2001 (the "Trust Agreement"), the Trustees are authorized and empowered to "(f) To sell...and convey any and all of the trust property...upon such terms as [they] shall deem advisable." In addition, Section 7.1 of the Trust Agreement provides that "all persons dealing with the Trustee may assume the existence of the powers herein granted to the Trustee and the Trustee's proper exercise thereof."

The undersigned certify that pursuant to the Trust Agreement, they may jointly execute and deliver to EPA and to the State of Vermont Agency of Natural Resources (the "Grantees") the Easements in substantially the same form as that which were reviewed by the undersigned in connection with the execution of this Certification, and to negotiate modifications to the Easements prior to their execution and delivery in their sole discretion.

The undersigned further certify that they are the sole Trustees of the Trust, the Trust Agreement is in full force and effect and has not been modified or limited by any action or any provision of any other agreement.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands on ~~March~~ ^{April 7,} _____, 2004.


Derrick H. Davis, Trustee


Susan M. Conley, Trustee



GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

645 Pine Street

Attest

Jo LaMarche, Asst. City Clerk

THIS AGREEMENT is made this 16th day of June, 2004 by and between CITY OF BURLINGTON, a Vermont municipal corporation (hereinafter referred to as "Grantor"), having an address of City Hall, 149 Church Street, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is adjacent to and partially within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

Handwritten signatures and stamps at the bottom right of the page.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress-Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;

- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
 - (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;

- (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;
- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release

under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

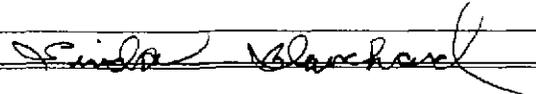
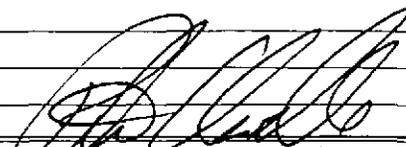
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee

pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above

- 15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

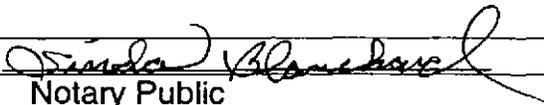
IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 16th day of June, 20007

| | |
|---|---|
| Witness: | Grantor: CITY OF BURLINGTON |
| | |
|  | By:  |
| | Name: The Honorable Peter Clavelle |
| | Mayor of the City of Burlington |

State of Vermont
County of Chittenden

On this 16th day of June, 20007, personally appeared The Honorable Peter Clavelle, Mayor of the City of Burlington, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/10/07</u> |

The undersigned, the holder of a Lease Agreement recorded in the Land Records of the City of Burlington, Vermont, in Book 652, Page 761, and lessee under a Site Lease Agreement recorded in Vol. 652 at Page 788 of said Land Records, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument. Chittenden Trust Company further consents to the granting of this Instrument by the City of Burlington.

Chittenden Trust Company, as Trustee
under Trust Agreement dated June 1,
2000

WITNESS:

Maurice T. McNeil

By: [Signature] SRP
Its Authorized Representative
Address: Two Burlington Square
Burlington, VT 05401

STATE OF VERMONT
COUNTY OF CHITTENDEN

On this 16th day of June, 2004, before me, the undersigned Notary Public in and for the State of Vermont, duly commissioned and sworn, personally appeared Joyce R. Shaver of Chittenden Trust Company, as Trustee, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of Chittenden Trust Company, as Trustee.

[Signature]
NOTARY PUBLIC

My Commission Expires: 2/10/07

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **CITY OF BURLINGTON**

Property Address: 645 Pine Street

Property Description

Being all and the same land and premises conveyed to the City of Burlington by Quit Claim Deed of St. Johnsbury Trucking Company, Inc., dated December 28, 1994 and recorded in Volume 519 at Page 395 of the City of Burlington Land Records, and being more particularly described therein as follows:

"Being all and the same land and premises conveyed to SJT Real Estate Holding Co., Inc., by Quitclaim Deed of the Hamilton Corporation dated October 1, 1975, and recorded in Volume 233 at Pages 314-317 of the City of Burlington Land Records, and being further described therein as follows:

"Being a parcel of land with all buildings and other structures thereon located at the northwesterly corner of the intersection of Pine Street and Lakeside Avenue and further described as follows: Beginning at the point of the intersection of the westerly line of Pine Street and the northerly line of Lakeside Avenue; thence proceeding westerly along the northerly sideline of Lakeside Avenue 484.62 feet to a stake; thence turning to the right and forming an included angle of 86° 49' and proceeding northerly in a line parallel with and 1 foot easterly of a wire -woven fence for a distance of 678 feet, more or less, to the southerly property line of property now or formerly of Green Mountain Power Corporation; thence turning to the right and proceeding easterly along the southerly line of Green Mountain Power Corporation 252 feet, more or less, to a corner of Green Mountain Power Corporation's property; thence turning to the right and proceeding southerly along the westerly sideline of Green Mountain Power Corporation's property 174 feet to the southwesterly corner of property of Green Mountain Power Corporation; thence turning to the left and forming an included angle of 82° 16' 30" and proceeding east along the southerly sideline of Green Mountain Power Corporation's property 49.3 feet to the northwesterly corner of property formerly of Manning (Parcel 2, hereinafter described); thence turning to the right and forming

an included angle of $89^{\circ} 54' 16''$ and proceeding southerly parallel with the westerly line of Pine Street and in and along the westerly line of said Manning property 350.3 feet to the southwesterly corner of the Manning lot; thence turning to the left and forming an included right angle and proceeding easterly along the southerly line of said Manning lot 175 feet to the westerly sideline of Pine Street; thence turning to the right and forming an included right angle and proceeding southerly in and along the westerly sideline of Pine Street 176.76 feet to the point or place of beginning.

"Parcel 2: Being a parcel of land with buildings and all other structures thereon, being property formerly of Manning located on the westerly side of Pine Street and further described as follows: Beginning at a point marking the intersection of the westerly sideline of Pine Street and the southerly sideline of property of Green Mountain Power Corporation, and being distant northerly measured in said westerly sideline of Pine Street 528 feet from the point of intersection of said westerly sideline of Pine Street with the northerly sideline of Lakeside Avenue; thence running southerly in the westerly line of Pine Street 350 feet to a point; thence turning to the right and forming an included right angle and running westerly 175 feet to a point; thence turning to the right and forming an included right angle and running northerly in a line parallel with the westerly sideline of Pine Street 350.3 feet to a point in the southerly sideline of property of Green Mountain Power Corporation; thence turning to the right and forming an included angle of $90^{\circ} 6'$ more or less and running easterly in said southerly sideline of Green Mountain Power Corporation 175 feet to the point or place of beginning.

"Being the same lands and premises conveyed to the Hamilton Corporation by Vermont Terminal Corporation and St. Johnsbury Trucking Company by deeds dated March 14, 1968 and July 1, 1947, respectively, and recorded in Volume 187, Pages 585-587, and Volume 129, Pages 32-34, respectively of said Land Records.

"The Property is subject to an Easement Deed for underground cable from St. Johnsbury Trucking Company, Inc. to New England Telephone and Telegraph Company dated April 2, 1984 and recorded in Book 306 at Page 449, as well as to all other matters of record or affecting the Property, provided that this paragraph shall not reinstate any such encumbrances previously extinguished by the Marketable Record Title Act, Subchapter 7, Chapter 5, Title 27 of the Vermont Statutes Annotated.

"Reference may be had to:

"1. Certificate of Ownership and Merger dated October 8, 1981 and recorded June 8, 1987 in Volume 364 at Page 347 of said Land Records of the City of Burlington which certificate evidences the merger of SJT Real Estate Holding Company, Inc., into Trucking Merger and Reorganization, Inc.

"2. Certificate of Ownership and Merger dated December 31, 1981 and recorded June 8, 1987 in Volume 364 at Page 342 of said Land Records of the City of Burlington which certificate evidences the merger of Trucking Merger and Reorganization, Inc., into St. Johnsbury Trucking Company, Inc.

"3. Order Authorizing Sale of Real Property located at 645 Pine Street, Burlington, Vermont, pursuant to Section 363 of the Bankruptcy Code of the U.S. Bankruptcy Court, Southern District of New York, In re St. Johnsbury Trucking Company, Inc., Debtor, Chapter 11, Case No. 93-B-43136 (FGC), dated December 21, 1994 and about to be recorded in the Land Records of the City of Burlington, Vermont."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

143 SF
SF
Vermont



GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

585 Pine Street

Attest
J. LaMarche, Asst. City Clerk

THIS AGREEMENT is made this 16th day of June, 2004 by and between CITY OF BURLINGTON, a Vermont municipal corporation (hereinafter referred to as "Grantor"), having an address of City Hall, 149 Church Street, Burlington, VT 05401, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action Nos. 1:99-CV-366 and 1:00-CV-17 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

RECEIVED
JUN 16 2004
CITY OF BURLINGTON
EST.

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;

- (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information) of the Consent Decree;
 - (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
 - (f) Grantor shall not perform or allow to be performed on the Property any

construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;

- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.
7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release

under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.

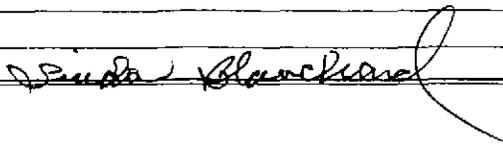
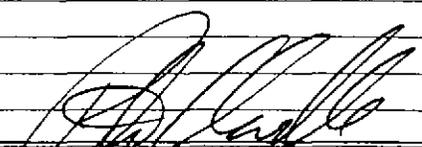
- (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.
- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee

pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.

15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

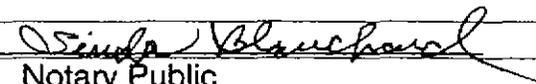
IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 16th day of June, 2004.

| | |
|---|---|
| Witness: | Grantor: CITY OF BURLINGTON |
|  | By:  |
| | Name: The Honorable Peter Clavelle |
| | Mayor of the City of Burlington |

State of Vermont
County of Chittenden

On this 16th day of June, 2004, personally appeared The Honorable Peter Clavelle, Mayor of the City of Burlington, signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

| | |
|--|---|
| | Before me,  |
| | Notary Public |
| | My Commission Expires: <u>2/10/04</u> |

The undersigned, the holder of a mortgage recorded in the Land Records of the City of Burlington, Vermont, in Book _____, Page _____, by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

By:

Its Authorized Representative

Address: _____

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2004, before me, the undersigned Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared _____ of _____ [company name] _____, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of _____ [company name].

NOTARY PUBLIC

My Commission Expires: _____.

EXHIBIT A

to

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **CITY OF BURLINGTON**

Property Address: 585 Pine Street

Property Description

A parcel of land located on the westerly side of Pine Street known and identified as 585 Pine Street, Burlington, Vermont.

Being all and the same lands and premises conveyed to the City of Burlington by Warranty Deed of Vermont Gas Systems, Inc., dated March 21, 1967 and recorded in Volume 181 at Page 494 of the City of Burlington Land Records, EXCEPT for those lands and premises conveyed by City of Burlington to The G.S. Blodgett Company, Inc., dated December 27, 1967 and recorded in Volume 187 at Page 217 of said Land Records.

Said parcel of land is depicted on a plan entitled "Property Plan, Burlington Electric Department, Burlington, Vermont," dated December 13, 1967 and recorded in Volume 183 at Page 643 of the City of Burlington Land Records. The parcel is depicted thereon as follows:

Beginning at a point marked by a concrete marker on the west side of Pine Street, making the northeasterly corner of the parcel herein described; thence proceeding in a southerly direction along the westerly sideline of Pine Street for a distance of 348.01 feet, more or less, to a point marked by a survey marker; thence turning and proceeding along the southerly boundary of the herein described parcel to a distance of 501.80 feet, more or less, to a point in the southerly boundary of lands now or formerly of General Electric Company; thence turning proceeding along the westerly side of said parcel and the easterly sideline of land now or formerly of General Electric Company a distance of 362.00 feet more or less, to a point marked by a monument; thence turning and proceeding easterly along the northerly boundary of said parcel a distance of 511.10 feet, more or less, to the point and place of beginning.

Also being the same land and premises conveyed to the City of Burlington by Warranty Deed of Green Mountain Power Corporation, dated September 15, 1978 and recorded in Volume 256 at Page 73 of the City of Burlington Land Records and being more particularly described therein as follows:

"A parcel of land comprising 40,686 square feet more or less with improvements thereon situated on the westerly side of Pine Street and having 172.42 feet frontage thereon, said parcel of land being known as the "Pine Street Substation Lot." Being a portion of the lands and property conveyed by the Burlington Light and Power Company to the Green Mountain Power Corporation by Warranty Deed dated October 8, 1928, and recorded in Volume 94, Page 504 of the Burlington Land Records."

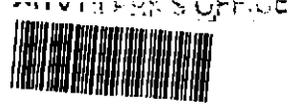
The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

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501 Pine Gatehouse 201 880 623

SFB



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SDMS DocID 262819

A. Chap. 231

Return, Vermont received

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Attest:

Jo LaMarche

Jo LaMarche, Asst. City Clerk

THIS AGREEMENT is made this 8th day of July, 2004 by and between VERMONT GAS SYSTEMS, INC., a Vermont corporation, (hereinafter referred to as "Grantor"), having an address of 85 Swift Street, P.O. Box 467, Burlington, VT 05402, and the State of Vermont Agency of Natural Resources, and any successor agencies of the State of Vermont (hereinafter referred to as "the State" or the "Grantee").

WITNESSETH THAT:

WHEREAS, the United States Environmental Protection Agency (hereinafter "EPA") has, pursuant to Section 105 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), placed on the National Priorities List certain lands and premises in the vicinity of Pine Street in Burlington, Vermont, such lands and premises being known as "the Pine Street Canal Superfund Site" (the "Site");

WHEREAS, EPA has selected a "remedial action" for the Site and has defined the extent of the Pine Street Canal Superfund Site in a Record of Decision ("ROD") dated September 29, 1998;

WHEREAS, EPA has determined in the ROD that certain easements, rights, obligations, covenants and restrictions, as more particularly set forth below, are necessary at certain portions of the Site and adjoining properties to ensure that future activities on these properties do not interfere with the remedial actions, or substantially increase the ecological, human, or environmental risks at the Site;

WHEREAS, the undersigned Grantor is the owner of certain lands and premises described in Exhibit A hereto (the "Property") which property is totally within the Site; and

WHEREAS, the Grantor is on notice of the potential existence of hazardous substances on the Site and the Property; and

WHEREAS, the Grantor is on notice that any disturbance of the Property which causes migration of hazardous substances within the Site or to locations beyond the Site may result in liability under CERCLA; and

WHEREAS, under the terms of a Consent Decree filed in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et. al, Civil Action No. 1:99-CV-366 (D.Vt.) (the "Consent Decree"), entered into, by, and between Settling Defendants, the United States, and the State, the Performing Defendants have agreed to perform the remedial action selected for the Site in the ROD, in order to protect the public health and welfare and the environment from the actual or threatened release of hazardous wastes or hazardous substances at or from the Site. The Owner Settling Defendants have agreed, jointly and severally with the Performing Settling Defendants, to reimburse the United States and the State for certain costs, as provided in the Consent Decree, and have severally agreed to provide a right of access to their property for purposes of implementing, facilitating and monitoring the remedial action, and to submit to permanent use restrictions on their property as covenants that will run with the land for the purpose of protecting human health and the environment.

5.12.2004

A copy of the Consent Decree is available from:

Office of Environmental Stewardship
United States Environmental Protection Agency
One Congress Street
Boston, MA 02214
Attn: Pine Street Canal Superfund Site Attorney

WHEREAS, Grantor wishes to cooperate fully with EPA and the Grantee in implementation of all response actions at the Site;

NOW, THEREFORE,

1. In consideration of the agreements reached in the Consent Decree, Grantor, on behalf of itself, its successors, heirs and assigns, hereby grants to the Grantee and its assigns the easements, rights, obligations, covenants, and restrictions (hereinafter, collectively referred to as the "Environmental Restrictions"), the terms and conditions of which are set forth below.
2. Purpose. It is the purpose of this instrument to convey real property rights to the Grantee, which will run with the land, to facilitate the implementation of the remedial action and to protect human health and the environment.
3. Right of Access. In establishing the within Environmental Restrictions, Grantor hereby grants to the Grantee, their authorized representatives (including but not limited to EPA), and assigns, a right of access at all reasonable times to the Property for the purpose of conducting any activity related to the Consent Decree including the following purposes:
 - (a) Monitoring the Work or the Projects;
 - (b) Verifying any data or information submitted to the United States and the State;
 - (c) Conducting investigations relating to the contamination at or near the Site;
 - (d) Obtaining samples;
 - (e) Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - (f) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of the Consent Decree;
 - (g) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents,

consistent with Section XXIV (Access to Information) of the Consent Decree;

- (h) Assessing Settling Defendants' compliance with the Consent Decree; and
 - (i) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.
 - (j) To the extent practicable, prior to accessing the property, Grantee, its authorized representatives (including but not limited to EPA) and/or its assigns shall give Grantor, its successors or assigns, reasonable notice of its intent to access and shall try to reasonably coordinate such access so as to minimize the disruption of activities on the property conducted by Grantor, its successors or assigns. In exercising its rights of access, Grantee, its authorized representatives (including EPA) and its successors or assigns shall make reasonable efforts to minimize interference with the activities of Grantor, its successors or assigns on the property.
4. Restricted Uses and Activities. Grantor shall neither perform, nor allow, nor cause any other person to perform, any activities or uses in, on, upon, through, over or under those portions of the Property which violate one or more of the following conditions:
- (a) Grantor shall be responsible for complying with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
 - (b) Grantor shall not use the Property or allow the Property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
 - (c) Grantor shall not use or allow recontamination of the Site following completion of the Remedial Action to such an extent that the remedial action or its performance standards may be jeopardized, or cause contamination of off-site properties following completion of the Remedial Action;
 - (d) Grantor shall not use the Property or allow the Property to be used for residential use or for day care centers for the care of children;
 - (e) Grantor shall not use or allow the use of the groundwater on the Property for potable drinking water purposes and shall not install or allow the installation of wells at any location where free phase contamination has been shown to be present;
 - (f) Grantor shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and will likely cause migration of contaminated groundwater to Lake Champlain to

such an extent that the remedial action may be jeopardized or that a significant risk to Lake Champlain may result;

- (g) Grantor shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the Property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service, or remove underground utility components, conduits, installations, or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving, or boring to install pilings for otherwise allowable construction; (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavations.

5. Emergency Excavation. In the event it becomes necessary to excavate a portion of the Property as part of a response to emergency repair of utility lines, or as part of a response to emergencies such as fire or flood, the activity and use restriction provisions of Paragraph 4 above, which would otherwise restrict such excavation, shall be suspended only with respect to such excavation for the duration of such emergency response, provided that Grantor:

- (a) orally notifies the Site Manager for the Vermont Department of Environmental Conservation (VT DEC) and EPA's Project Coordinator (or, in his or her absence, EPA's Alternate Project Coordinator, or in the event that both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I), of such emergency as soon as possible but no more than twenty-four (24) hours after having learned thereof, and follows up with a written notice to VT DEC and EPA; and
- (b) limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency.

This provision shall not waive any liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA or any other applicable federal or state laws and regulations.

6. Severability. If any court or other tribunal determines that any provision of this Grant is invalid or unenforceable, such provision shall be deemed to have been

modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this Grant as though it had never been included herein. In either case, the remaining provisions of this Grant shall remain in full force and effect; provided, however, that the Grantee retains its right to request modification of this Grant pursuant to Paragraph 11 below.

7. Enforcement. Grantor expressly acknowledges that a violation of the terms of this Grant could result in enforcement by the Grantee, including, but not limited to, the issuance of criminal and civil penalties, and/or equitable remedies. Grantor also agrees, on behalf of itself and its successors and/or assigns, that EPA shall also have a third party right of enforcement. Any action taken by the Grantee, or EPA pursuant to this Paragraph 7 shall be in addition to, but not in lieu of, such rights as EPA and/or the State possess to enforce the terms and conditions of the Consent Decree and under applicable law, which enforcement rights the State and EPA fully reserve.
8. Provisions to Run With the Land. The easements, rights, obligations, covenants, and restrictions set forth in this instrument shall run with the land, and any portion thereof, and shall be binding on the Grantor, the Grantor's heirs, administrators, successors, or assigns, and shall inure to the benefit of the Grantee and its successors. It is the parties' intent that the United States shall be a third party beneficiary of the terms of this instrument, with full authority to enforce the terms of this instrument as provided herein.
9. Incorporation into Leases. Grantor hereby agrees to incorporate this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Property, or any portion thereof, is conveyed. Any transfer of the Property, or any portion thereof, shall take place only if the grantee (including but not limited to any lessee) agrees, as a part of the agreement to purchase or otherwise obtain a property interest in the Property, that it will comply with the obligations of the Grantor to provide access and/or Institutional Controls, as set forth in Section IX of the Consent Decree and this Grant, with respect to such Property.
10. Recordation. Grantor shall record and/or register this Grant with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of Vermont within fifteen (15) days of having received the Grantee's written approval of this Grant. The Grantor, within twenty-one (21) days of receipt of evidence of recordation and/or registration, shall mail a certified Registry copy of this Grant to the VT DEC Site Manager and the EPA Project Manager.

Grantor shall record and/or register any amendment to or release of this Grant, made pursuant to Paragraph 11 below, with the Register of Deeds or other appropriate land records office in the City of Burlington, Chittenden County, State of

Vermont within thirty (30) days of having received from the Grantee said amendment or release, as agreed to and accepted by, or granted by, the Grantee and mailed to Grantor by certified mail, return receipt requested. Grantor shall file with VTDEC's and EPA's Site Managers a certified Registry copy of any such amendment or release as recorded and/or registered, within twenty-one (21) days of receipt of evidence recordation and/or registration

This Grant shall become effective upon its recordation and/or registration with the Register of Deeds or other appropriate land records office in the City of Burlington.

11. Amendment, Modification and Release. This Grant may be amended, modified, or released only by the State, in accordance with CERCLA and the NCP, to the extent applicable, if EPA agrees in writing with the proposed amendment, modification or release. However, in no instance may the Grantee amend or modify this Grant to confer more rights in the Property than those accorded to the Grantee herein. Grantor may submit to the VTDEC Site Manager a proposal for modifying or withdrawing the terms and conditions of this instrument or a portion thereof, with a copy to the EPA Project Manager. Said proposal shall demonstrate that the terms and conditions contained herein may be modified or withdrawn in whole or in part consistent with the public interest and the public purposes of protecting human health and the environment. The Grantee, if EPA agrees in writing, shall issue a written decision on the approval, modification, or denial of such petition. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment, modification, or release.
12. No Dedication Intended. Nothing herein set forth shall be construed to be a gift or a dedication of the Property to the Grantee, or to the general public for any purpose whatsoever.
13. Rights Reserved. It is expressly agreed that acceptance of this Grant by the Grantee shall not operate to bar, diminish, or in any way affect any legal or equitable right of the State and/or EPA to issue any future order or take response action with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the State and/or EPA may otherwise possess with respect thereto.
14. Dispute Resolution. The dispute resolution procedures of this Paragraph 14 shall be the exclusive mechanism to resolve disputes between the Grantor, the Grantee and EPA regarding petitions for amendment, modification, and release under Paragraph 11 of this Grant. All other disputes between Grantor, the Grantee, and EPA shall be resolved according to the terms of Section XIX of the Consent Decree.
 - (a) Informal Negotiations – Any dispute shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties. The dispute

shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. In the event that the parties cannot resolve a dispute by informal negotiations under this subparagraph 14(a), then the position advanced by EPA shall be considered binding unless, within twenty-one (21) days after the conclusion of the informal negotiation period, Grantor invokes the formal dispute resolution procedures by serving on the Grantee and EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Grantor. Within twenty-one (21) days after receipt of Grantor's Statement of Position, the Grantee and/or EPA will serve on Grantor its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and supporting documentation.

- (b) Formal Dispute Resolution – Formal dispute resolution shall provide for review on the administrative record under applicable principles of administrative law. An administrative record of the dispute shall contain all Statements of Position, including supporting documentation, submitted pursuant to this subparagraph 14 (b). Where appropriate, supplemental Statements of Position may be provided by EPA, the Grantee or the Grantor. The Grantee, in consultation with EPA's Director of the Office of Site Remediation and Restoration, New England Region, will issue a final administrative decision resolving the dispute based on the administrative record. This decision shall be binding upon the Grantor, subject only to the right to seek judicial review pursuant to subparagraph 14(c) below.
- (c) Judicial Appeal – Any administrative decision made pursuant to subparagraph 14 (b) shall be reviewable by the United States District Court for the District of Vermont (the court having jurisdiction over the Consent Decree), provided that a notice of judicial appeal is served by the Grantor on the Grantee, and EPA, and within 10 days of receipt of the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, and the relief requested. The Grantee and/or EPA may file within 30 days a response to Grantor's notice of judicial appeal. In proceedings on any dispute governed by this subparagraph 14(c), Grantor shall have the burden of demonstrating that the decision of the Grantee pursuant to subparagraph 14(b) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision pursuant to subparagraph 14(b) shall be on the administrative record compiled pursuant to subparagraph 14(b) above.
15. Grantor, on behalf of itself, its successors, heirs, administrators and assigns, hereby waives any claims against the United States and the State arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. §1491, or common law, arising out of or relating to this grant of environmental restrictions and access.

IN WITNESS WHEREOF, GRANTOR as record title-holder of the above described Property, hereby submits this GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS, which said Grant shall be recorded in the Land Records of the City of Burlington, Vermont.

Dated this 8^m day of July, 2004

Witness:

Grantor: VERMONT GAS SYSTEMS, INC.

Eileen Simollardes
Eileen Simollardes

By: A. Donald Gilbert, Jr.
Name:
Its Duly Authorized Agent
A. Donald Gilbert, Jr.

State of Vermont
County of Chittenden

On this 8^m day of July, 2004, personally appeared A. DONALD GILBERT, JR. signer and sealer of the foregoing written conveyance and acknowledged the same to be his own free act and deed and the free act and deed of the Grantor.

Before me, Nancy A. Rossi
Notary Public
My Commission Expires:

Nancy A. Rossi
My Commission Expires
February 10, 2007

The undersigned, the holder of an Indenture of Mortgage and Deed of Trust recorded in the Land Records of the City of Burlington, Vermont, in Book 318, Page 337, as amended by a First Supplemental Indenture dated as of December 1, 1984 and recorded in Vol. 318 at Page 388 and Amendment to First Supplemental Indenture dated March 1, 1988 and recorded in Vol. 378 at Page 600 of said Land Records by execution hereof, agrees that the rights and easements reserved to it and to the portion of the property described therein, shall be subject and subordinate to the terms and provisions of this Instrument.

WITNESS:

Patricia M. Norton

Banknorth, N.A., Successor to
The Howard Bank N.A., Trustee

By: Annie M. Klockner, VP
Its Authorized Representative
Address: 111 Main St.
Burlington, VT 05401

STATE OF Vermont
COUNTY OF Chittenden

On this 8th day of ~~June~~ July, 2004, before me, the undersigned Notary Public in and for the State of Vermont, duly commissioned and sworn, personally appeared Gisela M. Klockner of Banknorth, N.A., successor to The Howard Bank N.A., Trustee, and (s)he acknowledged said Instrument, as executed, to be his or her free act and deed in said capacity, and the free act and deed of Banknorth, N.A., successor to The Howard Bank N.A., Trustee.

Gail A. Brown
NOTARY PUBLIC

My Commission Expires: 12-10-07

EXHIBIT A

To

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Grantor: **VERMONT GAS SYSTEMS, INC.**

Property Address: 501 Pine Street

Property Description

Being a portion of the same lands and premises conveyed to Vermont Gas Systems, Inc. by Warranty Deed of Green Mountain Power Corporation, dated December 30, 1964 and recorded in Volume 167 at Page 179 of the City of Burlington Land Records, and being that parcel of land retained by Vermont Gas Systems, Inc. in its Warranty Deed to the City of Burlington, dated March 21, 1967 and recorded in Volume 181 at Page of the City of Burlington Land Records.

Said parcel of land has a frontage along Pine Street of 92 feet and a depth of 60 feet and is described in said Warranty Deed to the City as the "lot of land on which the city gate station is now located."

The premises are subject to all covenants, restrictions, easements and rights of way of record, not meaning to reinstate any claims barred by operation of the Vermont Marketable Record Title Act, 27 V.S.A. §§ 601-612, both inclusive.

Reference is hereby made to the above-referenced documents, the instruments therein described, and the references therein contained in further aid of this description.

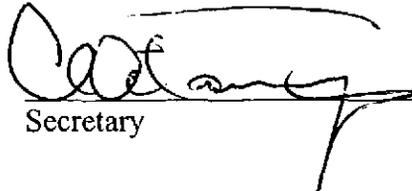
VERMONT GAS SYSTEMS, INC.

SECRETARY'S CERTIFICATE

I, Charles A. Farrington, the duly elected, qualified and acting Secretary of Vermont Gas Systems, Inc. (the "Corporation"), a corporation duly organized and existing under the laws of the State of Vermont, hereby certify that:

The resolutions attached hereto as Exhibit A have been duly adopted by the Directors of the Corporation pursuant to an Action by Written Consent of the Directors in Lieu of a Special Meeting dated as of June 21, 2004. Said resolutions have not been amended or repealed and remain in full force and effect as of the date hereof;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Corporation this 21 day of June, 2004.


Secretary

VERMONT GAS SYSTEMS, INC.

Exhibit A

RESOLVED: That the Corporation hereby authorizes the “Grant of Environmental Restrictions and Right of Access” (the “Easement”) related to property at the Pine Street Barge Superfund Site, known specifically as 501 Pine Street, Burlington, Vermont (Tax Map Number: 053-1-001-000), and the execution of such documents, agreements or contracts necessary to complete the Easement, and the performance of all such other acts as may be required to complete the Easement.

RESOLVED: That A. Donald Gilbert, Jr., President of the Corporation (the “Authorized Person”) is hereby authorized and directed to execute, deliver and perform the Easement. The Authorized Person is hereby authorized and directed to take such actions and execute such additional documents as such Authorized Person deems necessary or appropriate to complete the Easement, with the taking of such action and the execution of such documents by such Authorized Person to be conclusive evidence that the same is authorized by this resolution. The execution of the above-referenced documents by the Authorized Person does not violate any of the terms and conditions of the Corporation’s organizational documents or any other agreements to which the Corporation is a party or bound.

RESOLVED: That any and all such actions taken by the Authorized Person prior to the date hereof, performed on behalf of the Corporation in order to complete the Easement are hereby ratified, adopted and approved.

STATE OF VERMONT

OFFICE OF SECRETARY OF STATE

Certificate of Good Standing

I, Deborah L. Markowitz, Secretary of State of the State of Vermont, do hereby certify according to the records of this office

VERMONT GAS SYSTEMS, INC

a corporation formed under the laws of Vermont

was filed for record in the office on September 27, 1983

I further certify that the corporation has perpetual duration, that its most recent annual report is on file, and that articles of dissolution have not been filed.

March 11, 2004

*Given under my hand and the seal
of the State of Vermont, at
Montpelier, the State Capital*



*Deborah L. Markowitz
Secretary of State*

