

1
2 **Resolution Relating to**

RESOLUTION _____
Sponsor(s) Councilors Shannon,
Bushor, Aubin, Knodell; Bd. of Finance

Introduced: _____
Referred to: _____

Action: _____
Date: _____
Signed by Mayor: _____

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6 RENEWED LEASE AGREEMENT WITH RESOURCE
7 FOR THE OLD CITY GARAGE, 339 PINE ST.

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12 **CITY OF BURLINGTON**

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

16
17 That WHEREAS, the City, by and through its Department of Public Works, is the owner of land and
18 premises known as the old City Garage located at 339 Pine St., Burlington, Vermont (hereinafter the
19 "Property"); and

20 WHEREAS, ReSource is a non-profit corporation with a mission to reduce the amount of
21 reusable and repairable items dumped in landfills, provide valuable job skills, technical training and
22 opportunity to people in transition, and alleviate the effects of poverty by making vital household goods
23 and building materials available to the poor; and

24 WHEREAS, ReSource has been using and then leasing that portion of the Property identified on
25 the site map attached hereto as Attachment A (hereinafter the "Premises") since 2001 for its Building
26 Materials Reuse Enterprise; and

27 WHEREAS, ReSource has renovated and improved the space and addressed safety and structural
28 concerns in order to use the Premises for the Building Materials Reuse Enterprise; and

29 WHEREAS, because some or all of the Property may be needed for the construction of the
30 highway project formerly known as the Southern Connector and now known as the "Champlain Parkway"
31 or for the project known as the Railyard Enterprise Project or to be used for some other City development
32 project or need, the City cannot unconditionally commit to either a long term lease or unfettered access to
33 the outside area of the Premises currently used by ReSource for parking, storage, and associated
34 operational uses and needs; and

35 WHEREAS, the Parties acknowledge that an environmental easement encumbers the Property,
36 restricting uses and activities and requiring that a right to access the property at all reasonable times be
37 given to the State of Vermont Agency of Natural Resources and the United States Environmental
38 Protection Agency for the purpose of conducting the activities related to the Consent Decree filed in
39 connection with the Record of Decision for the Pine Street Canal Superfund Site in the case of *United*

* * * * *

ORIGINAL

DISTRIBUTION:

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

RESOLUTION RELATING TO

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Adopted by the City Council

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

..... Clerk

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

..... Mayor

Vol. Page

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Resolution Relating to

RENEWED LEASE AGREEMENT WITH RESOURCE
FOR THE OLD CITY GARAGE, 339 PINE ST.

States of America and the State of Vermont v. Green Mountain Power Corporation et al.; and

WHEREAS, the Parties have worked out a mutually agreeable lease agreement which takes the needs of each into consideration; and

WHEREAS, the agreement has been reviewed by the Director of Public Works, the City Attorney's Office and the Board of Finance and has the support of each;

NOW, THEREFORE, BE IT RESOLVED that the City Council approves the leasing of the Property referenced above to ReSource by the Lease Agreement hereto attached or one substantially equal to it and authorizes Public Works Director Chapin Spencer to execute it.

* * * * *

ORIGINAL

DISTRIBUTION:

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

RESOLUTION RELATING TO

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.....
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Adopted by the City Council

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

..... Clerk

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

..... Mayor

Vol. Page

Attest:

* * * * *



1 inch = 50 feet

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") IS MADE effective as of _____ by and between the **City of Burlington, Vermont**, a municipal corporation organized under the laws of the State of Vermont (hereinafter "Lessor") and **ReSOURCE, A Nonprofit Community Enterprise, Inc.**, formerly known as ReCycle North (hereinafter "Lessee"). Lessee is a non-profit corporation authorized to do business in the State of Vermont with its principal place of business in Burlington, County of Chittenden, and State of Vermont. Both Lessor and Lessee are hereinafter referred to as "the Parties".

RECITALS

- A. **Whereas**, Lessor is the owner of land and premises known as the City Garage located at 339 Pine St., Burlington, Vermont (hereinafter the "Property"); and
- B. **Whereas**, Lessee is a non-profit corporation with a mission to reduce the amount of reusable and repairable items dumped in landfills, provide valuable job skills, technical training and opportunity to people in transition, and alleviate the effects of poverty by making vital household goods and building materials available to the poor; and
- C. **Whereas**, Lessee has been using and then leasing that portion of the Property, identified on the site map attached hereto as Attachment A (hereinafter the "Premises") since 2001 for its Building Materials Reuse Enterprise; and
- D. **Whereas**, Lessee has renovated and improved the space and addressed safety and structural concerns in order to use the Premises for the Building Materials Reuse Enterprise; and
- E. **Whereas**, because some or all of the Property may be needed for the construction of the highway project formerly known as the Southern Connector and now known as the "Champlain Parkway" or for the project known as the Railyard Enterprise Project or to be used for some other City development project or need, Lessor cannot unconditionally commit to either a long term lease or unfettered access to the outside area of the Premises currently used by Lessee for parking, storage, and associated operational uses and needs; and
- F. **Whereas**, the Parties acknowledge that an environmental easement encumbers the Property, restricting uses and activities and requiring that a right to access the property at all reasonable times be given to the State of Vermont Agency of Natural Resources and the United States Environmental Protection Agency for the purpose of conducting the activities related to the Consent Decree filed in connection with the Record of Decision for the Pine Street Canal Superfund Site in the case of United States of America and the State of Vermont v. Green Mountain Power Corporation et al. with a portion of such easement attached to this agreement for the convenience of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Leased Premises/Use of Premises.** Subject to the terms and conditions set forth herein, Lessor leases to Lessee and Lessee leases from Lessor the Premises.

A. Lessee acknowledges, accepts, and agrees that some or all of the Property, including the Premises may be needed for the highway project formerly known as the Southern Connector and now known as the "Champlain Parkway" or for the project known as the Railyard Enterprise Project or some other municipal development project or need and that such use may impair or eliminate all or some of its occupancy and use of the exterior yard space of the Premises. Lessor agrees to try to minimize any such impairment.

Lessee shall inquire of Lessor's director of public works ("director"), or the director's designee, every six months from the date of execution of this agreement to obtain a status report on the construction and have the director inform it of any limitations to the use or occupation of the property, including the elimination of some or all of its occupancy, beginning on a date 6 months from the date of notice. Such information provided by the director on Lessee's inquiry shall, thereby, provide Lessee with a 6 month notice of the limitations on use and occupancy.

In the event that Lessee does not make such inquiry, the director shall provide Lessee with a 6 month notice of any and all limitations on Lessee's use and occupancy due to Lessor's need to use the Premises for the "Champlain Parkway" or for the project known as the Railyard Enterprise Project or some other municipal development project or need.

The Parties agree that such impairment may be a special ground for the early termination of the lease by Lessee. Should Lessee determine, in its discretion, that it cannot operate effectively due the use of the Property or Premises by Lessor, Lessee may terminate the Lease by means of written notice of termination delivered at least 30 days prior to termination.

B. Lessee acknowledges, accepts, and agrees that it is taking the Premises "as is" without any warranties of habitability or compliance with applicable codes by Lessor. Lessee acknowledges, accepts, and agrees that it may only use the Property in accordance and compliance with applicable building, life safety, fire, health, zoning, and other applicable codes related to health, safety, and environmental protections. Lessee acknowledges, accepts, and agrees to the restrictions on uses and activities set forth in the Grant of Environmental Restrictions and Right of Access (Attached).

2. **Term.** This Lease shall be for a term of three (3) years to commence upon the execution of this Lease and terminate at noon three years to the day after said execution, unless such termination date is on a Saturday or Sunday, in which case the date of termination shall be at noon on the following Monday.

Notwithstanding this term, this Lease may be terminated upon 6 months advanced written notice by Burlington that the Premises or a part of it is needed for any of the following: the Champlain Parkway, the Railway Enterprise Project or a municipal development project.

3. **Monetary consideration.** The Parties agree to the following monetary consideration:

A. Lessor shall not charge Lessee rent nor shall any be due from Lessee for the term of this Lease.

B. Lessee shall maintain the Premises up to all applicable health, accessibility, fire and building safety laws at its own expense and may make any other improvements at its own expense that it deems are necessary for use of the Premises for the purposes stated in this Lease. Any improvements Lessee makes shall be at its own cost and expense without any right of reimbursement at the termination of the Lease. All improvements shall be made in accordance with building, fire, health, zoning, and other applicable codes and permits for such work must be obtained if required by code.

4. **Covenants of Lessee.** As consideration for its right of occupancy of the Premises, Lessee hereby covenants and agrees as follows:

- a) to maintain the Premises in a clean, orderly and sanitary manner at all times and at its own expense and to comply with the requirements of all applicable health and safety codes;
- b) to surrender the Premises, including any structural improvements made thereto by Lessee but excluding all personal property of Lessee, at termination hereof;
- c) to be responsible to Lessor for damage caused to the Property by the acts or omissions of its officers, agents, servants, employees, contractors, guests, or invitees;
- d) to use the Premises in such a manner as to not impair the operation of the Chittenden Solid Waste Facility, Burlington City Arts authorized artists space, or any other use or operation authorized by the City of Burlington on the Property including but not limited to the use associated with the construction of the Southern Connector and the Grant of Environmental Restrictions and Right of Access.
- e) This Agreement incorporates by reference the terms of the environmental Easement and § IX of the Consent Decree entered on February 11, 2000 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

permitted use of the Premises is encumbered by such terms and conditions related to the rights of access to and use restrictions on the Property necessary to implement the Record of Decision for the purposes of protecting human health and the environment. The Grant of Environmental Restrictions and Right of Access is recorded in the Burlington Land Records in volume 877 pages 29-75. Pages 27-40 are attached hereto for the Parties' convenience. Lessee shall permit access to the Premises as set forth in the Grant and shall not perform any activities or uses which violate one or more of the conditions set forth in the Grant, including but not limited to Section 4, Restricted Uses and Activities, recorded in volume 877 pages 31-32 of the Burlington Land Records and attached hereto.

5. **Indemnification.** Lessee shall indemnify, defend, and hold harmless Lessor from and against all liability, damage, penalties or judgments arising from injuries to persons or property sustained by anyone in and about that part of the Property used exclusively by Lessee resulting from any act or acts or omission or omissions of Lessee, its agents, servants, employees, contractors or guests or invitees.
6. **Insurance.** Lessee shall be responsible for insuring its own personal property on the Premises against any and all loss. This insurance shall be obtained from an insurer having an A.M. Best Insurance Rating of at least A-, financial size category VII or greater. [www.ambest.com]. Lessee shall agree to provide and maintain the following types and amounts of insurance for the term of this Lease:
 - A. **Commercial General Liability Coverage:** Commercial General Liability Insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of, at a minimum, \$1,000,000 Combined Single Limit for each occurrence, \$2,000,000 general aggregate. Lessee shall list Lessor as an Additional Insured on their Commercial General Liability Policy.
 - B. **Commercial Auto Coverage:** Commercial Auto Liability Insurance covering all Owned & Hired and Non-Owned vehicles, with limits of, at a minimum, \$1,000,000 Combined Single Limit for each occurrence, \$2,000,000 general aggregate. Lessee shall list Lessor as an Additional Insured on their Commercial Auto Liability Policy.
 - C. **Workers' Compensation & Employers Liability Insurance:** Statutory Worker's Compensation Insurance and Employers Liability with limits of, at a minimum, \$1,000,000 for any one occurrence. Lessee shall show evidence of Workers Compensation and Employers Liability Insurance Coverage.
 - D. **Tenant's Legal Liability Insurance:** Tenant's Legal Liability insurance with limits at a minimum of the value of Lessor's premises. Lessee must show

- d) This Lease as written constitutes the entire agreement between the parties; no other agreement shall be a part hereof unless in writing and signed by duly authorized agents of all the original parties.
- e) The breach of any condition of this Lease is to be considered substantial.
- f) No holding over by Lessee beyond the Lease term or any renewal Lease term shall operate as a renewal of this Lease, but shall create a month to month tenancy only.
- g) Lessee shall comply with all provisions of any and all lawful orders, statutes, ordinances, and regulations imposed by the Federal Government, the State of Vermont, City of Burlington, or any other governmental agency, now or hereafter in force, relating to the use and occupancy of the Premises.
- h) Whenever Lessee shall construct, repair or rebuild or otherwise make alterations, Lessee shall discharge or cause to be discharged every lien or attachment filed against the premises within 60 days of filing the same in the City land records unless Lessee challenges the validity of the lien(s) within that 60 day period in a court of competent jurisdiction and Lessee agrees to indemnify and hold Lessor harmless from any and all liability or expense with respect thereof.
- i) Any notice, consent, or other writing required by this Lease shall be delivered in person, or by certified mail, return receipt requested, as follows:
 - If to Lessor:** Director, Burlington Department of Public Works, 645A Pine St., Burlington, VT 05401
 - If to Lessee:** Tom Longstreth, Executive Director, ReSource, 266 Pine St., Burlington, VT 05401.
- j) This Lease is executed in duplicate, each copy to be considered an original.

AFTER HAVING READ AND UNDERSTANDING THE FULL TEXT OF THIS CONTRACT, THE UNDERSIGNED HEREBY ACKNOWLEDGE RECEIPT OF A COPY HEREOF.

IN WITNESS WHEREOF, we hereunto set our hands and seals this _____ day of _____, 20__.

ReSOURCE, LESSEE

CITY OF BURLINGTON, LESSOR

Duly Authorized

Duly Authorized

Witness

Witness

evidence of Tenant's Legal Liability Insurance Coverage and shall list Lessor as an Additional Insured on their Tenant's Legal Liability Insurance Coverage.

E. Certificates of Insurance: Lessee shall provide Lessor with such Certificates of Insurance, as required above, prior to the commencement of the Lease. All Certificates shall contain a provision stating that the coverage's afforded under said policies will not be cancelled, materially changed or not renewed without thirty (30) days written prior notice, except ten (10) days for non-payment of premium, to Lessor.

7. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the Premises and making certain that Lessee is meeting all of its obligations under this Lease. Lessee shall permit access to the Premises as set forth in the Grant of Environmental Restrictions and Right of Access (Attached).

Assignment and Subletting. Lessee shall not assign or sublet any portion of the Premises without Lessor's prior written consent. In the event consent to assign or sublet is granted, subletters or assignees must comply with the same insurance requirements as Lessee, as well as all other terms and conditions of this Lease unless expressly waived in writing by Lessor.

8. **Utilities.** Lessee shall be responsible for providing and paying for all utilities to the Premises during the term of this Lease.

9. **Substantial Damage to Premises.** If the Premises shall be destroyed by fire or other casualty, or shall be so damaged that Lessor determines that repair is not warranted economically, then this Lease shall terminate.

10. **Default.** Any failure by either Party to perform any of the terms hereof shall constitute a default hereunder. Upon such default, the non-defaulting party may at its option terminate all rights of the defaulting party hereunder; provided, however, that the defaulting party shall be given notice of default and 90 days in the case of any other type of default to remedy any such default before such termination shall take effect.

11. **General Provisions.**

- a) No failure of either party to enforce any term hereof shall be deemed a waiver of future enforcement thereof.
- b) All covenants herein contained shall extend to and bind the successors and assigns of each of the parties hereto.
- c) Each of the conditions of this Lease is separable and separate, the validity of one not being dependent upon any other.

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont, this ____ day of _____, 20____, _____
personally appeared before me and acknowledged the foregoing instrument by him
signed and sealed to be his free act and deed, and the free act and deed of Recycle North,
Inc..

Before me, _____
Notary Public
My Commission expires _____.

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont, this ____ day of _____, 20____, _____
personally appeared before me and acknowledged the foregoing instrument by him
signed and sealed to be his free act and deed, and the free act and deed of the City of
Burlington, VT.

Before me, _____
Notary Public
My Commission expires _____.

Resolution Relating to

877 27

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

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

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

19 SF & B CITY CLERK'S OFFICE Received 6-22-2004 at 2:35 P. and recorded in Vol. 877 on Page of Burlington Land Records. Attest:

J. Ramarche, Asst. City Clerk

RESOLUTION RELATING TO 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.

211160/00007 wfc: resolution-pine street grants, 6-8-04
lb/atty's initials/c: Resolutions 2004/Name Resolution
Date

877 29

Receiver 6-22-2004 at 2:55 P.M.
and recorded in Vol. 877 on Page 231
of Burlington Land Records.
Vermont Property Transfer Tax 32 V.S.A. Chap. 231
-ACKNOWLEDGEMENT-
Return, Certificate & Payment Received

GRANT OF ENVIRONMENTAL RESTRICTIONS AND RIGHT OF ACCESS

Attest:

Jo LaMarche
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.

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>[Signature]</u>	By: <u>[Signature]</u>
	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>[Signature]</u>
	Notary Public
	My Commission Expires: <u>2/10/07</u>

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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: **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 Ronald 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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