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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. Kloekner, VP
Its Authorized Representative
Address: 111 Main St.
Burlington, VT 05401

STATE OF Vermont
COUNTY OF Chittenden

On this 8th day of July, 2004, before me, the undersigned Notary Public in and for the State of Vermont, duly commissioned and sworn, personally appeared Gisela M. Kloekner 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.

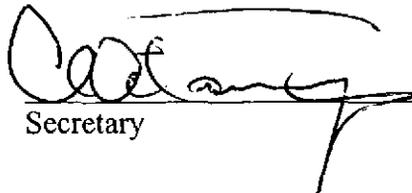
VERMONT GAS SYSTEMS, INC.

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*

