

Sponsor(s): _____

Introduced: _____

Referred to: _____

Action: _____

Date: _____

Signed by Mayor: _____

Resolution Relating to

**AUTHORIZATION TO ACCEPT
EASEMENT FOR SEWER AND STORMSEWER LINES
AND RELATED AGREEMENTS**

CITY OF BURLINGTON

In the year Two Thousand Ten.....

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

WHEREAS, in approximately 1991-1992 the City of Burlington ("City") permitted the construction of the so-called Flynn Avenue Cooperative Homes in the vicinity of 288 Flynn Avenue, Burlington, Vermont ("Property"); and

WHEREAS, to facilitate construction of the Flynn Avenue Cooperative Homes, the City permitted the relocation of the sewer and stormsewer lines running through the Property; and

WHEREAS, as a condition of approval of construction, the City was to be granted an easement over and through the lands where the relocated sewer and stormsewer pipes were installed ("Easement"); and

WHEREAS, for reasons that are presently unknown and undocumented, the Easement was never granted to the City for the sewer and stormsewer lines; and

WHEREAS, in approximately 2008, a sinkhole began to form in the parking lot of the Property in the area where one of the stormsewer lines is located; and

WHEREAS, after evaluation by the City's Department of Public Works ("DPW") and other parties, a determination was made that the stormsewer line at issue had failed and replacement was required ("failed line"); and

WHEREAS, on approximately August 20, 2009, the City entered into an agreement with Champlain Housing Trust ("CHT"), the owner of the land upon which the Flynn Avenue Cooperative Homes lie, to replace the failed line and equally share the cost of doing so ("Agreement"); and

WHEREAS, the City agreed, if the stormsewer pipe was installed pursuant to the specifications of DPW, to accept ownership of the relocated sewer and stormsewer lines and accept an easement over the land through which the relocated sewer and stormsewer lines lay for the purpose of installing, repairing, maintaining, restoring and/or replacing sewer and stormsewer lines, as well as any and all other components of the City's stormwater system and sewer/septic system including, but not limited to, manholes and outflows on, under and through the easement to be granted to the City; and

52
53
54
55

56 **Resolution Relating to**

57
58
59
60
61
62
63
64

AUTHORIZATION TO ACCEPT
EASEMENT FOR SEWER AND STORMSEWER LINES
AND RELATED AGREEMENTS

65
66
67
68
69
70

WHEREAS, the City also agreed, if the stormsewer pipe was installed pursuant to the specifications of DPW, to enter into a mutual release agreement with CHT ("mutual release") wherein both the City and CHT will release each other from liability for any and all occurrences that may arise from the sewer and stormsewer lines on under and through the easement to be granted to the City prior to the Effective Date of the Mutual Release; and

71
72
73
74
75
76

WHEREAS, the City also agreed, if the stormsewer pipe was installed pursuant to the specifications of DPW, to enter into an agreement with CHT wherein CHT would assign to the City all of the rights it possessed in the contracts it entered into with the contractors and engineers hired to construct, install and inspect the stormsewer line that replaced the failed line ("Assignment and Agreement").

77
78
79

WHEREAS, the stormsewer line was installed pursuant to DPW's specifications and DPW has reviewed and approved the attached Easement and Agreement;

80
81
82

WHEREAS, DPW has also reviewed and approved the attached Mutual Release and Assignment and Agreement; and

83
84
85
86
87

NOW THEREFORE, BE IT RESOLVED that the City hereby accepts the Easement and ownership of the sewer and stormsewer lines, all components of the City's stormwater system and sewer/septic system, including but not limited to manholes and outflows, located on under and through the Property as described more fully in the Easement and Agreement (attached); and

88
89
90
91
92
93

BE IT FURTHER RESOLVED that the Mayor be and hereby is authorized to sign the Easement and Agreement on behalf of the City, thereby accepting the grant of the therein described easement to the City of Burlington and accepting ownership of the sewer and stormsewer lines, all components of the City's stormwater system and sewer/septic system, including but not limited to manholes and outflows, located on, under and through the accepted easement, subject to review by the City Attorney, as necessary; and

94
95
96
97
98
99
100

BE IT FURTHER RESOLVED that the Mayor be and hereby is authorized to sign the Assignment and Agreement and Mutual Release on behalf of the City, thereby accepting all CHT rights in the contracts it entered into with the contractors and engineers hired to replace the failed line and releasing CHT from any liability resulting from the sewer and stormsewer lines located on, under and through the accepted easement prior to the date the Mutual Release is signed, subject to review by the City Attorney, as necessary.

EASEMENT AND AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS that **CHAMPLAIN HOUSING TRUST, INC.**, (hereafter also referred to as "CHT"), a Vermont nonprofit corporation with its principal place of business in Burlington, in the County of Chittenden and State of Vermont, and **FLYNN AVENUE COOPERATIVE HOMES, INC.**, a Vermont Housing Cooperative, with its principal place of business in Burlington, Vermont (hereinafter also referred to as the "Cooperative"), CHT and the Cooperative together being the "Grantor," for good and valuable consideration, the receipt of which is hereby acknowledged, by these presents do freely **GIVE, GRANT, SELL, CONVEY, and CONFIRM** unto **THE CITY OF BURLINGTON**, a Vermont municipality situated in the County of Chittenden and State of Vermont (hereafter also referred to as the "City"), and its successors and assigns forever, an easement in perpetuity, for the purpose of installing, repairing, maintaining, restoring and/or replacing sewer and/or stormsewer lines, as well as any and all other components of the City's stormwater system and sewer/septic system including, but not limited to, manholes and outflows (hereafter the "sewer and stormsewer lines"), on, under and through the following described property:

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO EASEMENT

The easement granted herein ("the easement") is located within a continuous strip of land located northerly of Flynn Avenue, commencing at the northerly boundary of Flynn Avenue and the southerly and westerly boundary of the Grantor's property and proceeding in a generally northerly direction along Grantor's westerly boundary to a point; thence turning to the right and proceeding in a generally northeasterly direction to a point; thence turning to the left and proceeding in a generally northerly direction to a point located on the northerly line of lands of Grantor and the southerly line of the lands now or formerly of Campagna; said easement being more fully depicted on a certain survey prepared by Dubois & King, Inc., dated July 29, 1993, and entitled "Plan of Easement for the City of Burlington, Flynn Avenue, Burlington, VT", and recorded in Map Hanger No. 267F of the City of Burlington Land Records (hereinafter the "Plan").

The easement granted herein is for the purpose of the installation, repair, maintenance, restoration and/or replacement of the three (3) sewer and stormsewer lines identified on the Plan as (a) 15" Sanitary Sewer; (b) 36" Storm Sewer; and (c) 6" DI Force Main, all of which run parallel to each other within the strip of land subject to this easement.

Grantee and Grantor each acknowledge and agree that insofar as the easement depicted on the Plan is divided into three segments of different widths (36.66', 42.00' and 50.00'), that notwithstanding those depicted segment widths, the width of each segment of the easement is reduced to a width less than the stated width if required to make the sidelines of said easement lie at least two feet (2.00') from the exterior wall of any building located on the lands adjacent to the lands where the easement passes.

The lands encumbered by the easement are the same lands and premises expressly reserved and excepted in the following two deeds: Warranty Deed for the improvements only from Lake Champlain Housing Development Corporation to Flynn Avenue Cooperative Homes, Inc., dated September 9, 1993, and recorded at Volume 490 at page 350 of the City of Burlington Land Records (hereinafter "the Cooperative Deed"); and Warranty Deed for the land only from Lake Champlain Housing Development Corporation to Burlington Community Land Trust, Inc., dated September 9, 1993, and recorded at Volume 490 at Page 347 of said Land Records (hereinafter "the CHT Deed"); and further described as being a portion of the same lands and premises conveyed to Lake Champlain Housing Development Corporation by Warranty Deed of Richard A. Limoge, Larry A. Limoge and Robert J. Limoge, d/b/a Limoge Brothers, dated July 17, 1992, and recorded in Volume 458 at Page 270 of the Land Records of the City of Burlington.

Flynn Avenue Cooperative Homes, Inc. owns the buildings and other structures as described in the deeds referenced above. CHT owns the lands as described in the deeds referenced above.

EXTINGUISHMENT OF PRIOR RIGHT OF WAY

The conveyance to the City of the herein described easement shall extinguish the Right of Way conveyed by the Estate of John J. Flynn to the City of Burlington by deed, dated February 21, 1952 and recorded in Volume 140 at Page 104 of said Land Records. A plan depicting said right of way is recorded in Volume 140 at Page 96 of said Land Records.

RESPECTIVE RIGHTS AND OBLIGATIONS

CHT and the Cooperative have the right to fully use and enjoy the lands and premises subject to the easement in any manner that will not prevent or interfere with the exercise by the City of the easement herein granted.

CHT and the Cooperative, for themselves and their heirs, administrators, successors and assigns, hereby covenant (notwithstanding those improvements, landscaping and/or structures currently in existence as of the date of the signing of this instrument and consistent with those improvements, landscaping and/or structures approved by the City of Burlington Department of Planning and Zoning in their June 25, 1992 and June 8, 2000 final plat approval) that they will not erect or permit any building or any other structure, or landscaping, upon said described premises, and will not place or permit any material of any kind or nature to be piled on, or accumulated on, or be removed from, said described premises so as to change the grade or elevation of the surface of the ground, any and all of which, in the reasonable opinion of Grantee, or its successors and assigns, is likely to interfere with the operation or maintenance of the sewer and stormsewer lines or service in connection therewith without the express written permission of the City of Burlington Department of Public Works, which permission shall not be unreasonably withheld.

The City shall have the right to engage in all actions and activities necessary to and consistent with the use of the easement herein granted including, but not limited to, within the boundaries of the easement, the right to cut down, remove and keep cleared at any and all times, such trees, underbrush and vegetation as in the reasonable judgment of the City may interfere with or endanger the operation or maintenance of said pipelines or any of their appurtenances. Notwithstanding the foregoing, the City shall use due care in its use of the easement. The City shall have the right of ingress and egress over the land as reasonably necessary for the exercise of rights, privileges and the easement herein granted, provided, however, the City shall exercise its rights in a careful manner. The City shall either pay for or restore any land or property owned by CHT or the Cooperative disturbed or damaged by the City in the exercise of its rights and obligations delineated herein.

Notwithstanding the City's obligation outlined in the previous sentence above, the City shall only be responsible for restoring or paying for that which it disturbs or damages, and shall not be required, for example, by way of illustration and not by way of

limitation, to replace the entire driveway/parking lot of the Cooperative if only a portion is disturbed by the City's activities.

Upon the recording of this Easement and Agreement in the City of Burlington Land Records, the City, and its successors and assigns, shall be the sole owner of and solely responsible for the sewer and stormsewer lines located within the easement, as well as any and all other components of the City's storm water system and sewer/septic system, including but not limited to, manholes and outflows, located on, under or through the easement.

Reference is hereby made to the instruments aforementioned, and the records thereof, and the instruments therein referred to, and to their respective records and references, all in further aid of this description.

The Cooperative joins in this conveyance but without joining in any of the warranties hereinafter set forth, solely for the purpose of conveying to the City such interests as the Cooperative may have in and to the sewer and stormsewer lines and the easement, if any.

TO HAVE AND TO HOLD said granted premises, with all the privileges and appurtenances thereof, to the said Grantee, **THE CITY OF BURLINGTON**, its successors and assigns, to their own use and behoof forever; and **CHAMPLAIN HOUSING TRUST, INC.**, for itself and its successors and assigns, does covenant with **THE CITY OF BURLINGTON**, its successors and assigns, that until the ensealing of these presents it is the sole owner of the premises burdened by the easement herein conveyed, and has good right and title to convey the easement herein granted in manner aforesaid, that the land burdened by the easement herein granted is **FREE FROM EVERY ENCUMBRANCE** except restrictions, reservations, and other easements or rights of way, mortgages, liens and state and municipal land use permits of record, and it hereby engages to **WARRANT AND DEFEND** the same against the lawful claims whatever, except as described above.

IN WITNESS WHEREOF, each of the parties to this deed, by their respective duly authorized agent and acting on their respective behalf, have hereunto set their respective hands and seals.

DATED at Burlington, Vermont, this ____ day of _____ 2010.

IN THE PRESENCE OF:

CHAMPLAIN HOUSING TRUST, INC.

By: _____
Duly Authorized Agent

DATED at _____, Vermont, this ____ day of _____ 2010.

IN THE PRESENCE OF: **FLYNN AVENUE COOPERATIVE HOMES, INC.**

By: _____
Duly Authorized Agent

DATED at Burlington, Vermont, this ____ day of _____ 2010.

IN THE PRESENCE OF: **The CITY OF BURLINGTON**

By: _____
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont, in said County, this ____ day of _____ 2010, personally appeared _____, duly authorized agent for Champlain Housing Trust, Inc. and acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed and the free act and deed of Champlain Housing Trust, Inc.

Before me, _____
NOTARY PUBLIC
My Commission Expires 2/10/2011

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont, in said County, this ____ day of _____ 2010, personally appeared _____, duly authorized agent for Flynn Avenue Cooperative Homes, Inc. and acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed and the free act and deed of Flynn Avenue Cooperative Homes, Inc..

Before me, _____
NOTARY PUBLIC,
My Commission Expires 2/10/2011

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont, in said County, this ____ day of _____ 2010, personally appeared _____, duly authorized agent for the City of Burlington and acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed and the free act and deed of the City of Burlington.

Before me, _____
NOTARY PUBLIC
My Commission Expires 2/10/2011

MUTUAL RELEASE

Now Come the Champlain Housing Trust, Inc. (hereafter "CHT") a Vermont nonprofit corporation with offices in Burlington, Vermont and the City of Burlington (hereafter the "City"), a Vermont municipality with offices in Burlington, Vermont (collectively, the "Parties"), and have entered this Mutual Release effective as of _____, 2010 (hereafter the "Effective Date"):

RECITALS

Whereas, on August 20 2009, the Parties entered into an Agreement (hereafter the "Agreement") concerning the repair and other matters related to a sinkhole and damaged/at risk storm water pipe (hereafter the sinkhole and the damaged/at risk pipe shall be referred to collectively as the "Damaged/at Risk Pipe") located beside and beneath the parking lot of the Flynn Avenue Cooperative Housing Project (the "Site").

Whereas, pursuant to the Agreement, the previously Damaged/at Risk Pipe has now been replaced (hereafter the "Repaired Pipe") and the sinkhole repaired, the Work delineated in the Agreement has been completed and paid for in full, and the Easement referenced in the Agreement (hereafter "the Easement") has been duly executed and recorded in the City of Burlington Land Records;

Whereas, pursuant to the Agreement, the City has assumed ownership of and responsibility for the Repaired Pipe and for any and all other components of the City's storm water system and sewer/septic system located on, beside, or beneath the Site, including but not limited to manholes and outflows (hereafter referred to collectively as the "Storm/Sewer System at the Site").

Whereas, pursuant to the Agreement, the Parties have entered into an Assignment and Agreement (hereafter "Assignment and Agreement") where CHT agreed to assign to the City its rights as Owner under the Construction Contract and as Client under each of the engineering contracts while at the same time retaining all of said rights, independent of the City's rights as assignee and notwithstanding the assignment of said rights to the City.

Whereas, pursuant to the Agreement, the Parties agreed to enter into a Mutual Release consistent with the provisions of section 4 of the Agreement.

Whereas, the intent of this Mutual Release is for CHT and the City to release each other from any claims with respect to all matters concerning the Damaged/at Risk Pipe, the Repaired Pipe, and the Storm/Sewer System at the Site prior to the Effective Date of this Mutual Release, unless expressly exempted herein.

NOW THEREFORE, in consideration of the promises made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purposes and Intent. By executing this Release, CHT and the City release the other with respect to the matters and for the periods described in section 2 of this Release.

2. General Release. CHT and the City, each on its own behalf and on behalf of its successors and assigns, hereby fully, forever, irrevocably and unconditionally release, remise and discharge each other with respect to all issues arising out of or related to the Damaged/at Risk Pipe, the Repaired Pipe, and the Storm/Sewer System at the Site prior to the Effective Date of this Mutual Release, unless expressly exempted herein.

Without limiting the foregoing, this Mutual Release covers all claims that were or could have been raised between CHT and the City relating to the: a) Damaged/at Risk Pipe or b) Repaired Pipe or c) Storm/Sewer System at the Site for any reason, and further extends to all known, unknown, undiscovered and undiscoverable claims arising out of or related to the a) Damaged/at Risk Pipe or b) Repaired Pipe or c) Storm/Sewer System at the Site as of the date of this Mutual Release and releases all persons employed by or associated with the Parties who could in any way be subjected to these claims, including subsidiaries, predecessors (including, without limitation, Lake Champlain Housing Development Corporation), successors, assigns, principals, affiliates, employees, agents, officers, and insurers of the Parties, unless expressly exempted herein. This General Release shall affect a complete release of all issues among the Parties arising out of or related to the Damaged/at Risk Pipe, the Repaired Pipe, and the Storm/Sewer System at the Site, including claims for attorneys' fees, unless expressly exempted herein. Any and all claims arising out of conduct or incidents occurring after the date of this Mutual Release shall survive the execution of this Mutual Release. Nothing in this Mutual Release is intended to release any person or entity who is not covered by this Mutual Release. In particular, nothing in this Mutual Release is intended to or shall release any contractors, pipe manufacturer, engineer or architect who participated in the original design, manufacture or construction of the Damaged/at Risk Pipe or the Storm/Sewer System at the Site or who participated in the repair/replacement of the Damaged/at Risk Pipe. Further, nothing in this General Release is intended to release claims unrelated to the Damaged at Risk Pipe, the Repaired Pipe, or the Storm/Sewer System at the Site. Nothing in this Mutual Release is intended to affect or impair the provisions of section 6 of the Agreement. Nothing in this Mutual Release is intended to affect or impair either party's respective right to enforce the provisions of either: 1) the Easement; 2) the Assignment and Agreement; or 3) this Mutual Release.

3. Other Agreements. There are no outside agreements among the parties related to the subject matter herein other than the Agreement and the attachments to the Agreement, the Easement and the Assignment and Agreement.

Dated at Burlington, Vermont, this _____ day of _____ 2010.

Duly Authorized Agent for the City of
Burlington

Dated at Burlington, Vermont, this _____ day of _____ 2010.

Duly Authorized Agent for Champlain
Housing Trust, Inc.

231055-84

Assignment and Agreement

NOW COME Champlain Housing Trust, Inc. a Vermont nonprofit corporation with offices in Burlington, Vermont (hereafter "CHT") and the City of Burlington, a Vermont municipality with offices in Burlington, Vermont (hereafter the "City") (hereafter collectively "the parties"), and hereby agree to the following:

WHEREAS, CHT and the City executed a certain Agreement (hereafter "the City/CHT Agreement") on August 20, 2009, for the replacement of a damaged storm water pipe and repair of a sink hole located at the Flynn Avenue Cooperative at Flynn Avenue, Burlington, Vermont ("the Site");

WHEREAS, the City/CHT Agreement provides for CHT to retain third parties (hereafter "the Contractors & Engineers") to perform the work necessary to replace the damaged pipe and repair the sink hole ("the Work"), all as more specifically described and delineated in the Agreement;

WHEREAS, one of the Contractors & Engineers, Engineers Construction, Inc. ("ECI"), is expressly mentioned in the City/CHT Agreement, and the contract between CHT and ECI (the "Construction Contract") is attached as an exhibit to the City/CHT Agreement;

WHEREAS, the Construction Contract and the City/CHT Agreement expressly provide that both CHT and the City may enforce CHT's rights as "Owner" set forth in the Construction Contract;

WHEREAS, subsequent to the execution of the City/CHT Agreement, CHT retained Krebs & Lansing Consulting Engineers, Inc. ("Krebs & Lansing") and Knight Consulting Engineers, Inc. ("Knight") to perform some of the Work, pursuant to the City/CHT Agreement. Neither the agreement between CHT and Krebs & Lansing (the "Krebs & Lansing Contract") or the agreement between CHT and Knight (the "Knight Contract") (collectively "the Engineering Contracts," copies of which are attached hereto) provide for the City to be able to enforce CHT's rights as "Client" set forth in these agreements;

WHEREAS, the City/CHT Agreement provides that CHT and the City shall share equally the cost of the Work;

WHEREAS, the City/CHT Agreement provides that, upon completion of the Work and execution and delivery of certain documents, the City shall be the sole owner of and solely responsible for the existing and replaced pipe and any and all other components of the City's storm water system and sewer/septic system located on, beside or beneath the Site;

WHEREAS, the Work has been completed and the parties are in the process of executing and delivering all required documents such that the City shall be the sole owner of and solely responsible for the aforementioned storm water and storm/sewer systems;

WHEREAS, in light of the City's imminent ownership of and responsibility for said storm water and storm/sewer systems, the parties agree that CHT shall assign to the City its rights as Owner under the Construction Contract and as Client under each of the Engineering Contracts (hereafter "CHT's Rights"), while at the same time retaining all of said rights, independent of the City's rights as assignee and notwithstanding the assignment of said rights to the City; and

WHEREAS, the parties agree that, in the event that any assignment made hereunder renders ineffective or impairs CHT's Rights (hereafter an "Impairment of CHT's Rights"), the parties shall diligently endeavor to address said Impairment of CHT's Rights in an effort to preserve CHT's Rights while preserving the City's rights as assignee.

NOW THEREFORE, in consideration of the mutual promises and payments herein, and for other good and valuable consideration, the parties agree as follows:

1. CHT hereby assigns to the City its rights as Owner under the Construction Contract and as Client under each of the two Engineering Contracts, subject to the limitations set out at paragraphs 2 and 3 below;
2. Notwithstanding the foregoing assignment of rights, CHT shall retain all of its rights under the Construction Contract and the two Engineering Contracts, respectively, independent of the City's rights as assignee;
3. In the event that any assignment made hereunder renders ineffective or impairs CHT's Rights, the parties shall diligently endeavor to address said Impairment of CHT's Rights in an effort to preserve CHT's Rights while preserving the City's rights as assignee.
4. This Assignment is not intended to modify any previously executed agreements, and in the event of an inconsistency between this assignment and those agreements, the provisions of those agreements shall prevail.

Dated at Burlington, Vermont, this _____ day of _____ 2010.

Duly Authorized Agent for the City of
Burlington

Dated at Burlington, Vermont, this _____ day of _____ 2010.

Duly Authorized Agent for Champlain
Housing Trust, Inc.

231150-84