

## EASEMENT DEED & AGREEMENT

**KNOW ALL PERSONS BY THESE PRESENTS** that the **City of Burlington**, a Vermont municipality located in Chittenden County ("Grantor" or "City"), in consideration of FIVE THOUSAND Dollars paid to its full satisfaction by **Waterfront Plaza, LLC**, a Vermont limited liability company with its principal place of business in Burlington, Vermont, ("Grantee" or "Waterfront Plaza"), by these presents does freely GIVE, GRANT, SELL, CONVEY AND CONFIRM unto the said Grantee and its successors and assigns forever, the following rights and easements under and on lands and premises situated in the City of Burlington, County of Chittenden, State of Vermont, and being more particularly described as follows, viz:

A permanent easement for the construction and maintenance of nine underground foundation footings and the appurtenances thereto ("Footings") under, in and on portions of the rights-of-ways on Battery Street and King Street for the purpose of supporting the building constructed under Zoning Permit 10-0601 CA/MA at 180-188 Battery Street (Tax Parcel ID # 049-1-070-000).

The Property on which such permanent easement is located as follows:

- (a) On King Street, beginning approximately within applicable construction standards, 24 feet west of Grantee's north-east corner property line on King Street and running westerly for approximately, within applicable construction standards, 130 feet, extending approximately, within applicable construction standards, 5 feet into the King Street Right-Of-Way from the Grantee's north property line on the north side of the south side of King Street, for a total of approximately, within applicable construction standards, 650 square feet, and extending for this entire area approximately, within applicable construction standards, 13 feet, 6 inches below the surface of the King Street Right-Of-Way.
- (b) On Battery Street, beginning approximately, within applicable construction standards, 34 feet north of Grantee's south-west corner property line on Battery Street and running northerly for approximately, within applicable construction standards, 133 feet, extending approximately, within applicable construction standards, 4 feet into the Battery Street Right-Of-Way from the Grantee's west property line on the east side of Battery Street, for a total of approximately, within applicable construction standards, 532 square feet, and extending for this entire area approximately, within applicable construction standards, 13 feet, 6 inches below the surface of the Battery Street Right-Of-Way.

Such permanent easement is depicted in the Foundation Plan, S2.1, dated November 22, 2010 and adopted by reference into this easement and recorded in the Burlington Land Records as Hanger # \_\_\_\_\_ and the Encroachment Plan, EP 1, dated December 27, 2010 and adopted by reference into this easement and recorded in the Burlington Land Records as Hanger # \_\_\_\_\_. The Footings are depicted in the Footing Drawing, attached hereto.

Such permanent easement is granted in connection with and for the benefit of Grantee's construction and use of the building ("Building") on the parcel of land located at 180-188 Battery Street on the corner of Battery Street and King Street ("Benefited Parcel"). The "Burdened Parcel" is made up of the above described portions of the Battery Street public right-of-way and the King Street public right-of-way located adjacent to the Benefited Parcel.

Included herewith is a temporary easement for the construction, maintenance, repair, and replacement of the Footings, as required from time to time, together with the right in the Grantee to enter onto the lands of the Grantor to excavate, support, fill and otherwise take such temporary actions as may be necessary or appropriate to ensure the structural support of the Building. The location of any such temporary easement shall be set forth and described in any permit required for the use of the temporary easement and shall extend onto the public rights of way only as set forth in the applicable permit and/or permit conditions granted for its exercise.

**By acceptance of this Easement Deed, Grantee, its successors and assigns, covenants and agrees with the City, its successors and assigns, to be bound by the following terms and conditions:**

1. The easements, permanent and temporary, are subject to any and all permits and permit conditions required for such activity by Grantor, including but not limited to applicable permits for land use, excavation, obstructions, stormwater and building construction. Prior to the commencement of work, Grantee must obtain all requisite governmental approvals and permits necessary to construct, maintain and use the easements and the improvements benefiting from the easements described herein or taking other temporary actions connected to the Footings as may be necessary or appropriate to ensure the structural support of the Building, as well as the approvals and permits for the Footings themselves. All work done and improvements made in connection with the easements granted herein shall be completed in accordance with the governmental approvals and permits issued to Grantee and shall be made at Grantee's sole cost and expense. Grantee shall restore the Burdened Parcel and the adjacent King Street or Battery Street right-of-ways, if disturbed, following any disturbance in accordance with all governmental regulations, permits and approvals, and such restoration shall be made at Grantee's sole cost and expense.

2. If Grantee determines that a temporary action necessary or appropriate to ensure structural support of the Building should be made permanent, Grantee shall notify Grantor forthwith and request an additional easement from Grantor, which shall not be unreasonably withheld or delayed, upon such reasonable terms and conditions as the Grantor deems is necessary to protect the public's rights in the Burdened Parcel and adjacent to it, including those of the utilities located in the rights of way within and adjacent to the Burdened Parcel.

3. In the exercise of its easement rights, Grantee will perform all work in the lands of the Grantor in a good and workmanlike manner, in conformance to the requirements of any and all permits and permit requirements required for such activity by Grantor. Grantee shall perform all work so as to cause no unnecessary damage or disturbance to the Grantor's lands or the utilities located therein or the public's rights in the Burdened Parcel. In each and every instance, Grantee shall restore each portion of the Grantor's lands disturbed by the Grantee's entry to the same and as good a state and condition as they were immediately prior to the Grantee's entry unless otherwise required by a permit or permit condition issued by Grantor concerning said work.

4. Upon reasonable notice to the City, Grantee shall have the right to enter upon the Burdened Parcel from time to time for the purposes of the protection of the Easement, including but not limited to conducting inspections, surveys, preparing appraisals, conducting soils tests or engineering studies, and obtaining other information about the Burdened Parcel.

Grantee's entry onto the Burdened Parcel for the purposes set forth herein and its activities on the Burdened Parcel as permitted herein shall occur at the sole risk of Grantee. Grantee shall indemnify, hold City harmless and defend City from and against any and all claims, liens, damages, losses and causes of action which may be asserted by Grantee or Grantee's employees and agents or any third party as a result of any such entry. Grantee's entry onto or testing of the Burdened Parcel shall be conducted in a manner that minimizes any disturbance to the land and to the use and enjoyment of the Burdened Parcel by the City or the public. Subsequent to completing said inspections, surveys and tests, Grantee shall, at its sole expense, return the Burdened Parcel as nearly as is practicable to the state depicted in the plans approved by Zoning Permit 10-0601CA/MA and the building plans and permits associated with such land development or any superseding zoning or building permit. In the period prior to the completion of the construction of Grantee's project on the Benefited Parcel, Grantee shall comply with all permits and laws applicable to the construction permitted by ZP 10-0601CA/MA.

5. Except during construction and maintenance and repair, Grantee shall maintain the Footings and Easement and the land needed to support them in a manner that does not impair the public rights of way on the Burdened Parcel, including the protection of pedestrians and vehicles traveling upon the public rights-of-ways within and adjacent to the Burdened Parcel.

6. Grantee shall maintain the Footings and Easement and the land needed to support them in a manner that protects all utilities, existing or future, located within the Burdened Parcel or the adjacent public rights-of-ways. Grantee agrees that any and all expenses assumed by a utility to repair damages caused to the utility by the construction, use, maintenance and repair of the Footings allowed by the Easement shall be reimbursed by Grantee. Utilities currently located in the Burdened Parcel are depicted in the Burlington Electric Department's Proposed Aerial Replacement Project drawing, dated May 25, 2010 and incorporated by reference herein and recorded in the Burlington Land Records as Hanger # \_\_\_\_\_, and in Stormwater Plan and Profile drawing, C3.01, dated January

26, 2010 and incorporated by reference herein and recorded in the Burlington Land Records as Hanger # \_\_\_\_\_. Prior to the commencement of any future work by Grantee on Grantor's lands pursuant to this Easement Deed and Agreement, a then current drawing(s) of utilities located in and adjacent to the relevant portions of the Burdened Parcel shall be prepared by Grantee and submitted to Grantor.

7. Grantee agrees to protect vehicles and pedestrians traveling upon the public right-of-ways within and adjacent to the Burdened Parcel from damage, including during any construction, maintenance, or repair of the Footings. Grantee agrees to protect vehicles and pedestrians traveling upon the public right-of-ways within and adjacent to the Burdened Parcel from damage caused by its or its officers', representatives', agents', employees', or contractors' temporary actions connected to the Footings that are deemed necessary or appropriate to ensure the structural support of the Building.

8. Grantee shall not maintain, commit, or permit the maintenance or commission on or in Burdened Parcel pursuant to this Easement Deed and Agreement and the purposes set forth herein of any nuisance or violation of any applicable City of Burlington ordinance, State or Federal statute, or controlling bylaw, regulation, or condition imposed whether existing at the time of commencement of this easement or enacted, amended, or otherwise put into effect during the term of this Easement Deed and Agreement.

9. If Grantee fails to perform its obligations hereunder as and when called for, then Grantee shall make payment to the City of reasonable compensation for the failure to perform. After notice to the Grantee and failure to timely cure by Grantee, City also shall have the right, in its sole discretion, to recover all amounts expended by City in furtherance of purposes and terms of this Easement Deed and Agreement and pursue any further legal or equitable remedies provided by law, including specific performance and damages. In the event that a legal action is instituted arising out of a breach of this Easement Deed and Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

10. Grantee shall maintain in effect throughout the term of this Easement Deed and Agreement comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Easement Deed and Agreement and the Easements transferred hereto in an amount not less than \$1,000,000 each occurrence and \$3,000,000 general aggregate. The City shall be named as an additional insured on such insurance policy.

Prior to execution of this Easement Deed and Agreement, Grantee shall furnish the City with a certificate of insurance which shall include the provision that the City is named as an additional insured and shall be given 30 days written notification prior to cancellation of such insurance. The certificate shall be attached to this Agreement.

It is the responsibility of Grantee to ensure that a current certificate of insurance are on file with the City at all times.

11. Grantee agrees to indemnify, defend and hold the City harmless and free from any and all liability arising out of Grantee's use of the Burdened Parcel pursuant to this Easement Deed and Agreement and Grantee agrees to make no claim against the City or any of its officers, employees, agents or representatives for any loss or damage caused by the City's use or maintenance of its right-of-way.

Said Easements are conveyed by Grantor to Grantee "AS IS, WHERE AS" and "WITH ALL FAULTS;" and neither Grantor nor its agents, employees or other representatives make any guarantee, representation or warranty, express or implied (and Grantor shall not have any liability whatsoever) as to the value, uses, habitability, condition, design, operation, financial condition or prospects, or fitness for a particular purpose or use of the Burdened Parcel or the Grantor's land adjacent thereto, or any part thereof, or any other guarantee, representation or warranty whatsoever, express or implied, with respect to the Burdened Parcel or any part thereof or the Grantor's land adjacent thereto, or information supplied to Grantee with respect thereto. Further, City shall have no liability for any latent, hidden, or patent defect as to the Burdened Parcel or the Grantor's land adjacent thereto.

**TO HAVE AND TO HOLD** said granted rights. and premises, with all the privileges and appurtenances thereof, to the said Grantee, **Waterfront Plaza** and its successors and assigns, to their own use and behoove forever; and the said Grantor, **City of Burlington**, for itself and its successors and assigns, does covenant with the said Grantee and its successors and assigns, that until the ensealing of these presents it is the sole owner of the Burdened Parcel, and has good right and title to convey the same in manner aforesaid; that they are **FREE FROM EVERY ENCUMBRANCE**, except as aforesaid; and it hereby engages to **WARRANT AND DEFEND** the same against all lawful claims whatever, except as aforesaid.

In Witness Whereof, the undersigned has executed this instrument this \_\_\_\_ day of January, 2011.

City of Burlington By:

In presence of:

\_\_\_\_\_  
Bob Kiss, Mayor

\_\_\_\_\_  
Witness

Waterfront Plaza, LLC By:

In presence of:

\_\_\_\_\_  
Duly Authorized Agent

\_\_\_\_\_  
Witness

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont, in said County and State, this \_\_\_\_ day of January, 2011,  
personally appeared the above named Mayor Bob Kiss and Duly Authorized Agent of the  
Grantor, City of Burlington, and he acknowledged this instrument, by him sealed and  
subscribed, as a duly authorized officer of the City of Burlington to be his free act and  
deed individually and on behalf of the City of Burlington, Vermont

Before me:

\_\_\_\_\_ (notary expires \_\_\_\_\_)

STATE OF VERMONT  
COUNTY OF CHITTENDEN, SS.

At Burlington, Vermont, in said County and State, this \_\_\_\_ day of January, 2011,  
personally appeared the above named \_\_\_\_\_, duly authorized  
Agent of the Grantee, Waterfront Plaza, LLC, and acknowledged this instrument, by  
him/her sealed and subscribed, as a duly authorized officer of the Waterfront Plaza, LLC  
to be his/her free act and deed individually and on behalf of the Waterfront Plaza, LLC.

Before me:

\_\_\_\_\_ (notary expires \_\_\_\_\_)

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SEE PLAN

EXT. FACE OF CONCRETE

T.O. WALL

#5 @ 12" o/c  
#5 @ 15" o/c

GRADE

T.O. SHELF

CONT. STEEL ANGLE  
L6x3 1/2 x 5/16 WITH  
1/2" x 2 1/8" EPOXY BOLTS  
TO CONCRETE @ 30" o/c

8"

NTS

2"

NTS

#5 @ 15" o/c

CONCRETE SLAB  
ON STEEL DECK

#5 @ 18" o/c

T.O. SLAB

STEEL BEARING PLATE  
REFER TO GEN. NOTES

STEEL BEAM  
SEE PLAN

T.O. SHELF

4"

10"

CONCRETE SLAB  
ON GRADE

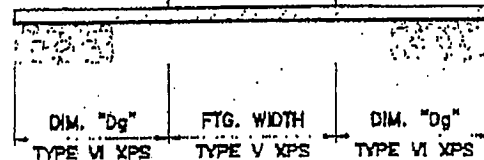
T.O. SLAB

#5 @ 18" o/c  
EACH FACE Grade (Sidewalk level)

#5 @ 12" o/c  
EACH FACE

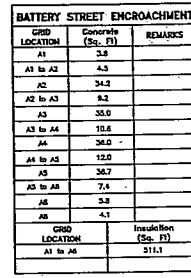
CONCRETE WALL  
SEE SCHEDULE

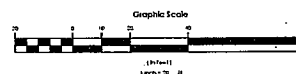
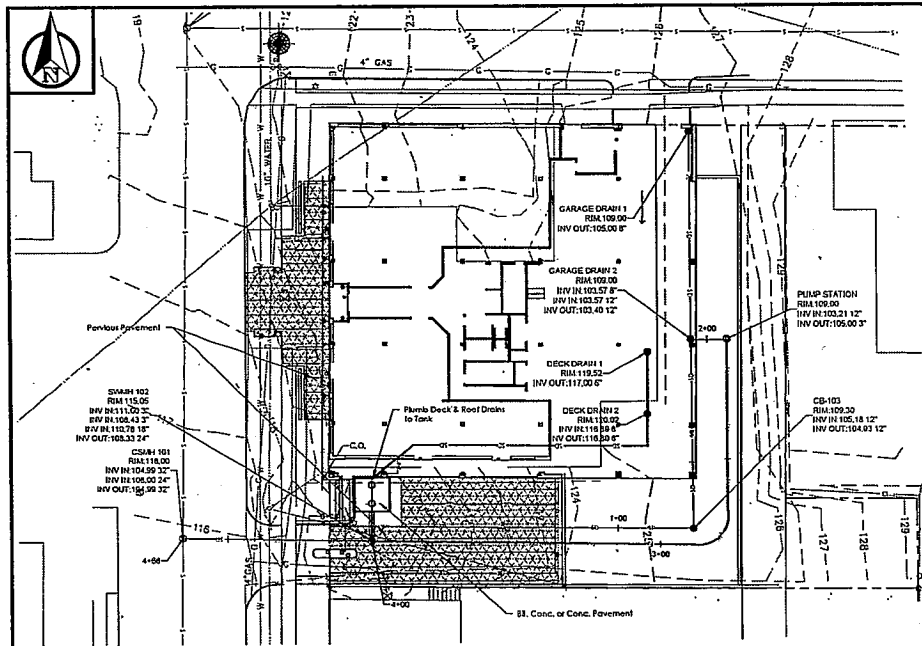
T.O. FTG.







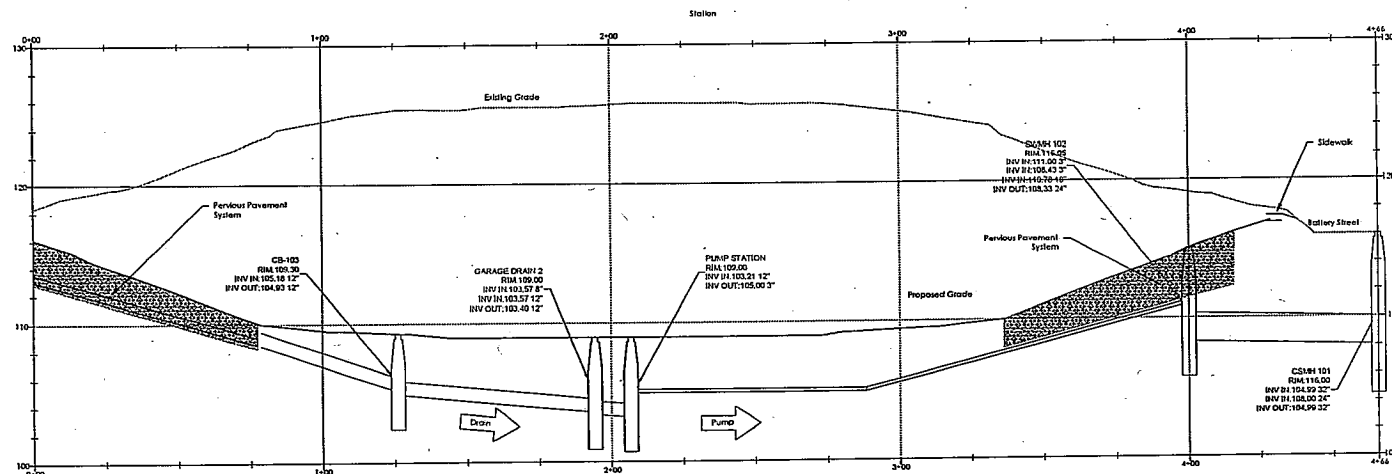




#### General Notes:

- Utilities shown are approximate and do not necessarily represent all utilities located on or adjacent to the area surveyed. The Contractor shall field verify all utility conflicts. All discrepancies shall be reported to the Engineer.
- All existing utilities not incorporated into the final design are to be removed or abandoned as indicated on the plans and/or directed by the Engineer.
- The Contractor shall maintain or build plans (with tie) for all underground utilities. These plans shall be submitted to the Owner at the completion of the project.
- The Contractor shall repair/relocate all disturbed areas (on or off the site) as a direct or indirect result of the construction.
- All graded areas shall be maintained until full vegetation is established.
- Maintain all trees outside of construction limits.
- The Contractor shall be responsible for all work necessary for complete and operable facilities and utilities.
- In addition to the requirements set in these plans and specifications, the Contractor shall complete the work in accordance with all of permit conditions, local Public Works Standards and all construction safety regulations.
- Any dewatering necessary for the completion of the site work shall be considered as part of the contract and shall be the Contractor's responsibility.
- If there are any conflicts or inconsistencies with the plans or specifications, the Contractor shall contact the Engineer for verification before work continues on the item(s) in question.
- All system components (banks, pipes, joints) shall be watertight.

Stormwater - Profile  
Horizontal Scale: 1" = 20'  
Vertical Scale: 1" = 4'



**Survey Credits**  
Property boundaries and topographic  
survey provided by Vermont Land  
Surveyors.

**Index of Drawings**  
C3.01 - Plan & Profile  
C3.02 - Details



Engineered Solutions, Inc.  
94 West Canal Street, Unit 3  
Winooski, Vermont 05440  
(877) 458-2445  
www.esi.com

**Waterfront Plaza**  
180 Battery Street  
Burlington, VT

Stormwater  
Plan & Profile



City Of Burlington Permit Set

Project Name	Project No.	Scale	Date
Waterfront Plaza	180	AS SHOWN	1/23/2019
Drawn by	Checked by	Reviewed by	Approved by
ES/101	ES/101	ES/101	ES/101

Drawn by	Checked by
ES/101	ES/101
Scale	As Shown
Sheet	C3.01
Of	2
Revision	ICV-01

