



MURPHY
SULLIVAN
KRONK

MEMORANDUM

To: City of Burlington Board of Finance

From: Catherine Kronk

Date: August 7, 2012

Re: 41 Cherry Street, LLC

This Memorandum is presented as a communication in support of the 41 Cherry Street, LLC amendments to Master Declaration and Ground Lease Resolution.

I. Background

- A. The City of Burlington has ground-leased Unit A of the Westlake Area Condominium to 41 Cherry Street, LLC. 41 Cherry Street, LLC is building Hotel Vermont on Unit A.
- B. The Westlake Area Condominium is the result of a public/private development that was formally begun in July of 2005 with the execution of the Master Declaration Westlake Area Condominium ("Master Declaration"). The City of Burlington owns Unit A (ground leased to 41 Cherry Street, LLC), Unit B (Lakeview Garage), Unit C-2 (new level of underground parking now accessed through the Lakeview Garage). The Burlington Community Development Corporation owns Unit C-1 (underground parking leased to owners of the Westlake Residential Condominium, Inc.). Westlake Residential Condominium, Inc. owns Unit E (residential condominium) and Burlington Harbor Hotel Group owns Units D and C-3 (Courtyard Marriott Hotel and courtyard deck over Unit C-2).

II. Problem

- A. Hotel Vermont is the last piece of the puzzle in the project. It has common walls with Unit C-2 and Unit B, both owned by the City. The Lakeview Garage will be (and already is) accessed by driving under the Hotel Vermont (crossing Unit A).
- B. During construction, it was discovered that part of Hotel Vermont encroached on Unit C-3. Hotel Vermont is built out over part of the courtyard (C-3). The portion of Hotel Vermont that encroaches over Unit C-3 is not technically permitted by the terms of the Master Declaration.

III. Solution

- A. This encroachment requires an easement over Unit C-3 and the removal of a 15 foot height restriction. The only way to achieve this legally, is to amend the Master Declaration.
- B. An additional housekeeping item involves the amendment of an easement already in the Master Declaration changing it from an easement for "footings and columns" to an easement for a "foundation wall" to support the building on Unit A.
- C. The Master Declaration can be amended by the consent of the Unit Owners. All the other Unit Owners have agreed to this Amendment.

IV. Ground Lease Amendment and Notice of Lease Amendment

- A. Additionally, one Amendment to Ground Lease is presented for your approval in the Second Amendment to Ground Lease. This amendment is also of the housekeeping variety, in that a reference to a 17 foot easement has, upon surveying, been determined to be 17.27 feet.
- B. Finally, a Notice of Lease Amendment addressing these changes is included. Upon approval it will be filed in the Land Records.

FIRST AMENDMENT TO
MASTER DECLARATION
WESTLAKE AREA CONDOMINIUM

This First Amendment to Master Declaration Westlake Area Condominium (the "Amendment") is made by all the Unit Owners: Burlington Harbor Hotel Group, LLC (Units D and C-3), Westlake Residential Condominium Association, Inc. (Unit E); The City of Burlington (Unit A, B and C-2), and the Burlington Community Development Corporation (Unit C-1) and is made as of the 1st day of August, 2012.

Background

1. The City of Burlington declared and established a condominium known as the Westlake Area Condominium located in the City of Burlington, Vermont as described in the Master Declaration Westlake Area Condominium dated July 27, 2005 and recorded in Volume 925 at Page 709 of the City of Burlington Land Records (the "Declaration").
2. The Unit Owners are the owners of the all of the Units in the Westlake Area Condominium (the "Condominium").
3. The Unit Owners desire to amend the Declaration in order to supplement the provisions of the Declaration that provide easements for the construction of a building on Unit A of the Condominium, including the portion of the said building that encroaches onto Units C-2 and C-3.
4. All capitalized terms used herein shall bear the meanings set forth in the Declaration unless otherwise defined.

NOW, THEREFORE,

Pursuant to the terms of Article XI of the Declaration, the Unit Owners hereby amend the Declaration as follows:

1. The following easements are hereby added to Property Description set forth in Exhibit A to the Declaration, following paragraph (13) of Exhibit A:
 - (14) An easement and right of way for the benefit of Unit A extending 46.33 feet by 60 feet from Unit A onto Unit C-3, and shown as "New 60' X 46.33' Easement over Unit C-3 to Serve Unit A (the "Projection Easement") on the plan entitled: "Westlake Area Condominium - Unit C-2 and C-3 Easement Plan" prepared by Civil Engineering Associates, Inc. and dated August 1, 2012, attached hereto and to be recorded in the City of Burlington Land Records (the "Unit C-2 and C-3 Easement Plan") . The Projection Easement is granted for the construction, use, maintenance, and repair of the following: (a) projections from the building to be constructed on Unit A, including, without limitation, an outdoor deck with pedestrian access to Unit C-3 by stairway, (b) a one story building, with a rooftop terrace, and (c) related footings, supporting structures and appurtenances. The Projection Easement shall include the right of access to all of Unit C-3 for the purposes of construction, maintenance and repair of the improvements to be located in the easement area shown on the Unit C-2 and C-3 Easement Plan. The improvements built within the Projection Easement shall not encroach on the parking spaces located below it, on Unit C-3, and shall allow for a height of at least 6'8" above each such parking space.

2. The Unit C-2 and C-3 Easement Plan shall be included in the definition of "Plats and Plans" as defined in the Declaration.
3. The following restriction on Unit C-3 shall be deleted from Section 4.03(5) of the Declaration:

"No permanent structure over fifteen feet (15') in height shall be constructed, placed upon or maintained on Unit C-3"

The third paragraph of Section 4.03(5) of the Declaration, as modified hereby, shall now read as follows: "No structure shall be placed, erected or maintained within thirty feet (30') from the face of the easterly wall of Unit E. All landscaping or trees will be maintained at a height less than thirty feet (30')."

4. Section 5.01(2)(C) of the Declaration shall be amended by deleting the reference to "Landscaped Plaza".
5. Section 6.07 of the Declaration shall be amended by deleting the Section labeled "Landscape Plaza.I".
6. The easement referred to in note number 5.3 on Sheet 1.3 of the Plats and Plans and recorded in Volume 925 at Page 750 of the City of Burlington Land Records shall be deleted and replaced by the following: Proposed 2' X60' easement for a foundation wall and overhead structure on Unit A onto Unit C-2, as shown on the Unit C-2 and C-3 Easement Plan.
7. All provisions of the Declaration not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the Unit Owners have executed or caused this Amendment to be executed as of the date set forth above.

[signature page to follow]

City of Burlington

By: _____
Its duly authorized agent

Print Name: _____

Title: _____

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington in said County and State, this ____ day of August, 2012, the duly authorized agent for the City of Burlington personally appeared, and he acknowledged this instrument by him sealed and subscribed to be his free act and deed of the City of Burlington.

Before me _____
Notary Public
My Commission Expires:

Burlington Community Development Corporation

By: _____
Its duly authorized agent

Print Name: _____

Title: _____

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, in said County and State, this ____ day of August, 2012, the duly authorized agent of the Burlington Community Development Corporation personally appeared, and he acknowledged this instrument by him sealed and subscribed to be his free act and deed of Burlington Community Development Corporation.

Before me _____
Notary Public
My Commission Expires:

Burlington Harbor Hotel Group, LLC

By: _____
Its duly authorized agent

Print Name: _____

Title: _____

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, in said County and State, this ____ day of August, 2012, the duly authorized agent of Burlington Harbor Hotel group personally appeared, and he acknowledged this instrument by him sealed and subscribed to be his free act and deed of Burlington Harbor Hotel Group, LLC.

Before me _____

Notary Public

My Commission Expires:

Westlake Residential Condominium Association, Inc.

By: _____
Its duly authorized agent

Print Name: _____

Title: _____

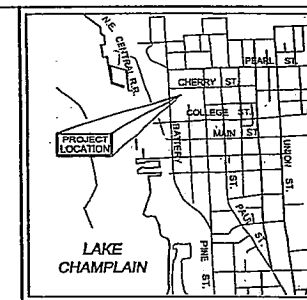
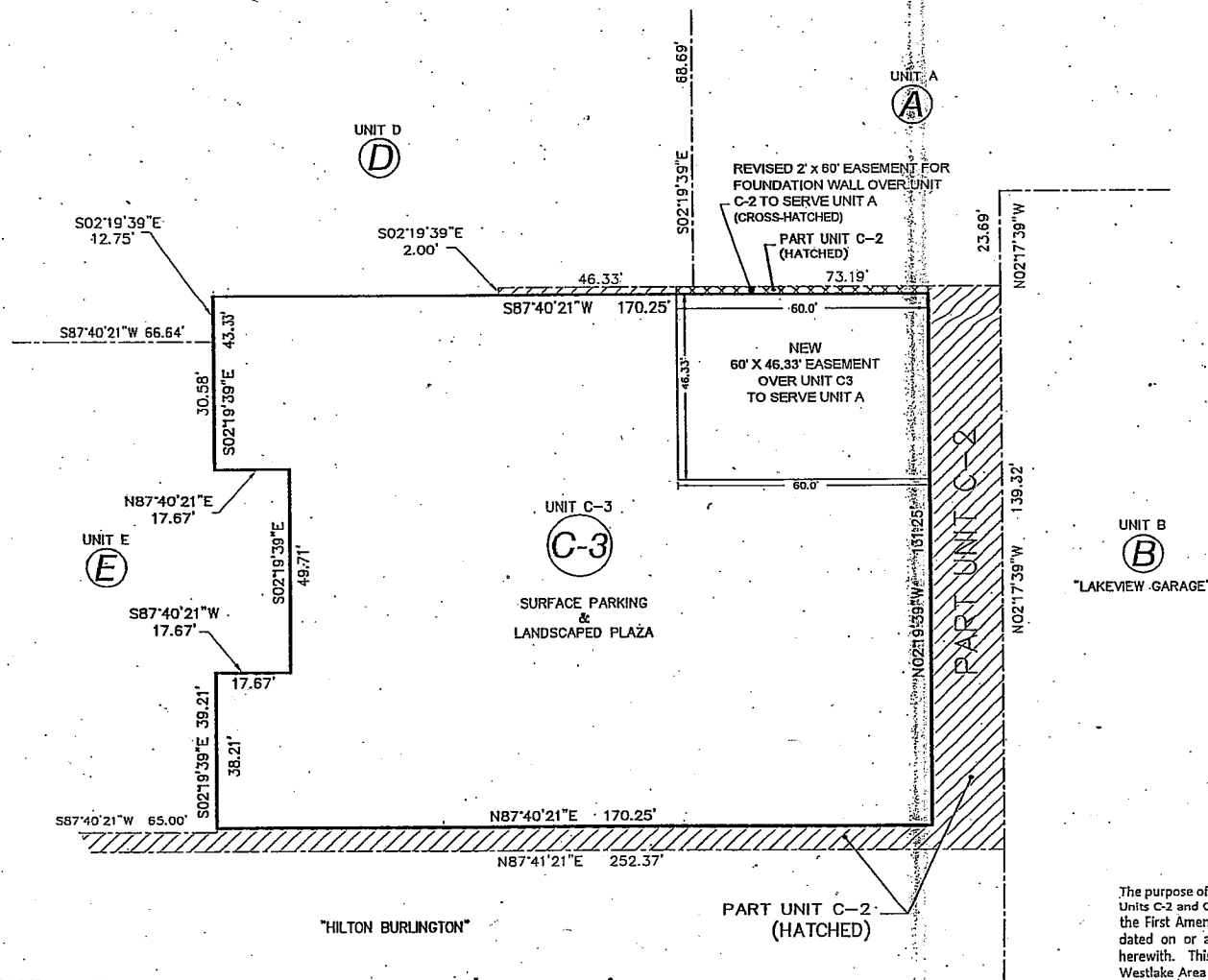
STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington in said County and State, this ____ day of August, 2012, the duly authorized agent of Westlake Residential Condominium Association, Inc. personally appeared, and he acknowledged this instrument by him sealed and subscribed to be his free act and deed of Westlake Residential Condominium Association, Inc.

Before me _____

Notary Public

My Commission Expires:



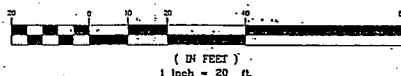
LOCATION MAP

NOT TO SCALE

- Note -

The purpose of this plan is to depict certain new and revised easements over Units C-2 and C-3 for the benefit of Unit A, as more particularly described in the First Amendment to Master Declaration Westlake Area Condominium, dated on or about even date hereof and recorded contemporaneously herewith. This plan supplements the Plats and Plans (Exhibit D) for the Westlake Area Condominium, dated July 27, 2005 and recorded in Volume 925 at Pages 709-752 of the City of Burlington Land Records.

GRAPHIC SCALE



This plan was prepared solely to depict a certain proposed additional easement over Units C-2 and C-3 to serve Unit A. Existing boundaries shown are in conformance with the record. As a specially-requested product, this plan is not meant to be in full compliance with 27A VSA Section 2-109 "Plats and Plans". This statement valid only when accompanied by my original signature and seal below.

Timothy R. Cowan, VTLS 597

Date

Date	Ch'k'd	Revision
Drawn by	TRC	Date
Approved by		Scale
		Project No.

Westlake Area Condominium Unit C-2 & C-3 Easements

41 CHERRY STREET
BURLINGTON VERMONT



CIVIL ENGINEERING ASSOCIATES, INC.
10 MARSHFIELD VIEW LAKE, SOUTH BURLINGTON, VT 05403
802-864-2323 FAX 802-864-2271 web: www.ceai.com
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E1

SHEET 1 of 1

SECOND AMENDMENT TO GROUND LEASE

This Second Amendment to Ground Lease is by and between the City of Burlington ("Landlord") and 41 Cherry Street, LLC ("Tenant") and is made as of August 1, 2012.

WHEREAS, the Landlord and the Tenant entered into a Ground Lease with respect to real property located at 41 Cherry Street in Burlington, Vermont and dated as of December 1, 2008, as amended by the First Amendment to Ground Lease between the Landlord and the Tenant, dated as of July 5, 2011 (together, the "Lease"); and

WHEREAS, the description of the Property or Leased Premises in the Lease requires a minor amendment in order to provide an accurate measurement of an easement in favor of the Tenant over Unit C-2; and

WHEREAS, the parties desire to amend the Lease to amend the Legal Description of the Property and the Leased Premises as set forth in Exhibit A to the Lease.

NOW THEREFORE, the parties hereto agree as follows:

1. **Easement over Unit C-2.** Section 2(2) of Exhibit A to the Lease containing "Legal Description of Property and Leased Premises 41 Cherry Street, Burlington, Vermont" shall be deleted and replaced by the following:

Easement over and upon Unit C-2 measuring 17.27 feet by 72 feet, more or less, as shown on the plan attached hereto as Exhibit A-1, which easement is for the purposes of constructing a building and improvements in the airspace beginning 7'2" above the finished grade of the existing ramp of the garage and to construct necessary footings and piers to support the structure to be built on Unit A and on or over the easements areas described.
2. **Exhibit A.** Exhibit A to the Lease "Legal Description of Property and Leased Premises 41 Cherry Street, Burlington, Vermont" shall be deleted and replaced by Exhibit A attached hereto.
3. **Defined Terms.** All capitalized terms used herein shall have the meanings set forth in the Lease unless otherwise defined herein. The term "Premises", as used in the Lease, shall have the same meaning as "Leased Premises" and "Property".
4. **Notice of Lease.** The Notice of Lease filed in the Burlington land records shall be amended in order to take into account this Second Amendment to Lease.
5. **Amendment.** All terms of the Lease not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Ground Lease as of the day and date first set forth above.

City of Burlington

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS

On this _____ day of August, 2012, in the City of Burlington, personally appeared Miro Weinberger, Mayor of the City of Burlington, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me, _____

Notary Public

My commission expires: 2.10.15

41 Cherry Street, LLC

By: _____
Charles DesLauriers, Manager

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS

On this _____ day of August, 2012, in the City of Burlington, personally appeared Charles DesLauriers, Manager of 41 Cherry Street, LLC, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of 41 Cherry Street, LLC.

Before me, _____

Notary Public

My commission expires: 2.10.15

Exhibit "A"

Legal Description of Property and Leased Premises
41 Cherry Street, Burlington, Vermont

The Property or Leased Premises consist of:

1. Unit A of the Westlake Area Condominium as more fully described in the Master Declaration Westlake Area Condominium ("Condominium") dated July 27, 2005 and recorded in Volume 925 at Page 709 of the Burlington Land Records as amended by First Amendment to Master Declaration dated as of August 1, 2012 to be recorded in the City of Burlington Land Records ("Master Declaration") All defined terms used below are as defined in the Master Declaration.

Without limiting the foregoing, it is noted that the Property is subject to and has the benefit of those easements and rights of way and covenants, as shown on said Plats and Plans and as set forth in the Master Declaration, including but not limited to the following:

The sixty (60) foot right of way for ingress and egress to Unit B and across Unit A is limited to ten (10) feet in height, and the owner of Unit A is granted the vertical air rights above the right of way and the right to develop or construct within those vertical air rights so granted; and

The horizontal boundaries of Unit A and Unit B are the above described metes and bounds, the upper vertical boundary is one hundred thirty feet (130') above the surface of the land and the lower vertical surface is fifty feet (50') below the surface of the land.

2. Easements upon and over Units B and C-2 and the Cherry Street right of way as shown on the plan attached hereto as Exhibit A-1, and described as follows:

1. Easement over and upon Unit B being a twelve foot (12') by ninety five foot (95') easement as shown on the plan attached hereto as Exhibit A-1, which easement is for the purposes of constructing a building and improvements in the airspace above the existing wall of the garage on Unit B (elevation 196.97' +/- ASL) and to construct necessary footings and piers to support the structure to be built on Unit A and on or over the easements areas over or upon Units B and C-2; and

2. Easement over and upon Unit C-2 measuring 17.27 feet by 72 feet, more or less, as shown on the plan attached hereto as Exhibit A-1, which easement is for the purposes of constructing a building and improvements in the airspace beginning approximately 7'2" above the finished grade of the existing ramp of the garage and to construct necessary footings and piers to support the structure to be built on Unit A and on or over the easements areas described.

3. Easement thirty six feet (36') in length on the northerly boundary of Unit A and extending thirteen feet (13') over the Cherry Street public right-of-way and to be for the purposes of projections from Unit A, including, without limitation, for wall mounted signage, awnings and doors that may be constructed or installed from time to time, and footings.

4. Easement forty five feet (45') in length on the easterly boundary of Unit A and extending five feet (5') into the airspace of Unit B of the Westlake Area Condominium at least eight feet and four inches (8' 4") above the grade of the walkway between Unit A and what is now Macy's, which easement may be for the purposes of the construction, maintenance, repair and replacement of buildings and improvements attached to or a part of the buildings and improvements to be built on Unit A.

5. Easement and right of way on, under and along the Cherry Street public right-of-way and on, under and along the walkway between Unit A and what is now Macy's, which is a portion of Unit B of the Westlake Area Condominium for the installation, operation, maintenance and repair of all utilities serving the Benefited Parcel, including without limitation water, sewer, stormwater, electricity, cable, fiber optics and telephone lines, pipes, poles and conduits, and all other utilities that are or may be laid, installed or constructed from time to time to serve Unit A, including without limitation those shown on the Plats and Plans attached to the Master Declaration of the Westlake Area Condominium.

~~6. 2' X 60' easement for a foundation wall and overhead structure on Unit A onto Unit C-2,~~
as is more particularly described in paragraph 6 of the First Amendment to Master Declaration Westlake Area Condominium dated as of the 1st day of August, 2012 and to be recorded in the City of Burlington Land Records contemporaneously herewith.

3. An easement over and upon the Cherry Street public right of way, adjacent to the northerly boundary line of Unit A, for the construction, maintenance and use of an entranceway for vehicles for guests and invitees accessing the Building, as is more particularly shown on Exhibit A-2 attached hereto.

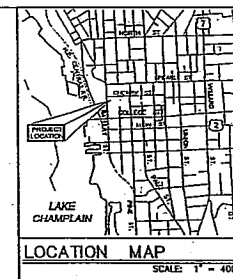
4. An easement and right of way for the benefit of Unit A extending 46.33 feet by 60 feet from Unit A onto Unit C-3, as is more particularly described in paragraph 1 of the First Amendment to Master Declaration Westlake Area Condominium dated as of the 1st day of August, 2012 and to be recorded in the City of Burlington Land Records contemporaneously herewith.

Unit A and the foregoing easements referred to herein as "the Property" or "Leased Premises"

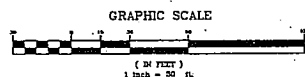
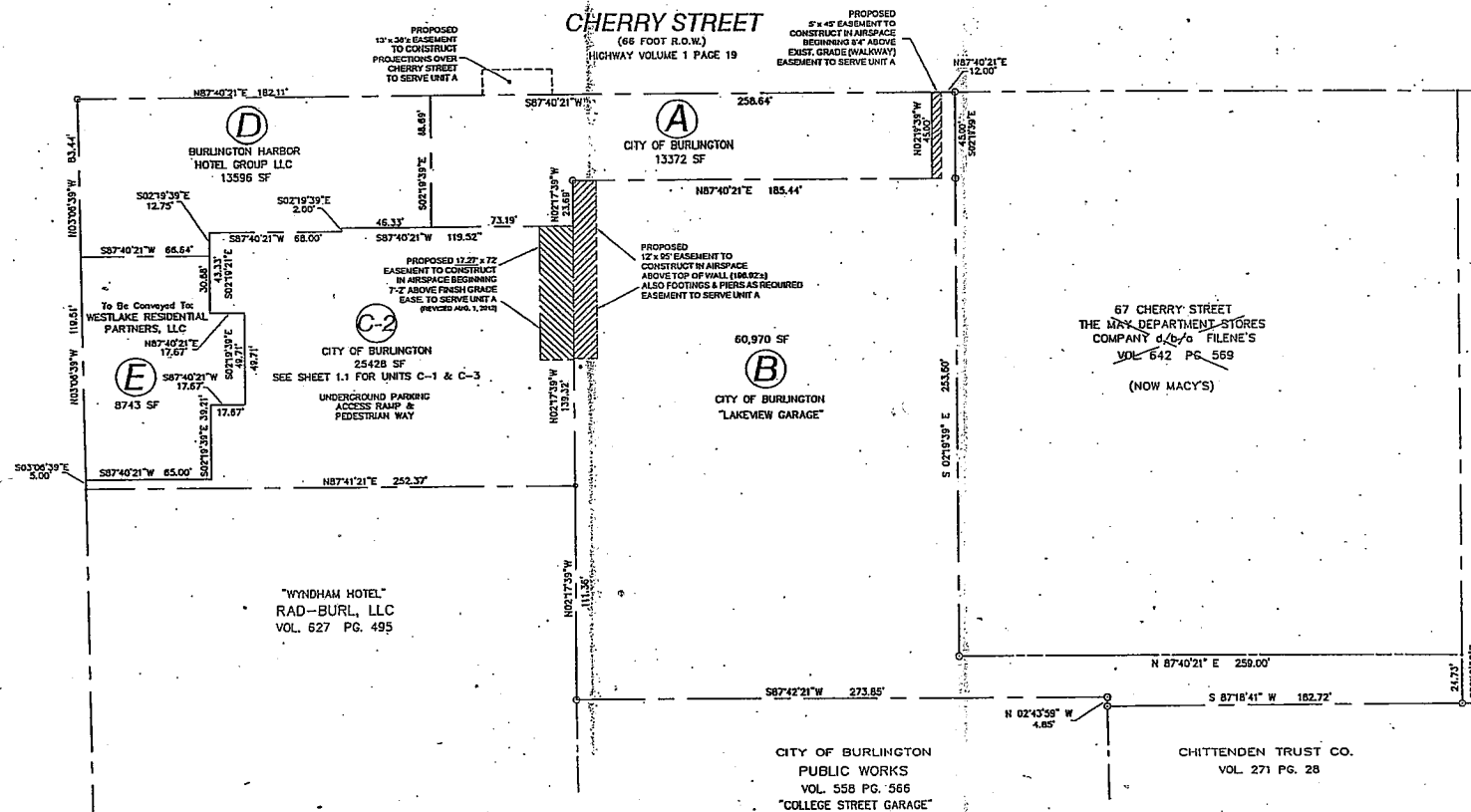
N/F
ST. PAUL'S CATHEDRAL
(HOUSING FOR ELDERLY)

N/F
CATHEDRAL SQUARE CORP.

Exhibit A-1



BATTERY STREET
(59 FOOT R.O.W.)
HIGHWAY VOLUME 1 PAGE 17



PROPOSED ADDITIONAL EASEMENTS

WESTLAKE AREA CONDOMINIUM

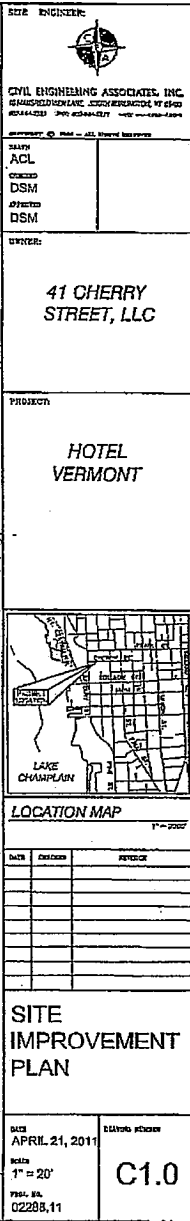
UNIT BOUNDARIES UNITS A, B, C-2, D, & E

Date	CHK'd	Revision
8.01.12	TRC	CORRECT WIDTH EASEMENT ON C-2
8.15.08	TRC	RAISE EASEMENT HEIGHT IN C-2
6.23.08	TRC	PROPOSED EASMTS, UPDATE NAMES
Drawn by	ACL/IBP	Date
Checked by	TRC	Scale
Approved by	TAC	Project No.
		07288.03



CIVIL ENGINEERING ASSOCIATES, INC.
10 HANFIELD VEW LANE SOUTH BURLINGTON, VT 05403
802-844-2323 FAX: 802-844-2371 email: www.ceai.com

WESTMONT
SHEET
1.0



THIRD AMENDED AND RESTATED NOTICE OF LEASE

KNOW ALL PERSONS BY THESE PRESENTS, that **THE CITY OF BURLINGTON**, a Vermont municipality (the "Landlord"), and **41 CHERRY STREET, LLC**, a Vermont limited liability company with a principal place of business in Burlington, Vermont (the "Tenant"), have entered into Lease dated as of December 1, 2008 and amended by First Amendment to Ground Lease dated as of July 5, 2011, and Second Amendment to Ground Lease dated as of August 1 2012 (collectively, the "Lease"), with respect to certain lands and premises known as **Unit A and a portion of Unit B, Units C-2 and C-3 of the Westlake Area Condominium, Burlington, Vermont, with an address of 41 Cherry Street, Burlington, Vermont as more particularly described on Exhibit A attached hereto (the "Leased Premises")**.

WHEREAS, the parties hereto have filed a Notice of Lease dated as of December 1, 2008 and recorded in Volume 1050 at Page 512 of the City of Burlington Land Records; an Amended and Restated Notice of Lease dated May 29, 2012 and recorded in Volume 1175 at Page 191 of the Land Records, and a Second Amended and Restated Notice of Lease dated June 8, 2012 and recorded in Volume 1178, at Page 495 of the City of Burlington Land Records; and

WHEREAS, the parties hereto wish to replace the Notice of Lease, the Amended and Restated Notice of Lease and the Second Amended and Restated Notice of Lease, all referred to above, with this Third Amended and Restated Notice of Lease.

NOW THEREFORE, the parties agree as follows:

This Third Amended and Restated Notice of Lease replaces the Second Amended and Restated Notice of Lease referred to above.

The following information accurately reflects the agreement between the parties contained in the Lease:

1. The current Landlord and Tenant are listed above.
2. The date of execution of the Lease is as of December 1, 2008.
3. The term of the Lease shall be for a period of forty nine (49) years commencing on December 1, 2008 and terminating at midnight on December 31, 2057. Unless terminated, the Lease renews automatically at the end of the Lease Term and each successive Lease Term for an additional 49 year term unless the Tenant terminates the Lease.
4. The Property or Leased Premises subject to the Lease is described on **Exhibit A** attached hereto.
5. In addition to those permitted in the Lease, the Permitted Improvements shall also include the improvements to be undertaken by Tenant to the sidewalk and road surface in the Cherry Street right of way in order to construct the entranceway for vehicles for guests and invitees accessing the Building.
6. The Lease contains the following restrictions on assignment of the Lease:

"Section 11. Assignment and Subletting.

- (a) Tenant shall have the right at any time to sublet the whole or a portion of the Property or to assign or mortgage this Lease, without Landlord's prior written approval, and upon the

condition that all rights acquired by a third party hereunder shall be subject to each and all of the covenants, conditions or restrictions set forth in this Lease. At least fifteen (15) days prior to the execution by Tenant of any assignment agreement, Tenant shall deliver to Landlord a copy of the proposed final form thereof, which shall contain, in a form acceptable to Landlord, a covenant on the part of the assignee to assume all the obligations of Tenant. Any sublease agreement shall contain a provision that it is subject to all of the terms, covenants and conditions of this Lease and shall not contain provisions inconsistent with the terms of this Lease.

(b) Tenant shall, without Landlord's consent but upon prior written notice, have the right to assign this Lease to any entity controlled by, which controls or which is under common control with Tenant."

7. This Third Amended and Restated Notice of Lease will be recorded in the land records of the City of Burlington and is intended to provide notice to third parties of the Lease. The Lease contains terms and conditions in addition to those set forth in this Notice of Lease. Capitalized terms not otherwise defined herein shall have the meaning defined in the Lease. This Third Amended and Restated Notice of Lease is not intended to amend or modify the terms and conditions of the Lease. To the extent that the terms and conditions of this Third Amended and Restated Notice of Lease differ from the terms and conditions of the Lease, the terms and conditions of the Lease shall govern and prevail. An original Lease is located at the offices of the Landlord and of the Tenant.

8. Tenant has a right of first refusal with respect to the Property.

9. The parties' notice addresses are as follows:

If to Landlord: City of Burlington
Attn: Mayor
149 Church Street
Burlington, Vermont 05401
Telephone: (802) 865-7272
Facsimile: (802) 865-7270

with a copy to: City Attorney
149 Church Street
Burlington, Vermont 05401
Telephone: (802) 865-7121
Facsimile: (802) 865-7123

If to Tenant: 41 Cherry Street, LLC
25 Cherry Street
Burlington, Vermont 05401
Telephone: (802) 864-4709
Facsimile: (802) 862-1176

with a copy to: Catherine Kronk, Esq.
Murphy Sullivan Kronk
P.O. Box 4485
275 College Street
Burlington, VT 05406-4485
Telephone: (802) 861-7000

Facsimile: (802) 861-7007

This Notice is given pursuant to 27 V.S.A. § 341©.

DATED as of the 1st day of August, 2012.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

[Signature page to follow]

Landlord:

The City of Burlington

Witness

By: _____
Title: _____

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, in said County, on this ____ day of August, 2012, _____, Duly Authorized Agent of The City of Burlington, personally appeared, and he/she acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed of The City of Burlington.

Before me _____
Notary Public
My commission expires: 2/10/15

~~Tenant:~~

41 Cherry Street, LLC

Witness

By: _____
Manager

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

At Burlington, in said County, on this ____ day of August, 2012, _____, Manager of **41 Cherry Street, LLC** personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his/her free act and deed and the free act and deed of **41 Cherry Street, LLC**.

Before me _____
Notary Public
My commission expires: 2/10/15

Exhibit "A"

Legal Description of Property and Leased Premises
41 Cherry Street, Burlington, Vermont

The Property or Leased Premises consist of:

1. Unit A of the Westlake Area Condominium as more fully described in the Master Declaration Westlake Area Condominium ("Condominium") dated July 27, 2005 and recorded in Volume 925 at Page 709 of the Burlington Land Records as amended by First Amendment to Master Declaration dated as of August 1, 2012 to be recorded in the City of Burlington Land Records ("Master Declaration") All defined terms used below are as defined in the Master Declaration.

Without limiting the foregoing, it is noted that the Property is subject to and has the benefit of those easements and rights of way and covenants, as shown on said Plats and Plans and as set forth in the Master Declaration, including but not limited to the following:

The sixty (60) foot right of way for ingress and egress to Unit B and across Unit A is limited to ten (10) feet in height, and the owner of Unit A is granted the vertical air rights above the right of way and the right to develop or construct within those vertical air rights so granted; and

The horizontal boundaries of Unit A and Unit B are the above described metes and bounds, the upper vertical boundary is one hundred thirty feet (130') above the surface of the land and the lower vertical surface is fifty feet (50') below the surface of the land.

2. Easements upon and over Units B and C-2 and the Cherry Street right of way as shown on the plan attached hereto as Exhibit A-1, and described as follows:

1. Easement over and upon Unit B being a twelve foot (12') by ninety five foot (95') easement as shown on the plan attached hereto as Exhibit A-1, which easement is for the purposes of constructing a building and improvements in the airspace above the existing wall of the garage on Unit B (elevation 196.97' +/- ASL) and to construct necessary footings and piers to support the structure to be built on Unit A and on or over the easements areas over or upon Units B and C-2; and

2. Easement over and upon Unit C-2 measuring 17.27 feet by 72 feet, more or less, as shown on the plan attached hereto as Exhibit A-1; which easement is for the purposes of constructing a building and improvements in the airspace beginning approximately 7'2" above the finished grade of the existing ramp of the garage and to construct necessary footings and piers to support the structure to be built on Unit A and on or over the easements areas described.

3. Easement thirty six feet (36') in length on the northerly boundary of Unit A and extending thirteen feet (13') over the Cherry Street public right-of-way and to be for the purposes of projections from Unit A, including, without limitation, for wall mounted signage, awnings and doors that may be constructed or installed from time to time, and footings.
 4. Easement forty five feet (45') in length on the easterly boundary of Unit A and extending five feet (5') into the airspace of Unit B of the Westlake Area Condominium at least eight feet and four inches (8' 4") above the grade of the walkway between Unit A and what is now Macy's, which easement may be for the purposes of the construction, maintenance, repair and replacement of buildings and improvements attached to or a part of the buildings and improvements to be built on Unit A.
 5. Easement and right of way on, under and along the Cherry Street public right-of-way and on, under and along the walkway between Unit A and what is now Macy's, which is a portion of Unit B of the Westlake Area Condominium for the installation, operation, maintenance and repair of all utilities serving the Benefited Parcel, including without limitation water, sewer, stormwater, electricity, cable, fiber optics and telephone lines, pipes, poles and conduits, and all other utilities that are or may be laid, installed or constructed from time to time to serve Unit A, including without limitation those shown on the Plats and Plans attached to the Master Declaration of the Westlake Area Condominium.
 6. 2' X60' easement for a foundation wall and overhead structure on Unit A onto Unit C-2, as is more particularly described in paragraph 6 of the First Amendment to Master Declaration Westlake Area Condominium dated as of the 1st day of August, 2012 and to be recorded in the City of Burlington Land Records contemporaneously herewith.
3. An easement over and upon the Cherry Street public right of way, adjacent to the northerly boundary line of Unit A, for the construction, maintenance and use of an entranceway for vehicles for guests and invitees accessing the Building, as is more particularly shown on Exhibit A-2 attached hereto.
 4. An easement and right of way for the benefit of Unit A extending 46.33 feet by 60 feet from Unit A onto Unit C-3, as is more particularly described in paragraph 1 of the First Amendment to Master Declaration Westlake Area Condominium dated as of the 1st day of August, 2012 and to be recorded in the City of Burlington Land Records contemporaneously herewith.

Unit A and the foregoing easements referred to herein as "the Property" or "Leased Premises"

