

1
2 **Resolution Relating to**

RESOLUTION
Sponsor(s): Councilors Keogh,
Wright, Paul, Mulvaney-Staniak: Bd. of Finance

Introduced: 07/11/11
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

3
4
5
6
7 ENCUMBRANCE PERMIT AND AMENDED
8 GROUND/PARKING LEASES FOR
9 41 CHERRY STREET, LLC
10

11
12 **CITY OF BURLINGTON**

13
14 In the year Two Thousand Eleven.....
15 Resolved by the City Council of the City of Burlington, as follows:

16
17 That WHEREAS, the CITY owns property located within the public right-of-way, to include
18 street, sidewalk and greenbelt in front of the property located at 41 Cherry Street; and

19 WHEREAS, 41 Cherry Street, LLC, is ready to construct a hotel consistent with the
20 provisions of their ground lease for the property at 41 Cherry Street in Burlington, Vermont (the
21 "Project"); and

22 WHEREAS, the final design for the Project contemplates an entrance way for hotel
23 guests loading and unloading which was not addressed by the provisions of the ground lease; and

24 WHEREAS, the entrance way can be accomplished by amending the ground lease to
25 include a section of the public right-of-way presently consisting of sidewalk, greenbelt and four
26 parking spaces on Cherry Street directly in front of the property; and

27 WHEREAS, in return 41 Cherry Street, LLC is now prepared to amend its Parking
28 Agreement with the City to require minimum leasing; i.e. for at least 16 parking spaces, at the
29 Lakeview Garage; and

30 WHEREAS, in order to build the Project, 41 Cherry Street, LLC, will need to encumber
31 the sidewalk and street in front of 41 Cherry Street; and

32 WHEREAS, 41 Cherry Street, LLC, is therefore in need of a license and easement in
33 order to permit the continued obstruction and encumbrance of the street, sidewalk, and greenbelt
34 area in front of 41 Cherry St. totaling approximately 11,341 square feet in order to conduct

36 **Resolution Relating to** ENCUMBRANCE PERMIT AND AMENDED
37 GROUND/PARKING LEASES FOR
38 41 CHERRY STREET, LLC
39

40 construction activities related to the Project, including the erection of a construction barrier
41 around the construction site and the occupation of up to 18 metered parking spaces from time to
42 time; and

43 WHEREAS, the Project has been reviewed and approved by the Department of Public
44 Works (hereinafter DPW) subject to the conditions referenced herein; and

45 WHEREAS, such use of a public thoroughfare for periods in excess of 30 days requires
46 approval of the City Council under Charter Sec. 48XLIX and Code of Ordinances, Chap. 27,
47 Sec. 27-32; and

48 WHEREAS, the attached draft Ground Lease amendment, draft Parking Agreement
49 amendment and draft Encumbrance Permit/License Agreement were all presented to the Board
50 of Finance on July 6, 2011 whereupon the Board unanimously recommended full City Council
51 approval of a resolution authorizing Mayor Bob Kiss to execute the final documents (in
52 substantial conformance to each referenced above) of same;

53 NOW, THEREFORE, BE IT RESOLVED that Mayor Bob Kiss is hereby authorized to
54 execute a First Amendment to the Ground Lease, and a First Amendment to the Parking
55 Agreement as well as an Encumbrance Agreement/License Agreement, each in substantial
56 conformance to the above-referenced attachments, subject to the review and approval of the City
57 Attorney.

ENCUMBRANCE PERMIT/ LICENSE AGREEMENT
WITH 41 CHERRY STREET, LLC.
July 15, 2011 -- March 31, 2013

This ENCUMBRANCE PERMIT/LICENSE AGREEMENT is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter CITY) and 41CHERRY STREET, LLC, a Vermont Corporation with its principal offices in Burlington, Vermont (hereinafter CS OR LICENSEE).

WHEREAS, the CITY owns property, including the street, sidewalk and greenbelt in front of the property at 41 Cherry Street; and

WHEREAS, CS intends to construct a hotel at 41 Cherry Street in Burlington, Vermont (the "Project"); and

WHEREAS, in order to build the Project, CS will need to encumber the sidewalk and street in front of 41 Cherry Street. CS is therefore in need of a license and easement in order to permit the continued obstruction and encumbrance of the street, sidewalk, and greenbelt area in front of 41 Cherry St. totaling approximately 11,341 square feet in order to conduct construction activities related to the Project, including the erection of a construction barrier around the construction site and the occupation of up to 18 metered parking spaces from time to time; and

WHEREAS, the Project has been reviewed and approved by the Department of Public Works (hereinafter DPW) subject to the conditions referenced herein; and

WHEREAS, such use of a public thoroughfare for periods in excess of 30 days requires approval of the City Council under Charter Sec. 48XLIX and Code of Ordinances, Chap. 27, Sec. 27-32.

WITNESSETH:

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, the CITY and CS enter into the following License Agreement:

{00071938.2}

41 CHERRY STREET HOTEL GENERAL TRAFFIC PLAN

EFFECTIVE
 PHASE 1 JULY 15, 2011 THRU DECEMBER 15, 2011
 AND
 PHASE 3 OCTOBER 15, 2012 THRU MARCH 31, 2013
 DATE: JULY 6, 2011

SITE ENGINEER:

 CIVIL ENGINEERING ASSOCIATES, INC.
 10 MANFIELD VIEW LANE, SOUTH BURLINGTON, VT 05403
 802-854-2323 FAX: 802-854-2271 web: www.cca-1.com
 COPYRIGHT © 2011 - ALL RIGHTS RESERVED

DRAWN:
 ACL
 CHECKED:
 DSM
 APPROVED:
 DSM

OWNER:
 41 CHERRY STREET, LLC

PROJECT:
 HOTEL VERMONT

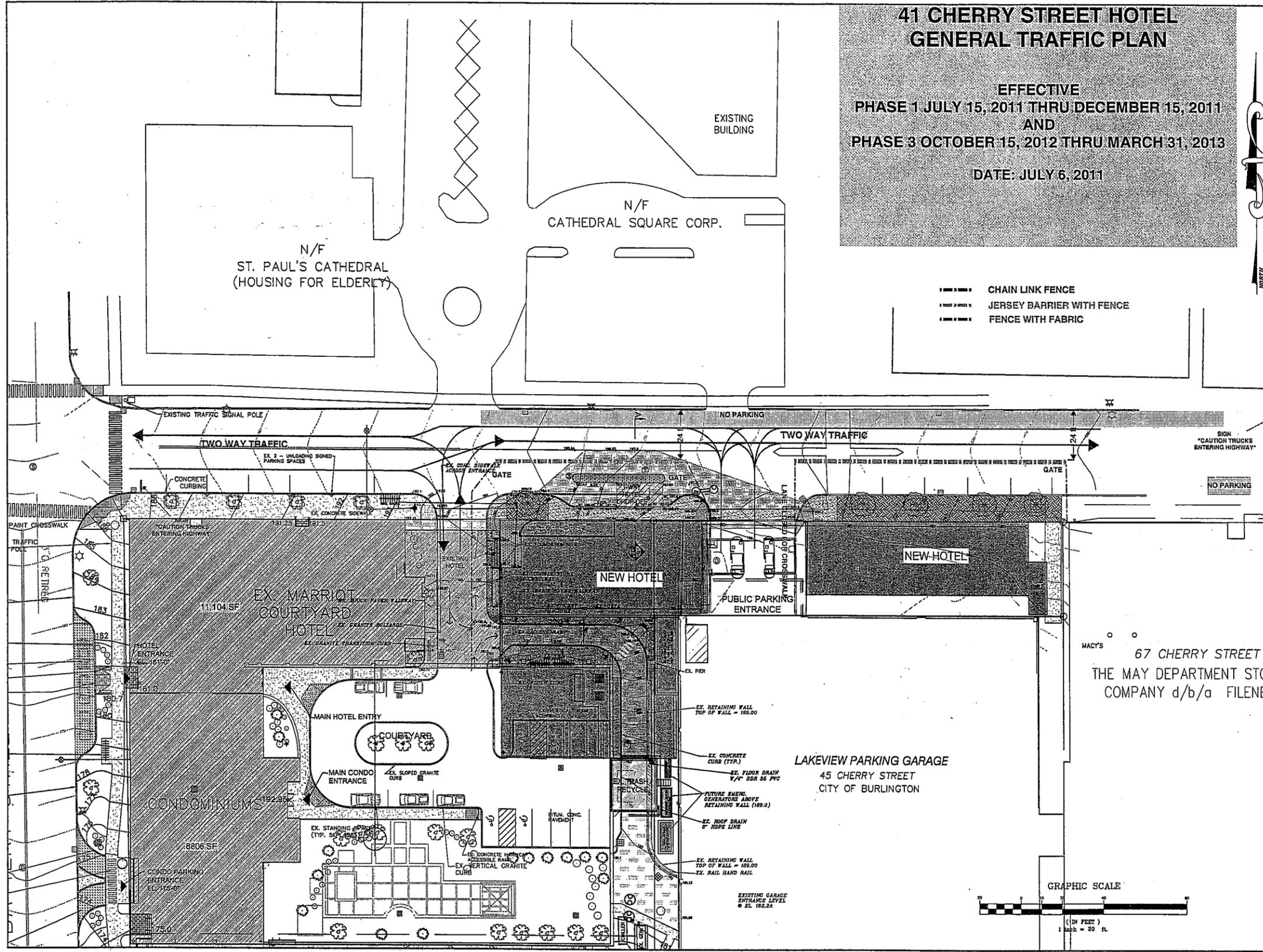


67 CHERRY STREET
 THE MAY DEPARTMENT STORE
 COMPANY d/b/a FILENE

DATE	CHECKED	REVISION

SITE PLAN

DATE: APRIL, 2011
 SCALE: 1" = 20'
 PROJ. NO. 02288.11
 DRAWING NUMBER: C1.4 TP 01



P:\AutoCAD Projects\02288.11\DWG_4152011_125256.PLA, dls666

41 CHERRY STREET HOTEL SUPERSTRUCTURE TRAFFIC PLAN

PHASE 2 EFFECTIVE
PHASE 2 APRIL 1, 2012 THRU OCTOBER 15, 2012

DATE: JULY 6, 2011

SITE ENGINEER:



CIVIL ENGINEERING ASSOCIATES, INC.
10 HANFIELD VIEW LANE, SOUTH BURLINGTON, VT 05403
802-864-2271 FAX: 802-864-2271 web: www.cae-vt.com

COPYRIGHT © 2008 - ALL RIGHTS RESERVED

DRAWN
ACL
CHECKED
DSM
APPROVED
DSM

OWNER:

41 CHERRY
STREET, LLC

PROJECT:

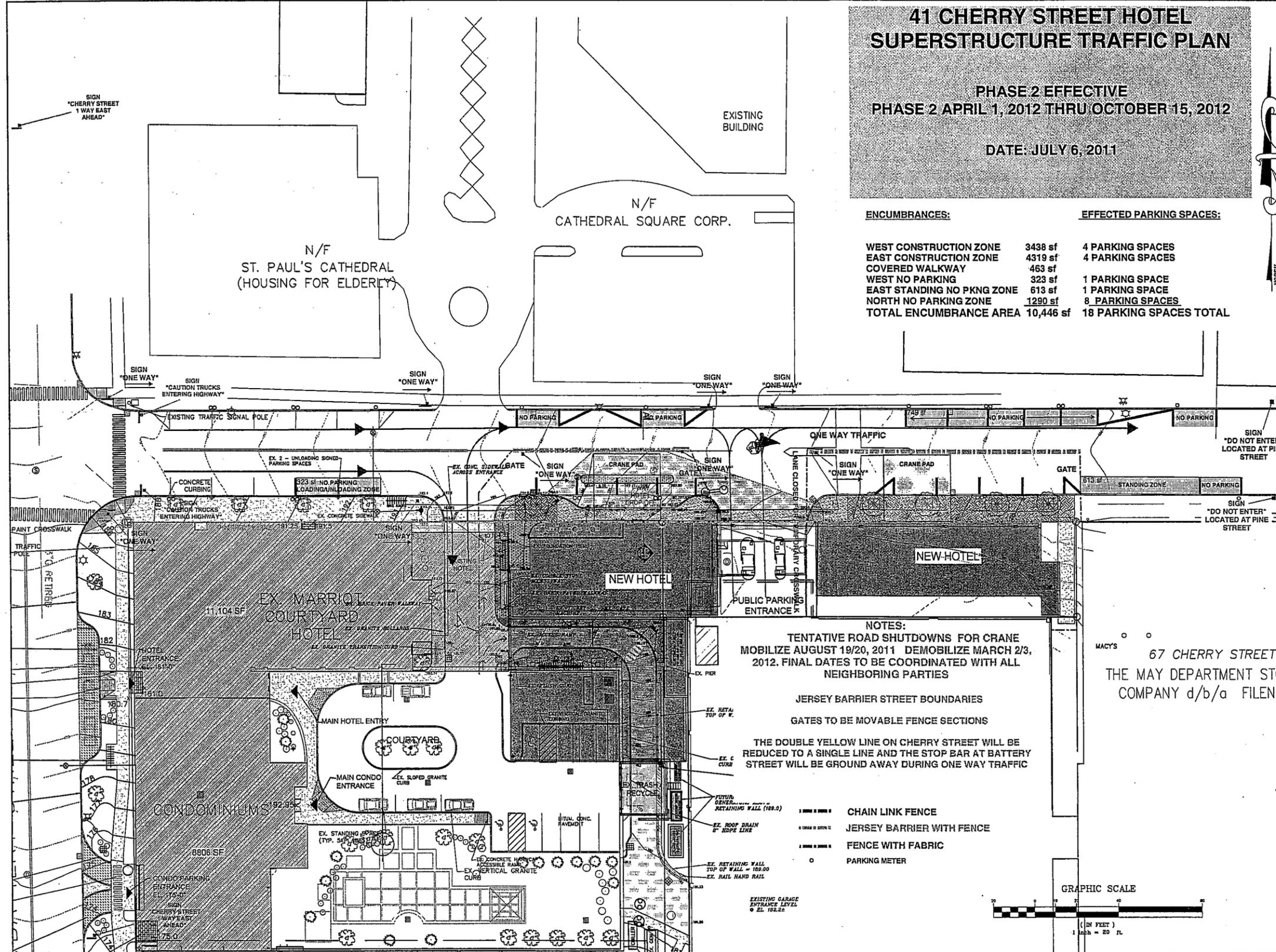
HOTEL
VERMONT

ENCUMBRANCES:

WEST CONSTRUCTION ZONE 3438 sf
EAST CONSTRUCTION ZONE 4319 sf
COVERED WALKWAY 463 sf
WEST NO PARKING 323 sf
EAST STANDING NO PKNG ZONE 613 sf
NORTH NO PARKING ZONE 1290 sf
TOTAL ENCUMBRANCE AREA 10,446 sf

EFFECTED PARKING SPACES:

4 PARKING SPACES
4 PARKING SPACES
1 PARKING SPACE
1 PARKING SPACE
8 PARKING SPACES
18 PARKING SPACES TOTAL



NOTES:
TENTATIVE ROAD SHUTDOWNS FOR CRANE
MOBILIZE AUGUST 19/20, 2011 DEMOBILIZE MARCH 2/3,
2012. FINAL DATES TO BE COORDINATED WITH ALL
NEIGHBORING PARTIES

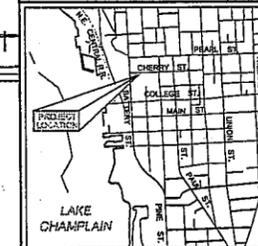
JERSEY BARRIER STREET BOUNDARIES

GATES TO BE MOVABLE FENCE SECTIONS

THE DOUBLE YELLOW LINE ON CHERRY STREET WILL BE
REDUCED TO A SINGLE LINE AND THE STOP BAR AT BATTERY
STREET WILL BE GROUND AWAY DURING ONE WAY TRAFFIC

- CHAIN LINK FENCE
- JERSEY BARRIER WITH FENCE
- FENCE WITH FABRIC
- PARKING METER

MACY'S
67 CHERRY STREET
THE MAY DEPARTMENT STORE
COMPANY d/b/a FILENE

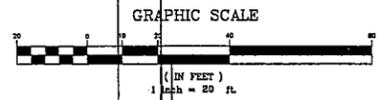


LOCATION MAP
1" = 2000'

DATE	CHECKED	REVISION

SITE
PLAN

DATE
APRIL, 2011
SCALE
1" = 20'
PROJ. NO.
02288.11
DRAWING NUMBER
C1.4
TP 02



FIRST AMENDMENT TO GROUND LEASE

This First Amendment to Ground Lease is by and between the City of Burlington ("Landlord") and 41 Cherry Street, LLC ("Tenant") and is made as of July 5, 2011.

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 ("Lease"); and

WHEREAS, the description of the Property or Leased Premises in the Lease failed to include a portion of the public right of way that will be dedicated to the Permitted Improvements as a hotel entranceway for loading and unloading guests in front of the Building; and

WHEREAS, the parties desire to amend the Lease to include the portion of the public right of way to be dedicated to the use of the Building and the Permitted Improvements.

NOW THEREFORE, the parties hereto agree as follows:

1. **Premises.** The following section 2(6) shall be added to Exhibit A to the Lease:

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 the plan attached hereto as Exhibit A.
2. **Permitted Improvements.** The Permitted Improvements shall 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 referred to in Section 1, above.
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 First Amendment to Lease.
5. **Amendment.** All terms of the Lease not amended hereby shall remain in full force and effect.

Signature page to follow

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

City of Burlington

By: _____
Robert Kiss, Mayor

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS

On this ____ day of July, 2011, in the City of Burlington, personally appeared Robert Kiss, Mayor of the City of Burlington, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her 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

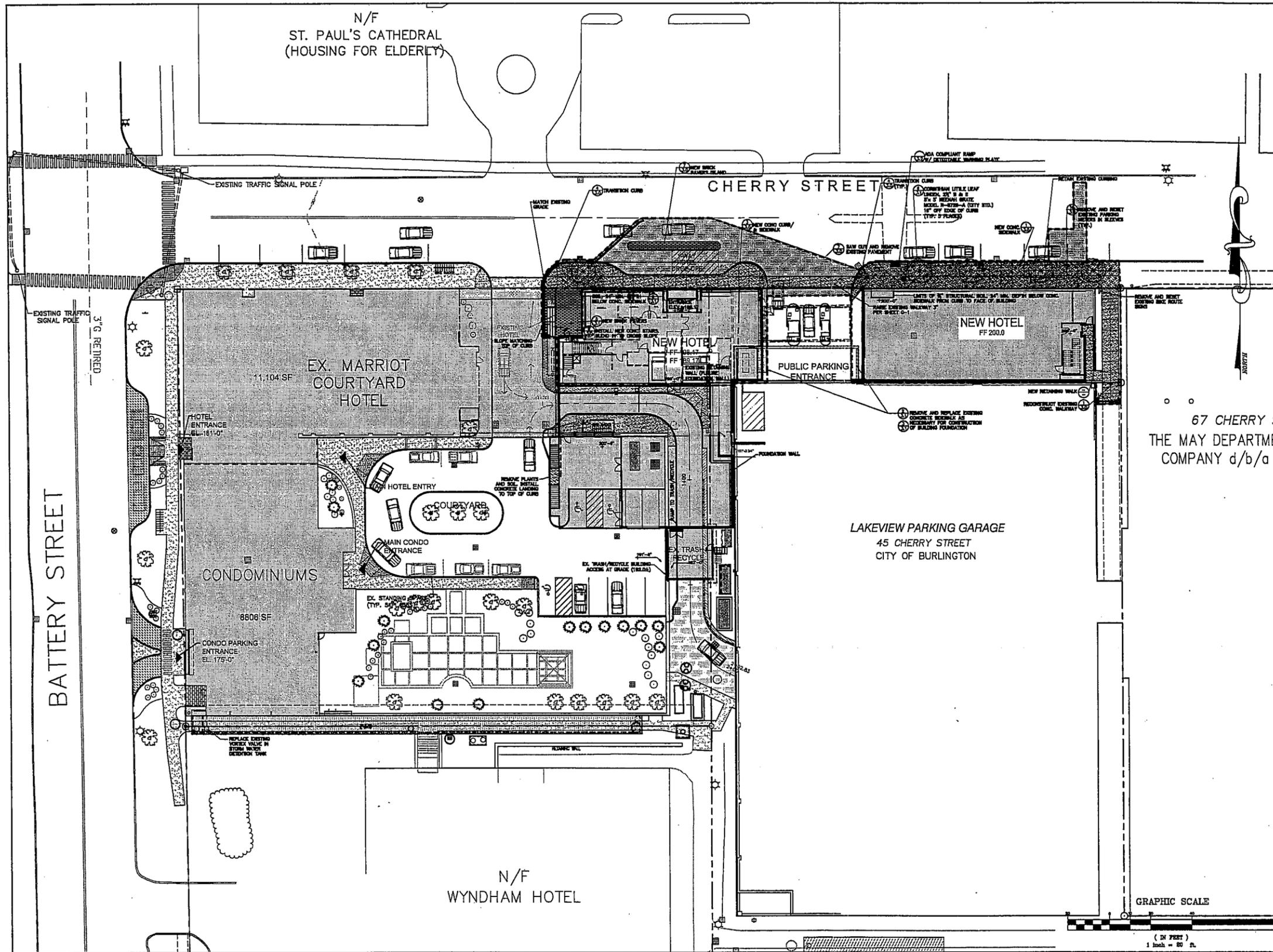
41 Cherry Street, LLC

By: _____
Charles DesLauriers, Manager

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS

On this ____ day of July, 2011, 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/she acknowledged this instrument, by him/her signed, 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



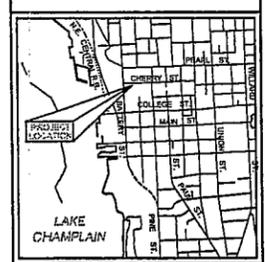
SITE ENGINEER:

 CIVIL ENGINEERING ASSOCIATES, INC.
 10 HANFORD NEW LANE, SOUTH BURLINGTON, VT 05403
 802-864-0223 FAX: 802-864-2271 www.coea-vt.com
 COPYRIGHT © 2008 - ALL RIGHTS RESERVED

DRAWN:
 ACL
 CHECKED:
 DSM
 APPROVED:
 DSM

OWNER:
 41 CHERRY STREET, LLC

PROJECT:
 HOTEL VERMONT
 67 CHERRY S
 THE MAY DEPARTMENT
 COMPANY d/b/a

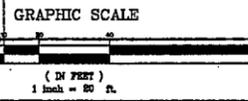


LOCATION MAP
 1" = 200'

DATE	CHECKED	REVISION

SITE IMPROVEMENT PLAN

DATE: APRIL 21, 2011
 SCALE: 1" = 20'
 PROJ. NO. 02288.11
 DRAWING NUMBER: C1.0



P:\AutoCAD\DD Projects\02288.11\DWG_4202011 8:25:45 AM_sds\title

FIRST AMENDMENT TO PARKING AGREEMENT

This First Amendment to Parking Agreement is by and between the City of Burlington ("City") and 41 Cherry Street, LLC ("Hotel") and is made as of the 5th day of July, 2011.

WHEREAS, the City and the Hotel entered into a Parking Agreement related to the leasing of parking spaces in the City Garage dated as of December 1, 2008 ("Parking Agreement") and

WHEREAS, the parties have agreed to amend the Parking Agreement in order for the Hotel to commit to the leasing of a certain number of parking spaces; and

WHEREAS, the Parking Agreement is unclear as to the availability of parking spaces and the parties desire to clarify the Parking Agreement to confirm availability of parking spaces.

NOW THEREFORE, the parties agree as follows:

1. **Hotel Employee and Commercial Space Employee Parking.** The Hotel hereby commits to leasing at least 16 of the 33 parking spaces to be made available to it in the Lakeview Garage upon the issuance of the final Certificate of Occupancy for the hotel project to be constructed at 41 Cherry Street in Burlington, Vermont.
2. **Available Parking Spaces.** The City hereby acknowledges that it is committed to making a total of 33 spaces available to the Hotel upon the issuance of the Certificate of Occupancy.
3. **Defined Terms.** All capitalized terms used herein shall have the meanings set forth in the Parking Agreement unless otherwise defined herein.
4. **Amendment.** All terms of the Parking Agreement not amended hereby shall remain in full force and effect.

Signature page to follow

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

City of Burlington

By: _____

Robert Kiss, Mayor

STATE OF VERMONT

COUNTY OF CHITTENDEN, SS

On this ____ day of July, 2011, in the City of Burlington, personally appeared Robert Kiss, Mayor of the City of Burlington, to me known to be the person who executed the foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her 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 July, 2011, 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/she acknowledged this instrument, by him/her signed, 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

DRAFT

