

MEMO

TO: Finance Board

FROM: City Attorney Ken Schatz and Joe Farnham, Esq.

DATE: March 26, 2012

**SUBJECT: Authorization for License at Burlington Town Center
Parking Garage**

On July 11, 2011, the City Council passed a resolution authorizing Mayor Kiss to release the City's rights with regard to land beneath the Burlington Town Center Parking Garage on Cherry Street ("Parking Garage"), in conjunction with the exercise of certain rights with regard to said land, by The Burlington Town Center, LLC ("BTC"), the owner of the garage facility and successor to the rights to said land.

On January 23, 2012, the City Council passed a resolution authorizing Mayor Kiss to transfer a second parcel of land (contiguous to the land which was the subject of the July 11, 2011 resolution) to "BTC" as successor to certain rights pursuant to a January 5, 2004 agreement between the City and DK Burlington Town Center, LLC, captioned Third Amendment to Land Lease, recorded at Volume 853, Page 644 of the City of Burlington Land Records ("Leased Land").

BTC is also successor to a certain LICENSE recorded at Volume 258, Page 245 of the City of Burlington Land Records, allowing for occupancy and use of a portion of the Cherry Street right-of-way, for the limited purposes of construction, erection and maintenance of pile caps for the foundations of the Parking Garage ("LICENSE"). That LICENSE (by incorporation of terms of the original pertinent agreements between the City and BTC's predecessors) expires upon BTC taking title to the lands referenced. At this time, in order to help facilitate future repairs if necessary, BTC desires a license employing similar language as to the premises described in the LICENSE, for the limited purposes of maintenance and repair of the Parking Garage's existing footings within the Cherry Street right-of-way, for the length of the northerly boundary of two parcels of land referenced above.

The above referenced release of rights, transfer of title, and granting of the easement are all contingent upon BTC's fulfillment of certain payment terms as a successor in interest, as set forth in a Lease Agreement With Option to Purchase ("Lease Agreement") dated June 25, 1993, between the City and Security Capital Corporation.

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**AUTHORIZATION FOR
LICENSE AT CHERRY
STREET PARKING FACILITY**

In the year Two Thousand Twelve.....
Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, on July 11, 2011, the City Council passed a resolution authorizing Mayor Kiss to release the City’s rights with regard to land beneath the Burlington Town Center Parking Garage on Cherry Street (“Parking Garage”), in conjunction with the exercise of certain rights with regard to said land, by The Burlington Town Center, LLC (“BTC”), the owner of the Parking Garage and successor to the rights to said land; and

WHEREAS, on January 23, 2012, the City Council passed a resolution authorizing Mayor Kiss to transfer a second parcel of land (contiguous to the land which was the subject of the July 11, 2011 resolution) to “BTC” as successor to certain rights pursuant to a January 5, 2004 agreement between the City and DK Burlington Town Center, LLC, captioned Third Amendment to Land Lease, recorded at Volume 853, Page 644 of the City of Burlington Land Records (“Leased Land”); and

WHEREAS, BTC is also successor to a certain LICENSE recorded at Volume 258, Page 245 of the City of Burlington Land Records, allowing for occupancy and use of a portion of the Cherry Street right-of-way, for the limited purposes of construction, erection and maintenance of pile caps for the foundations of the Parking Garage (“LICENSE”), which expires upon BTC taking title to the lands referenced; and

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**AUTHORIZATION FOR
LICENSE AT CHERRY
STREET PARKING FACILITY**

WHEREAS, BTC now desires a license employing language similar to that in the LICENSE, for the limited purposes of maintenance and repair of the Parking Garage’s existing footings within the Cherry Street right-of-way, for the length of the northerly boundary of “Parcel One” as depicted on a plat entitled: “Plat of Survey, Burlington Square, Burlington, Vermont,” Sheets P-1, P-2 and P-3, prepared by Civil Engineering Associates, Inc., dated January 17, 2000, and recorded in Map Slide 336B, 336C and 336D located at Map Slide 339 of the City of Burlington Land Records (“Footings License”),

NOW THEREFORE BE IT RESOLVED, that upon the March 26, 2012 recommendation of the Board of Finance and the approval of this body, the Honorable Mayor Bob Kiss or his successor be and hereby is authorized and directed to execute on behalf of the City the Footings License in favor of BTC as described above and to execute any and all documents necessary to facilitate the transfer of the Footings License upon being advised by the City Attorney that all monies owed to the City under the terms and conditions of the operative documents referenced above have been paid to the City, all subject to review and approval by the City Attorney and Chief Administrative Officer as necessary.