

MEMO

TO: Finance Board

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

DATE: June 17, 2011

SUBJECT: Authorization For Release of Rights with Regard to Burlington Town Center Parking Garage Land.

In 1993, the City entered into a sale/lease-back transaction with respect to land under the Burlington Town Center Parking Garage Land (the "Parking Garage Land"). The City sold the Parking Garage Land to Security Capital, leased it back and subleased the same land to the owner of the Burlington Town Center Parking Garage, Donohoe O'Brien Burlington Square Associates. The lease and sublease include an option to purchase the Parking Garage Land upon full payment of the lease obligation.

The City has paid in full its lease payment obligation to Security Capital. The current owner of the Burlington Town Center Parking Garage ("BTC") has notified the City that it intends to pay all monies owed to the City pursuant to the terms and conditions of the Sublease Agreement and exercise its option to purchase the Parking Garage Land.

In seeking to take title to the Parking Garage Land without encumbrance, BTC has requested that upon payment of all monies owed to the City pursuant to the terms and conditions of the Sublease Agreement, the City release any claim of right or interest with regard to the Parking Garage Land that it ever had by operation of the June 25, 1993 Lease Agreement.

We have determined that release by the City of any claim of right or interest with regard to the Parking Garage Land which it ever had by operation of the Lease Agreement will be appropriate and without prejudice to any other right or interest of the City.

The attached resolution, for your review and consideration, authorizes Mayor Kiss to execute on behalf of the City a release to be approved by the City Attorney, by which the City releases any claim of right or interest with regard to the Parking Garage Land that it ever had by operation of the Lease Agreement, once the City Attorney is satisfied that all monies owed to the City under the terms and conditions of the Lease Agreement have been paid to the City. Please feel free to contact us if you have any questions regarding this matter. Thank you.

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**AUTHORIZATION FOR RELEASE
OF RIGHTS WITH REGARD TO A
CERTAIN PARCEL OF LAND**

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

That WHEREAS, on June 25, 1993, the City of Burlington (“City”) conveyed a certain parcel of land to Security Capital Corporation (“Security Capital”), by Quitclaim Deed recorded at Volume 514, Page 664 of the City of Burlington Land Records, said parcel being that land upon which is sited a parking structure contiguous to, and with access to/from, the Burlington Town Center (the “Parking Garage Land”); and

WHEREAS, on June 25, 1993, the City leased the Parking Garage Land from Security Capital pursuant to a Lease Agreement and Option to Purchase (the “Lease Agreement”), which Lease Agreement also granted the City an option to purchase the Parking Garage Land; and

WHEREAS, the City then subleased the Parking Garage Land and its option to purchase the Parking Garage Land to Donohoe O’Brien Burlington Square Associates (“Donohoe O’Brien”) pursuant to a Sublease Agreement and Assignment of Option to Purchase dated June 25, 1993; and

WHEREAS, Donohoe O’Brien conveyed the Sublease Agreement and Assignment of Option to Purchase to DK Burlington Town Center Limited Partnership by Assignment of Leases and Leasehold Estate dated December 11, 2000, which then conveyed the Assignment of Leases and Leasehold Estate to The Burlington Town Center, LLC (“BTC”), a Delaware limited liability company with a principal place of business in Burlington, Vermont, on January 5, 2004;

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WHEREAS, BTC has provided notice to the City that it intends to exercise its option to purchase the Parking Garage Land and pay all monies owed to the City pursuant to the terms and conditions of the Sublease Agreement; and

WHEREAS, BTC, in seeking to take title to the Parking Garage Land without encumbrance, has requested of the City Attorney that the City release any claim of right or interest with regard to the Parking Garage Land that it ever had by operation of the June 25, 1993 Lease Agreement; and

WHEREAS, the City Attorney has determined that release by the City of any claim of right or interest with regard to the Parking Garage Land which it ever had by operation of the Lease Agreement will be appropriate and without prejudice to any other right or interest of the City,

NOW THEREFORE BE IT RESOLVED, that the Honorable Mayor Bob Kiss be and hereby is authorized and directed to execute on behalf of the City a release to be approved by the City Attorney, by which the City releases any claim of right or interest with regard to the Parking Garage Land that it ever had by operation of the Lease Agreement, upon being advised by the City Attorney that all monies owed to the City under the terms and conditions of the Lease Agreement have been paid to the City, all subject to review by the City Attorney and Chief Administrative Officer as necessary.