

RESOLUTION NO. _____

**A RESOLUTION VACATING AND CONVEYING A VACATED ALLEY
RIGHT-OF-WAY IN THE CITY OF MUSCATINE, IOWA TO KUM & GO**

WHEREAS, a request has been received to vacate and then sell a portion of an existing alley right-of-way situated within the City of Muscatine, Iowa; and

WHEREAS, Kum & Go. has requested, in order to facilitate the development of a new store on Block 76 of Original Town, the vacation and conveyance of a portion of the alley right-of-way that is described as follows:

ALL OF THE 20' ALLEYWAY LYING NORTHERLY AND ADJACENT TO LOTS 1, 2, 3, 4, AND 5 AND SOUTHERLY AND ADJACENT TO LOTS 6, 7, 8, 9 AND LOT 10 OF BLOCK 76 OF THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, ACCORDING TO THE RECORDED PLAT THEREOF.

SAID PARCEL CONTAINS 6,029 SQUARE FEET OR 0.14 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD (the "Property").

WHEREAS, Kum & Go is the owner of the adjoining properties; and

WHEREAS, Kum & Go has offered, in exchange for obtaining title to the Property, to, at its sole expense, construct 19 on-street parking spaces on Sycamore Street, and an adjoining sidewalk (the "Improvement"), in accordance with the Real Estate Purchase Agreement hereto attached as Exhibit A; and

WHEREAS, the value of the Improvement reflects the fair market value of the Property as currently estimated by the City; and

WHEREAS, the Property proposed to be vacated and conveyed has been determined by the City to have no significant impact on public access, and the City will not be inconvenienced by the vacation and conveyance of said Property; and

WHEREAS, on February 2, 2017, it was duly resolved by the City Council of the City of Muscatine, Iowa, that the proposed vacation and conveyance of said Property be scheduled for public hearing on February 16, 2017 at 7:00 p.m.; and

WHEREAS, due notice of said proposal to vacate and convey the Property was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council of the City of Muscatine, Iowa.

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, as follows:

1. That the sale and conveyance of such Property, as described below, to Kum & Go in exchange for the Improvements as set forth in Exhibit A, together with payment by such grantee of the estimated publication and recording costs for this transaction, be and is hereby approved:

ALL OF THE 20' ALLEYWAY LYING NORTHERLY AND ADJACENT TO LOTS 1, 2, 3, 4, AND 5 AND SOUTHERLY AND ADJACENT TO LOTS 6, 7, 8, 9 AND LOT 10 OF BLOCK 76 OF THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, ACCORDING TO THE RECORDED PLAT THEREOF.

SAID PARCEL CONTAINS 6,029 SQUARE FEET OR 0.14 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

2. The Mayor is authorized and directed to sign the Real Estate Purchase Agreement and the Quit Claim Deed for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
3. Upon completion of all terms set forth in the Real Estate Purchase Agreement, plus payment of the actual costs for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Offer to Purchase and the Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Community Development Department for the purpose of causing said documents to be recorded.
4. The City Planner is authorized and directed to forward the original of the Quit Claim Deed, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Muscatine County Recorder's Office for the purpose of causing these documents to be recorded.

5. Upon receipt of the recorded documents back from the Muscatine County Recorder, the City Planner shall mail the original of the Deed and copies of the other documents to the grantee.

PASSED, APPROVED AND ADOPTED this 16th day of March, 2017.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Diana L. Broderson, Mayor

Attest:

Nancy Lueck, Acting City Clerk

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement") is deemed made on the date the last of the parties executes this Agreement (the "Effective Date") by and between City of Muscatine, Iowa, whose address for the purposes of this Agreement is 215 Sycamore Street, Muscatine, Iowa 52761 (hereafter referred to as the "Seller" or the "City") and Kum & Go, whose address for the purposes of this Agreement is 6400 Westown Parkway, West Des Moines, Iowa 50266 (collectively hereafter referred to as the "Buyer.")

RECITALS

WHEREAS, Seller is the owner of the following legally described property situated in Muscatine County, Iowa:

ALL OF THE 20' ALLEYWAY LYING NORTHERLY AND ADJACENT TO LOTS 1, 2, 3, 4, AND 5 AND SOUTHERLY AND ADJACENT TO LOTS 6, 7, 8, 9 AND LOT 10 OF BLOCK 76 OF THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA, ACCORDING TO THE RECORDED PLAT THEREOF.

SAID PARCEL CONTAINS 6,029 SQUARE FEET OR 0.14 ACRES MORE OR LESS AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

Subject only to easements, restrictions and covenants of record (collectively referred as the "Property"); and

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Property; and

WHEREAS, Buyer and Seller desire to set forth the obligations, restrictions, limitations, and conditions upon which the Property will be conveyed by Seller to Buyer.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, each for the other, Buyer and Seller agree as follows:

1. **Sale of Property.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, for the Compensation set forth below and on the terms and conditions set forth in this Agreement, the Property. For purposes of this Agreement, Property shall be deemed to mean, on a collective basis: (a) the parcel of land described above (the "Property"), together with all rights, easements and interests appurtenant thereto; (b) all improvements located on the Property, if any. The parties agree that the Compensation

reflects the condition and value of the Property and that the Buyer is acquainted with the condition thereof and accepts the same "as is."

2. **Compensation.** Seller, in consideration of the mutual covenants and agreements contained herein, agrees to sell to Buyer and Buyer, in consideration of the mutual covenants and agreements contained herein, agrees to exchange the Property for the following compensation:
 - 2.1 Buyer, at its sole expense, shall construct 19 on-street parking spaces on Sycamore Street, and an adjoining sidewalk (the "Improvement(s)"), as shown on Site Plan, attached as "Exhibit A".
 - 2.2 Prior to acceptance of the Improvements made by the Buyer, and as fulfillment of the terms of Section 2.1, the City Engineer shall inspect said Improvements and certify that said Improvements were constructed in compliance with the approved Site Plan and all other applicable City standards.
 - 2.3 Buyer shall dedicate as public right-of-way the Improvements set forth in Section 2.1 as constructed and as indicated on Exhibit A.
 - 2.4 It shall be the responsibility of the buyer to prepare the right of way dedication plat that will necessary to fulfill the terms of Section 2.3.
 - 2.5 Buyer shall pay for the costs of all publication and recording costs for this transaction.
 - 2.6 The Improvements shall be completed and approved by the City Engineer on or before _____.
3. **Amendment.** By mutual written consent of both the Seller and Buyer, the site plan attached as Exhibit A may modified.
4. **Conveyance Documents.** Seller shall convey the Property to Buyer by a quit claim deed, in a form reasonably acceptable to counsel for Seller and Buyer. Seller shall deliver said deed to the Buyer either;
 - (a) When all terms set forth in Section 2 have been met by the Buyer; or
 - (b) The Buyer may elect to receive the deed prior to completion of all terms set forth in Section 2 if all the following conditions have been met:
 - (i) The Buyer shall provide a performance bond or other security which will insure to the City of Muscatine that the Improvements required by Section 2 will be completed by the buyer within ____ days of the execution of this Agreement.

- (ii) The amount of the bond or other security, as determined by the City Engineer, shall be in an amount satisfactory for securing and making the installation of all the required Improvements.
- (iii) This guarantee shall be retained by the City until the Improvements have been satisfactorily completed and accepted by the City and the right of way has been dedicated as required by Section 2.3.

5. **Warranties and Representations of Seller.** Seller warrants and represents to Buyer that it has the full right, power and authority to sell and convey the Property to Buyer as provided in this Agreement and to carry out the Seller's obligations hereunder. All requisite actions necessary to authorize Seller to enter into this Agreement and to perform its obligations hereunder have been taken; the joinder of no person or entity other than Seller will be necessary to sell the Property fully and completely to Buyer at Closing except as otherwise set forth and provided herein; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any instrument to which Seller is a party or by which the Property is bound. Other than the interests noted elsewhere in this Agreement, if any, Seller represents and warrants to Buyer that there are no adverse or other parties in possession of the Property or any part thereof. No party has been granted any license, lease or other right or interest relating to the use or possession of the Property, or any part thereof, other than as expressly provided for herein or of record or which will be terminated concurrently with Closing.
6. **Warranties and Representations of Buyer.** Buyer warrants and represents to Seller that it has the full right, power and authority to acquire the Property from Seller as provided in this Agreement and to carry out the Buyer's obligations hereunder. All requisite actions necessary to authorize Buyer to enter into this Agreement and to perform its obligations hereunder have been taken; the joinder of no person or entity other than Buyer will be necessary to acquire the Property fully and completely from Seller at Closing; and the execution and delivery of this Agreement and the consummation of the transaction herein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage loan agreement or instrument to which Seller is a party or by which Buyer or the Property is bound.
7. **Notices.** Neither party shall have the right to terminate this Agreement or seek any remedy for a breach hereof by the other party unless such breach continues for a period of thirty (30) days following written notice by the party seeking to pursue such remedy, specifying the occurrence and description of such default under this Agreement and unless the party given such notice shall have failed to commence to take such steps as are necessary to cure such breach or default as soon as possible (or having so commenced such steps to cure shall thereafter have failed to proceed diligently and with continuity to remedy the same). All notices, demands, writings, supplements, or other documents which are required or permitted by the terms of this Agreement to be given to any party shall be delivered in person, or shall be deposited in the United States Mail, postage prepaid, return receipt requested, addressed at the addresses specified above and shall be effective upon such deposit.

8. Assignment; Agreement Binding on Successors; Survival of Provisions. This Agreement may not be assigned or transferred by any of the parties without the express written consent of the other. This Agreement, and amendments, if any, and all representations, warranties, indemnification obligations, rights and duties hereunder, shall survive the Closing and shall be fully binding at all times against Seller and Buyer as well as any and all of its or their successors in interest, assigns or transferees.

9. Default; Remedies of the Parties.

9.1 Buyer's Remedies for Seller's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Seller fails or refuses to timely convey the Property to Buyer in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Buyer, Buyer may elect one of the following remedies (a) be entitled to terminate Buyer's obligations under this Agreement by written notice to Seller; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

9.2 Seller's Remedies for Buyer's Default. If (a) each of the conditions precedent set forth in this Agreement have been satisfied or waived prior to the Closing Date and (b) Buyer fails or refuses to timely purchase the Property and Close in accordance with the terms and conditions of this Agreement, except on account of a default hereunder by Seller, Seller may elect one of the following remedies (a) be entitled to terminate Seller's obligations under this Agreement by written notice to Buyer; (b) be entitled to specific performance of this Agreement; or (c) any other remedies available at law or equity.

10. Time. Time is of the essence in the performance of each party's obligations hereunder.

11. No Waiver. Subject to the deemed approvals under this Agreement, no waivers by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder.

12. Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified by subsequent written agreement signed by the party to be charged.

13. Counterparts and Effectiveness. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and this Agreement shall only be effective if a counterpart is signed by both Buyer and Seller.

14. Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

- 15. Survival of Warranties.** Any warranties, covenants and representations contained in this document shall survive the execution of this Agreement and any other documents, including the Deed given by Seller to Buyer to consummate this transaction, shall not be merged into such documents.
- 16. Attorney Fees.** In the event of default by either party pursuant to any of the terms of this Agreement, the prevailing party in any litigation or enforcement action shall be entitled to reimbursement by the defaulting party for any of the prevailing party's reasonable attorney fees, court costs, and other associated costs of enforcement.
- 17. Governing Law; Construction.** This Agreement shall be construed pursuant to the laws of the State of Iowa. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid. If any such provision of this Agreement shall be determined to be invalid or unenforceable, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating or otherwise affecting the remaining provisions of this Agreement.
- 18. Headings.** Article and section headings used in this Agreement are for the convenience of the parties only and shall not affect the construction of this Agreement.
- 19. Further Assurances.** At or after Closing, the parties shall prepare, execute and deliver at their respective expense, such additional instruments and other documents and shall take or cause to be taken such other action as is reasonably requested by the other party at any time or from time to time in order to effectuate and comply with all the terms of this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, we have hereunto affixed our hands this _____ day of _____, 2017.

Diana L. Broderson, Mayor

ATTEST:

Nancy Lueck, Acting City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the ____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared DIANA L. BRODERSON and Nancy Lueck, to me personally known, who, being by me duly sworn, did say that they are the Mayor and Acting City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine,

Iowa, on the __ day of _____, 2017, and the said DIANA L. BRODERSON and Nancy Lueck acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

KUM & GO

By: _____
Name: _____
Title: _____

STATE OF IOWA, MUSCATINE COUNTY, ss:

On this ____ day of _____, 2017, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is _____ of KUM & GO, that the seal affixed to the foregoing instrument to which this is attached is the corporate seal; that the instrument was signed and sealed on behalf of KUM & GO by authority of its Board of Directors, and that _____, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of KUM & GO, by it and by him/her voluntarily executed.

Notary Public in and for the State of Iowa