



City Hall, 215 Sycamore St.  
Muscatine, IA 52761-3840  
(563) 262-4141  
Fax (563) 262-4142

COMMUNITY DEVELOPMENT

MEMORANDUM

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

**To:** Mayor and City Council Members  
**Cc:** Greg Jenkins, Interim City Administrator  
**From:** Andrew Fangman, Assistant Community Development Director  
**Date:** March 5, 2020  
**Re:** Request Approval to Acquire Real Property – 501 Cedar Street

**INTRODUCTION:** The City has negotiated an agreement to purchase the closed Kum & Go convenience store located at 501 Cedar Street. Acquiring this property will create a replacement for Public Safety Building parking that has been lost to the County General Services Building project.

**BACKGROUND:** In the fall of 2019 Muscatine County began construction on a new General Services Building at the southeast corner of the 5<sup>th</sup> Street and Walnut Street intersection. Previously this area had been primarily been used for parking for the Public Safety Building which is located directly across Walnut Street. As per a prior agreement by which a portion of 4<sup>th</sup> Street was vacated in order make room the Muscatine County Jail, Muscatine County will be providing to the City, 20 dedicated parking spots along Walnut Street, as part of New General Services Building Project. However, far more than 20 vehicles related to activities at the Public Safety Building have been parking on County Property on the other side of Walnut Street. While they had no other use for this property, the County had been graciously allowing this. The construction of the new General Services Building will limit Public Safety parking on the other side of Walnut Street to the 20 dedicated spots.

In late 2017 Kum & Go closed their convenience store located at 501 Cedar Street, when they opened a new store kittycorner across the Cedar/5<sup>th</sup> intersection at 416 Cedar Street. After closing the store, Kum & Go removed the fuel station canopy and the underground fuel storage tanks.

In December of 2019 Kum & Go and the City of Muscatine by which Public Safety staff could park at 501 Cedar Street, at no cost to the City. This agreement eliminated the immediate parking shortage issue created by the construction of the new County General Service Building. However, this is not a long term solution is the agreement is only with Kum & Go, and would terminate upon the sale of 501 Cedar Street by Kum & Go to a third party.

The driveway off of 5<sup>th</sup> Street into 501 Cedar Street has long been of importance to the operation of the fire station across 5<sup>th</sup> Street. Larger fire apparatuses turn into this driveway

and then back straight into the bays at the fire station across 5<sup>th</sup> Street. While there has been no formal approval for this, all prior owners of 501 Cedar Street have not objected to this practice. There is however no guarantee that any future owners of this parcel would continued to permit, or that they would not reconfigure this driveway in manner that would make this physically impossible.

Because of the importance of this property to the continued smooth operation of the Public Safety Building, City Staff has negotiated a purchase agreement, with a sale price of \$100,000, for this property with Kum & Go. This agreement is attached to this memo.

With approval by Council of this purchase agreement, City Staff will proceed with the steps necessary to close on this property within the next few weeks. Once this occurs, the planning process for improvements to maximize the utility of this property to the City and to improve its appearance will commence.

**RECOMMENDATION/RATIONALE:** Staff recommends approval of this purchase agreement. Obtaining full control through ownership of 501 Cedar Street is important to the continued smooth operations out of the Public Safety Building

**BACKUP INFORMATION:**

1. Purchase Agreement

Date Source: Muscatine Area Geographic Information Consortium, City of Muscatine  
Prepared by: Andrew Fangman,  
Assistant Community Development Director  
Date: March 2, 2020



6th St

501 Cedar Street

Walnut St

5th St

Cedar St

Public Safety Building

Site of New County General Services Building

New Kum & Go

4th St

4th St

County Jail

100 50 0 100 Feet



## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT is made and entered into by and between KUM & GO, L.C., an Iowa limited liability company, hereinafter referred to as "Seller," and CITY OF MUSCATINE, hereinafter referred to as "Buyer;" WITNESSETH:

WHEREAS, Seller is the fee owner of commercial real estate situated in Muscatine, Muscatine County, Iowa;

WHEREAS, Buyer desires to purchase the real estate from Seller, all upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, it is agreed as follows:

1. Purchase and Sale of Property. Subject to the terms and provisions of this Agreement, Buyer, or its nominee, agrees to purchase, and Seller agrees to sell, the following described real estate situated in Muscatine, Muscatine County, Iowa, to-wit:

see Exhibit "A";

("Premises") together with all buildings and improvements located thereon and any easements and servient estates appurtenant thereto.

2. Escrow Deposit. Intentionally Omitted.

3. Purchase Price. The total purchase price to be paid by Buyer to Seller for the Premises shall be **\$100,000.00**, payable in cash, or cash equivalents, on the Closing Date. The Escrow Deposit shall be credited against the purchase price at the Closing.

4. Closing Date. The "Closing," "Closing Date," or "Date of Closing" shall be on or before April 1, 2020. The Closing shall occur at the Closing Place.

5. Closing Place. The term "Closing Place" shall mean the offices of Escrow Agent.

6. Date of Possession. Possession of the Premises shall be delivered to Buyer on the Closing Date.

7. Use of Purchase Price. At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interests of others, if any.

8. Abstract and Title. Seller, at its expense, shall promptly obtain an abstract of title to the Premises continued through the date of acceptance of this Agreement and

deliver it to Buyer's attorney for examination. Seller shall deliver said abstract immediately upon the expiration of Buyer's Due Diligence Review period. The Abstract shall show marketable title in Seller in conformity with this Agreement, Iowa law, and the title standards of the Iowa State Bar Association. The Seller shall make every reasonable effort to promptly perfect title. The abstract shall become the property of Buyer when the purchase price is paid in full. The abstract shall be obtained from an abstracter qualified by the Guaranty Division of the Iowa Housing Finance Authority. Notwithstanding the foregoing, Buyer acknowledges and agrees that the Premises shall be encumbered by a Use Restriction, in the form attached hereto as Exhibit "B", which shall be filed by Seller before Closing. Additionally, Buyer acknowledges and agrees to restrict its property located directly adjacent to, and south of, the Premises by recording a similar Use Restriction at or before Closing.

9. Premises Due Diligence. Within five (5) business days after the full execution hereof, Seller shall provide to Buyer such information and items regarding the Premises reasonably necessary to enable Buyer to complete its due diligence review of the transaction ("Due Diligence Review"), such as information regarding environmental assessments, surveys, engineering studies, wetland studies, and such similar items as may be reasonably requested by Buyer. At any time within ninety (90) days following the full execution hereof, Buyer may terminate this Agreement if Buyer, in its sole discretion, is not satisfied with its Due Diligence Review. If not so terminated, the Escrow Deposit shall become non-refundable to Buyer; provided, however, the Escrow Deposit shall still be credited against the purchase price in the event the transaction closes. Buyer further agrees to provide Seller with copies of any and all governmental submittals and due diligence materials obtained by Buyer upon Seller's request therefor.

10. Deed and Other Documents. On or before the Closing Date:

(a) Seller: Seller shall deliver to Escrow Agent or Buyer, as may be appropriate:

(i) An executed and acknowledged Warranty Deed in recordable form, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement, with a release of dower, curtesy, homestead, and other spousal rights, subject only to current real estate taxes (to be apportioned between the parties as set forth in this Agreement) and covenants, conditions, easements, encumbrances and restrictions approved by Buyer in writing. ;

(ii) a Non-Foreign Certificate sufficient to comply with the requirements of Section 1445 of the Internal Revenue Code (FIRPTA), or, in the alternative, Seller shall cooperate with Buyer in the withholding of funds and delivery of such funds to the Internal Revenue Service pursuant to FIRPTA regulations;

(iii) such other documents and affidavits as Buyer, the Title Company, or the Escrow Agent may reasonably require, including

without limitation, appropriate corporate certificates of status and authorizing resolutions; and

(iv) written instructions to Escrow Agent directing it to close the transaction.

(b) Buyer: Buyer shall deliver to Escrow Agent, Seller or Tenant, as may be appropriate:

(i) the purchase price in escrow with the Escrow Agent, together with any other amounts required to be paid by Buyer pursuant to the terms of this Agreement;

(ii) such other documents and affidavits as Seller, the Title Company, or the Escrow Agent may reasonably require, including without limitation, appropriate corporate certificates of status and authorizing resolutions; and

(iii) written instructions to Escrow Agent directing it to close the transaction.

11. Costs and Expenses. Closing costs and expenses shall be apportioned as follows:

a) Seller shall pay (i) any required state documentary or transfer taxes relative to the transfer of the Premises, (ii) any preliminary abstracting, if required, (iv) one-half of Escrow Agent's closing fee, and (v) Seller's own attorney fees.

b) Buyer shall pay (i) any required charges to obtain Buyer's loan, if any, (ii) any charges to record any mortgage granted by Buyer and any required state documentary taxes resulting therefrom, (iii) recording charges to record the Warranty Deed, (iv) the cost of the Commitment and the Title Policy, (v) one-half of Escrow Agent's closing fee, and (vi) Buyer's own attorney fees.

c) Any other closing costs or expenses not covered by this Section or otherwise allocated to a party in this Agreement, shall be in accordance with the customs and practices in the locale wherein the Premises is located.

12. Real Estate Taxes. Seller shall be responsible for and pay the real estate taxes for the fiscal year in which the Closing occurs, prorated to the date of Closing, and the real estate taxes for all prior years. Buyer shall be responsible for making all payments of real estate taxes becoming due and payable after the date of Closing.

13. Condition of Premises. The Premises as of the date of this Agreement, including buildings, grounds, and all improvements, will be preserved by the Seller in its present condition until possession, ordinary wear and tear excepted.

14. Risk of Loss. Risk of loss of the Premises shall remain with Seller until the Closing Date.

15. Casualty and Condemnation. Seller will give Buyer immediate written notice of any damage to the Premises by reason of (i) fire or other casualty occurring prior to the Closing Date, (ii) any actual or threatened condemnation of all or any part of any Premises prior to Closing, or (iii) any other act which occurs prior to Closing which has the effect of interrupting the normal and customary operations of the business transacted on the Premises (if applicable). In the event of such a casualty or condemnation, Buyer may terminate this Agreement by written notice to the Seller and, in such event, no party shall have any further rights, obligations or liabilities under this Agreement, except as related to return of the Escrow Deposit to Buyer.

16. DISCLAIMER OF WARRANTIES, "AS IS" CONVEYANCE. BUYER ACKNOWLEDGES TO AND AGREES WITH SELLER THAT BUYER'S PURCHASE OF THE PREMISES SHALL BE "AS IS," "WHERE IS," AND "WITH ALL FAULTS" AND WITH ALL PATENT OR LATENT DEFECTS.

17. ENVIRONMENTAL DISCLOSURE AND RELEASE. Seller has disclosed its available records of any known current environmental conditions for the Premises Buyer. Buyer acknowledges that it has received and reviewed any available environmental data and that the Premises may have been, and may continue to be a petroleum outlet and/or service station. Buyer recognizes that contamination may be present the Premises. Seller will make commercially reasonable efforts to transfer to Buyer its interest, if any, in the UST fund of the state in which any Premises is located, or the UST insurance policy, as applicable, to the extent allowed by law if additional work is required in the future. Buyer may at its sole option and expense perform a Phase II environmental audit of the property within 30 days after the date of full execution and delivery of this Agreement. If the Phase II environmental audit indicates a release from the underground petroleum storage tanks, piping, or dispensing facilities, Seller will indemnify Buyer for actual expenses up to, but no more than, the deductible amount from the insurance benefit under the applicable state's UST fund or the UST insurance policy applicable to releases from petroleum storage tanks. EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS OF SELLER CONTAINED IN THIS AGREEMENT, SELLER IS HEREBY RELEASED FROM AND BUYER HEREBY ASSUMES ALL RESPONSIBILITY AND LIABILITY REGARDING THE PRESENCE IN THE SOIL, AIR, STRUCTURES, AND SUBSURFACE AND SURFACE WATERS, OF MATERIALS OR SUBSTANCES THAT HAVE BEEN OR MAY IN THE FUTURE BE DETERMINED TO BE TOXIC, HAZARDOUS, OR THE SUBJECT OF REGULATION AND THAT MAY NEED TO BE SPECIALLY TREATED, HANDLED, AND/OR REMOVED FROM THE PREMISES UNDER CURRENT OR FUTURE FEDERAL, STATE, AND/OR LOCAL LAWS AND REGULATIONS. BUYER SHALL INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY AND ALL CLAIMS ARISING FROM OR RELATED TO THE PRESENCE OF SUCH MATERIALS OR SUBSTANCES, INCLUDING REASONABLE PROFESSIONAL AND ATTORNEYS' FEES ARISING FROM ANY SUCH CLAIM.

18. Buyer's Conditions Precedent. Buyer's obligation to close this transaction is expressly conditioned upon each of the following:

- a) Seller shall have performed and complied in all material respects with all agreements, terms, and conditions required by this Agreement to be performed by and complied with by Seller on or before the Closing Date.
- b) All representations, warranties and covenants of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date.

If any of Buyer's conditions precedent have not been satisfied or complied with prior to the Closing Date, Buyer may, by written notice to Seller on or before such Closing Date, cancel and terminate this Agreement. In the event that this Agreement is terminated by Buyer as permitted by this Section, then upon such termination neither party shall retain any rights or obligations under this Agreement, except that if terminated prior to the expiration of the Due Diligence Review Period, the Escrow Deposit shall be returned to Buyer. If Buyer terminates this Agreement subsequent to the expiration of the Due Diligence Review period, the Escrow Deposit shall be immediately delivered to Seller. Notwithstanding the foregoing, Buyer, in its sole discretion, may waive any conditions precedent in its favor and elect to proceed with the Closing prior to the termination of this Agreement.

19. Remedies of the Parties.

- a) Buyer's Remedies. In the event that the purchase and sale of the Premises does not close because of a breach of this Agreement on the part of Seller, then Buyer shall have as its sole and exclusive remedy a return of the Escrow Deposit.
- b) Seller's Remedies. In the event that the purchase and sale of the Premises does not close because of a breach of this Agreement on the part of Buyer, then Seller shall have as its sole and exclusive remedy the right to retain the Escrow Deposit as liquidated damages, and not as a penalty.
- c) In the event that the purchase and sale of the Premises does not close, and the failure of the transaction to close is not attributable to a breach by Seller or Buyer, then this Agreement shall terminate, the Escrow Deposit shall be returned to Buyer, and no party will retain any legal rights or remedies against any other party.

20. Notices. Any notice, demand or other communication under this Agreement by any party to another party shall be in writing and shall be validly given (i) upon delivery when hand delivered, (ii) upon receipt of confirmation of delivery when transmitted by facsimile, (iii) one (1) business day after being sent via overnight courier, or (iv) three (3) business days after being deposited in the United States mail, registered

or certified mail, postage prepaid, return receipt requested, in each case addressed to the parties as the addresses set forth below the signatures at the end of this Agreement. Either party may change its address set forth below the signatures at the end of this Agreement by giving written notice of such change to the other party in the manner set forth in this paragraph.

21. Cooperation. Seller and Buyer agree to cooperate fully with one another in taking any reasonable actions necessary or helpful to accomplish the transaction contemplated by this Agreement, including, but not limited to, the satisfaction of any conditions to Closing set forth in this Agreement.

22. Assignment. Buyer shall not have the right to assign this Agreement without the written consent of Seller.

23. Broker. Seller hereby represents that George Granberg of Ruhl & Ruhl Realtors represented Seller for this transaction. Buyer hereby represents that no broker represented Buyer for this transaction. 6% of the purchase price shall be paid to Seller's Broker, and 0% of the purchase price shall be paid to Buyer's Broker, each out of Seller's proceeds at Closing. Except for the foregoing, each party represents to the other than no other broker, finder or intermediary is involved in the purchase and sale of the Premises. Each party hereby indemnifies and agrees to hold the other parties harmless from and against any and all costs arising or resulting, directly or indirectly, out of any claim by any broker or finder in connection with this transaction due to their respective acts.

24. Construction. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the definitions and the context.

25. Binding Contract. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

26. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

27. Facsimile. For purposes of executing this Agreement, a facsimile signature shall be as effective as an actual signature.

28. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws and public policies of the State of Iowa.

29. Survival. The representations, warranties, and agreements of the parties contained herein shall survive the closing date.

30. Buyer Acceptance. This Agreement shall be null and void if not executed by Buyer and returned to Seller via the method for delivering valid notice on or before March 10, 2020.

SELLER:

BUYER:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

KUM & GO, L.C.

CITY OF MUSCATINE

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Fed. I.D. No.: 42-1352663  
Facsimile: 515-457-6179  
Address: 1459 Grand Avenue,  
Des Moines, IA 50309

Fed I.D. No.: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Attachments:  
Exhibit "A" - Legal Description  
Exhibit "B" - Use Restriction

**EXHIBIT "A"**  
**Legal Description**

Lot 1 and the Westerly 40 feet of Lot 2, in Block 102, of the City of Muscatine, in Muscatine County, Iowa.

**EXHIBIT “B”  
Use Restriction**

Prepared by and when recorded return to: Kum & Go, L.C., Attn: Joel Huston; 1459 Grand Avenue, Des Moines, IA 50309

**DECLARATION OF USE RESTRICTION**

THIS INSTRUMENT effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, (the “Effective Date”) is made by the undersigned owner of the Restricted Parcel (hereinafter referred to as the “Burdened Party”); WITNESSETH:

**RECITALS**

- A. Burdened Party is the owner of the Restricted Parcel (defined below); and
- B. Burdened Party desires to place certain use restrictions on the Restricted Parcel.

NOW, THEREFORE, BURDENED PARTY HEREBY DECLARES AND IMPOSES THE FOLLOWING:

- 1. Recitals. The Recitals set forth above are incorporated by this reference.
- 2. Restricted Parcel. The use restrictions imposed herein are imposed upon the following parcels of real estate (the “Restricted Parcel”), to-wit:

[INSERT LEGAL DESCRIPTION]

- 3. Use Restrictions. During the term of this declaration the Restricted Parcel shall not be used for any of the following:
  - a. A gasoline station, including any type of business that sells diesel fuel, ethanol fuel, bio-fuel or any other type of fuel used to power motorized vehicles designed primarily for use on public streets and highways.
  - b. A convenience store.

- c. A cigar, tobacco or pipe shop.
- d. A business that generates more than fifty percent (50%) of its gross revenue from the sale of beer or liquor products for off premise consumption.
- e. An adult bookstore, adult theatre, "adult entertainment" facility, or any business that sells pornographic or sexually explicit material.
- f. Any business that engages in illegal, immoral, or any other noxious activity.

4. Term. The use restrictions imposed against the Restricted Parcel shall remain in full force and effect for a period of 20 years from the Effective Date, at which time said use restrictions shall automatically expire. Burdened Party shall not revoke, and hereby relinquishes any right to revoke, the use restrictions imposed by this instrument.

5. Restrictions Run with Land. The use restrictions imposed by this instrument shall constitute covenants running with the land and, as such, shall be binding upon the owners from time-to-time of the Restricted Parcel and their respective heirs, successors and assigns.

6. Severability. If any provision of this instrument is invalid, illegal or incapable of being enforced by any law or public policy, all other provisions of this declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Burdened Party has caused this Declaration of Use Restriction to be executed on or as of the day and year first above written.

By: \_\_\_\_\_

Its: \_\_\_\_\_

BURDENED PARTY

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public