

Date November 7, 2011

**APPROVING RETAINING WALL MAINTENANCE AGREEMENT
WITH KUM & GO, L.C. AND KG STORE 573, L.L.C. FOR PROPERTY LOCATED
IN VICINITY OF SE 14TH STREET AND EAST DIEHL AVENUE**

WHEREAS, Kum & Go, L.C. is developing property titled in the name of KG Store 573, L.L.C. and located in the northwest quadrant of the intersection of E. Diehl Avenue and SE 14th Street, and locally known as 5850 SE 14th Street, Des Moines, and legally described as:

Parcel "G" being a part of Lots 1 and 2 in Bowlarama Place, an Official Plat, and a part of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section Twenty-Seven (27), Township Seventy-eight (78) North, Range Twenty-four (24) West of the 5th P.M., all now included in and forming a part of the City of Des Moines, Polk County, Iowa, as shown in the Plat of Survey recorded in Book 13755 at Page 292 on January 28, 2011, in the Office of the Recorder of Polk County, Iowa; and

WHEREAS, as part of said development, Kum & Go, L.C. is constructing retaining walls within the SE 14th Street right-of-way adjoining the real property locally known as 5512 SE 14th Street, Des Moines, and owned by the State of Iowa, legally described as:

A tract of land located in part of the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) and the Southeast Quarter of the Northeast Quarter (SE ¼ NE ¼) of Section 27, Township 78 North, Range 24, West of the 5th P.M., City of Des Moines, Polk County, Iowa, being more particularly described as follows:

Commencing at the East Quarter corner (E ¼) of said Section 27; thence North 89°(degrees)52'(minutes)10"(seconds) West, 55.00 feet to the point of beginning; thence South 00°37'02" East, 9.81 feet; thence North 89°52'10" West, 5.00 feet to the West right of way line of Southeast 14th Street; thence on said West right of way line, North 00°37'02" West, 230.02 feet; thence South 89°52'10" East, 5.00 feet; thence South 00°37'02" East, 220.21 feet to the point of beginning, containing 1,150.10 Sq. Ft. more of less; and

WHEREAS, according to Iowa Administrative Code Section 150.3(2)(c)(5), the City of Des Moines is responsible for maintenance of retaining walls between curb and right-of-way line on primary roads constructed with a curbed cross section, as applicable in the area being developed by Kum & Go, L.C.; and

WHEREAS, the City, Kum & Go, L.C. and KG Store 573, L.L.C. have negotiated a Retaining Wall Maintenance Agreement delegating the City's responsibility under Iowa Administrative Code Section 150.3(2)(c)(5) to Kum & Go, L.C. and KG Store 573, L.L.C, pursuant to which Agreement Kum & Go, L.C. and KG Store 573, L.L.C, and their respective successors in interest and assigns, are responsible for construction, installation, maintenance, repair and reconstruction of the retaining walls for their

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existence, and shall indemnify the City for all claims relating to the retaining walls, and which Agreement shall run with the land upon the properties legally described above.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

- 1. The Retaining Wall Maintenance Agreement between the City of Des Moines, Kum & Go, L.C., and KG Store 573, L.L.C., as on file in the office of the City Clerk, is hereby approved; the Mayor is authorized and directed to execute said Agreement; and the City Clerk is direct to attest to his signature and return the original Agreement to the City Real Estate Division Manager to be recorded with the Polk County Recorder.
2. The City Real Estate Division Manager is authorized and directed to administer the terms of the Agreement.

Moved by _____ to adopt.

APPROVED AS TO FORM:

Glenna K. Frank (handwritten signature)

Glenna K. Frank
Assistant City Attorney

RAU (handwritten initials)

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL.

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk