

★ Roll Call Number  
08-1217

Agenda Item Number

45

Date July 14, 2008

RESOLUTION APPROVING SUBORDINATION, NON-DISTURBANCE AND  
ATTORNMENMENT AGREEMENT FOR THE TRANSFER OF THE LEASEHOLD INTEREST  
IN THE BURGER KING RESTAURANT IN THE KALEIDOSCOPE MALL

WHEREAS, on January 16, 1984, by Roll Call No. 276, the City Council approved an *Urban Development Action Grant: City/Developer Loan Agreement* (the "Loan Agreement") and an *Open-End Second Real Estate Mortgage* (the "Mortgage") with Walnut Mall Limited Partnership for the development of the Walnut Mall, consisting of the Hub Tower, Kaleidoscope, and underground Parking Garage; and,

WHEREAS, on December 19, 1994, by Roll Call No. 94-4808, the City Council consented to the dissolution of the Walnut Mall Limited Partnership, and to amendments to the Loan Agreement and Mortgage whereby the Kaleidoscope was assigned to Hubbell Realty Company ("Hubbell"); Hubbell assumed responsibility for repayment of the Loan Agreement with City; the City released the Hub Tower and Parking Garage from the lien of the Mortgage; and the City's Mortgage became a first lien upon the Kaleidoscope; and,

WHEREAS, on August 20, 2001, by Roll Call No. 01-2579, the City Council approved a *Third Amendment to Urban Development Action Grant: City/Developer Loan Agreement* and a *Second Amendment to Open-ended Second Mortgage and Security Agreement* with Hubbell Realty Company to provide for the amortization of the balloon payment then due in September, 2007, over an additional ten years; and,

WHEREAS, the franchisee of the Burger King Restaurant within the Kaleidoscope at 655 Walnut Street is transferring its leasehold interest in that restaurant to the franchisor, Burger King Corporation, and requests that the City enter into a *Subordination, Non-Disturbance and Attornment Agreement* with Burger King Corporation whereby the parties agree that in the event of any foreclosure of the Mortgage, the City will assume the rights and obligations of landlord under the terms of that lease; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The *Subordination, Non-Disturbance and Attornment Agreement* with Burger King Corporation, which is on file and available for public inspection in the office of the City Clerk, is hereby approved.
2. The Mayor is hereby authorized and directed to sign the *Subordination, Non-Disturbance and Attornment Agreement* on behalf of the City of Des Moines, and the City Clerk is hereby authorized and directed to attest to the Mayor's signature on such document.

( continued )

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3. Upon execution of the Agreement by the Mayor, the City Clerk shall forward a duplicate original of the Agreement to the Legal Department for release to Burger King Corporation.

MOVED by Mahaffey to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin  
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.

Diane Rauh  
City Clerk