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RESOLUTION NO. 19-
City Council

RESOLUTION APPROVING A LEASE AGREEMENT WITH SIDE BY SIDE OWN, L.L.C. FOR CERTAIN LAND DESCRIBED AS EXHIBIT 'A' 100 EMMONS STREET; P.O.S. No. 2260 revised PLAT "A"

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA, approving a lease agreement between the City of Hiawatha and Side by Side Own, L.L.C. for property located at 100 Emmons street; P.O.S. No. 2260 revised plat A as Exhibit "A" for a term beginning April 22, 2019 and ending on October 31, 2020 for the storage of city's public safety and community development vehicles and equipment.

AYES:
NAYS:
ABSENT:

PASSED AND APPROVED this 17th day of April, 2019.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kari Graber, City Clerk

LEASE - BUSINESS PROPERTY

THIS LEASE AGREEMENT is entered into this _____ day of April 2019 by and between Side by Side Own, L.L.C., and Iowa Limited Liability Company ("Landlord"), whose address for the purpose of this lease is 2035 26th Street NW, Cedar Rapids, Iowa 52405 and the City of Hiawatha, Iowa, an Iowa Municipal Corporation ("Tenant"), whose address for the purpose of this lease is 101 Emmons Street, Hiawatha, Iowa 52233.

WITNESSETH THAT:

1. **PREMISES AND TERMS.** The Landlord, in consideration of the rents, agreements and conditions herein contained, leases to the Tenant and Tenant leases from Landlord, according to the terms of this lease, the following described "Leased Premises", situated in Linn County, Iowa:

Commonly known as: 100 Emmons Street, Hiawatha, Iowa

Legally described as: P.O.S. No. 2260 revised Parcel A

with the improvements thereon, and all rights, easements and appurtenances, which, more particularly, includes the space and premises as may be shown on "Exhibit A", if attached, for a term commencing at midnight on the day previous to the first day of the lease term, which shall be on April 22, 2019 and ending at midnight on the last day of the lease term, which shall be on October 31, 2020, unless extended, upon the condition that the Tenant pays rent therefor, and otherwise performs as in this lease provided. Tenant may terminate this Agreement with Landlord at any time with a thirty (30) day written notice provided to Landlord at the address provided in paragraph 24 below.

2. **LEASE PAYMENTS/DEPOSIT/NOTICE.** Tenant shall pay to the Landlord a one-time lease payment of $1.00 payable on the effective date of this Agreement.

3. **POSSESSION**. Tenant shall be entitled to possession on the first day of the term of this Lease Agreement and shall yield possession to the Landlord at the end of the lease term, except as herein otherwise expressly provided. Should Landlord be unable to give possession on said date, Tenant's only damages shall be a rebating of the pro rata rental.

4. **USE OF PREMISES.** Tenant covenants and agrees during the term of this Lease Agreement to use and to occupy the Leased Premises for the storage and location of the City's Public Safety and Community Development vehicles and equipment.

5. **QUIET ENJOYMENT.** Landlord covenants that its estate in said premises is in fee simple and that the Tenant, if not in default, shall peaceably have, hold and enjoy the premises for

the term of this lease. Landlord shall have the right to mortgage all of its right, title, interest in said premises at any time without notice, subject to this lease.

6. EQUIPMENT, DECORATING, REPLACEMENT, REPAIR AND MAINTENANCE.

DEFINITIONS

"Maintain" means to clean and keep in good condition.
"Repair" means to fix and restore to good condition after damage, deterioration or partial destruction.

CONDITIONS OF PREMISES

A. Tenant takes the premises in its present condition, except for such repairs and alterations as may be expressly otherwise provided in this Lease Agreement.

REPAIRS AND MAINTENANCE

B. Landlord shall replace and repair the structural parts of the building. For purposes of this Lease Agreement, the structural parts of the building shall mean the foundation, exterior walls, load bearing components of interior floors and walls.

C. Repair shall be performed and paid for by the parties as follows:

	PERFORMANCE L=LANDLORD T=TENANT	PAYMENT	
		% Landlord	% Tenant
Interior walls, floors and ceilings	T	0%	100%
Sewer, plumbing fixtures, pipes, wiring, electrical fixtures within the structure	T	0%	100%
Heating equipment	T	0%	100%
Air conditioning	T	0%	100%
Windows (replacement)	T	0%	100%
Sidewalks	T	0%	100%
Parking areas	T	0%	100%

D. Any repair or maintenance not specifically provided for above shall be performed and paid for by Tenant.

E. Tenant shall continue to have responsibility for repair and maintenance to the end that the premises will be kept in a safe and serviceable condition. Tenant will not permit nor allow the

premises to be damaged or depreciated in value by any act, omission to act, or negligence of itself, its agents or employees.

EQUIPMENT, DECORATING AND ALTERATIONS

F. The following items of equipment, furnishings and fixtures shall be supplied and replaced by the parties as follows:

	PERFORMANCE L=Landlord T=Tenant	PAYMENT L=Landlord T=Tenant
Heating equipment	T	T
Air conditioning equipment	T	T
Carpeting/floor covering	T	T
Drapes, shades, blinds	T	T

G. Any similar equipment, furnishings, and fixtures not specifically provided for above shall be provided and paid for by Tenant.

H. Any equipment, furnishings or fixtures to be supplied by Tenant shall be subject to the Landlord's prior written approval as to quality and method of installation. Tenant shall provide all trade equipment, furnishings and fixtures used in connection with the operation of its business, such as telephones, computers, desks, chairs, shelving and similar items.

I. Tenant shall be responsible for all interior decorating. Tenant shall make no structural alterations or improvements without the prior written consent of the Landlord.

J. Landlord agrees to have the heating equipment serviced at least annually during the term of this Lease Agreement, and any exercised options to renew this Lease Agreement, and Tenant agrees that the cost of such service shall be the sole expense of the Tenant.

AMERICANS WITH DISABILITIES ACT

K. Tenant will make no unlawful use of said premises and agrees to comply with all valid regulations of the Board of Health, City Ordinances or applicable municipality, the laws of the State of Iowa and the Federal government, but this provision shall not be construed as creating any duty by Tenant to members of the general public, provided, however, responsibility for compliance with the Americans With Disabilities Act shall be performed and paid for by the Tenant.

7. **UTILITIES AND SERVICES.** Utilities and services shall be furnished and paid for by the parties as follows:

	PAYMENT	
	% Landlord	% Tenant
Electricity	0%	100%
Gas	0%	100%
Water and Sewer	0%	100%
Garbage/Trash	0%	100%
Janitor/Cleaning	0%	100%
Snow Removal (parking lot only to be done by the Tenant)	0%	100%
Lawn Care/Mowing	0%	100%

Landlord shall be responsible for any other utilities not listed herein. All current utilities shall remain in the Tenant's name. Tenant shall invoice Landlord its percentage of the utilities as listed above each month. Landlord shall pay in full each monthly invoice received from the Tenant for utilities within ten (10) days of receiving each monthly invoice.

8. **TERMINATION, SURRENDER OF PREMISES AT END OF TERM -- REMOVAL OF FIXTURES.**

(a) **TERMINATION.** This Lease Agreement shall terminate upon expiration of the original term.

(b) **SURRENDER.** Tenant agrees that upon termination of this Lease Agreement it will surrender and deliver the premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Tenant.

(c) **HOLDING OVER.** Continued possession by Tenant, beyond the expiration of its tenancy, coupled with the receipt of the specified rental by the Landlord (and absent a written agreement by both parties for an extension of this lease, or for a new lease) shall constitute a month-to-month extension of the Lease Agreement. Tenant agrees to pay the same amount of rent per month as the last monthly rental payment due under the Lease Agreement, plus an additional twenty-five percent (25%) as additional rent for each month while Tenant remains in possession of the Leased Premises during the hold over period.

(d) **REMOVAL OF FIXTURES.** Tenant may, at the expiration of its tenancy, if Tenant is not in default, remove any fixtures or equipment which Tenant has installed in the premises, subject to Paragraph 7 above, providing Tenant repairs any and all damages caused by

removal.

9. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or sublet the Leased Premises or any part thereof without the Landlord's written permission. Such permission shall not be unreasonably withheld. If Tenant assigns or sublets any portion of the Leased Premises without Landlord's written permission, at the option of the Landlord, the Landlord may make the rental for the balance of the lease term due and payable at once.

10. **REAL ESTATE TAXES.**

A. All installments of real estate taxes for only the real estate being leased by the Tenant, that would become delinquent if not paid during the term of this lease, shall be paid by the parties in the following proportions:

Landlord 100 % Tenant 0%

B. PERSONAL PROPERTY TAXES. Tenant agrees to timely pay all taxes, assessments or other public charges levied or assessed by lawful authority against its personal property on the Leased Premises during the term of this Lease Agreement.

C. SPECIAL ASSESSMENTS. Special assessments that would be delinquent if not paid during the term of this Lease Agreement shall be timely paid by the parties in the following proportions:

Landlord 100% Tenant 0%

11. **INSURANCE.**

A. PROPERTY INSURANCE. Landlord and Tenant agree to insure their respective real and personal property for the full insurable value. Such insurance shall cover losses included in the Insurance Services Official Broad Form Causes of Loss (formerly fire and extended coverage). To the extent permitted by their policies, the Landlord and Tenant waive all rights of recovery against each other.

B. CERTIFICATES OF INSURANCE. Prior to the time the lease takes effect the Tenant will provide the Landlord with a certificate of insurance with these property and liability insurance requirements, such certificate shall include thirty (30) days advance notice of cancellation to the Landlord. A renewal certificate shall be provided prior to expiration of the current policies.

C. ACTS BY TENANT. Tenant will not do or omit doing any act which would invalidate any insurance or increase the insurance rates in force on the premises.

D. RECOMMENDATIONS - IOWA INSURANCE SERVICES OFFICE. Tenant further agrees to comply with recommendations of the Iowa Insurance Services Office and to be liable for and to promptly pay, as if current rental, any increase in insurance rates on said premises and on the building of which said premises are a part, due to increased risks or hazards resulting from Tenant's use of the premises otherwise than as herein contemplated and agreed.

E. Landlord and Tenant shall each provide a copy of this Lease Agreement to their respective insurers.

12. **LIABILITY FOR DAMAGE.** Each party shall be liable to the other for all damage to the property of the other negligently, recklessly or intentionally caused by that party (or their agents, employees or invitees), except to the extent the loss is insured and subrogation is waived under the owner's policy.

13. **INDEMNITY.** Except as provided in paragraph 21(A)(5) and except for the negligence of Landlord, Tenant will protect, defend and indemnify Landlord from and against all loss, costs, damages and expenses occasioned by, or arising out of, any accident or other occurrence, causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises , or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant.

14. **FIRE AND CASUALTY.**

(a) **PARTIAL DESTRUCTION OF PREMISES.** In the event of partial destruction or damage of the premises, which is a business interference which prevents the conducting of a normal business operation and which damage is repairable within thirty (30) days after its occurrence, this Lease Agreement shall not terminate but the rent for the premises shall abate during the time of such business interference. In the event of partial destruction, Landlord or Tenant shall repair such damages within ninety (90) days of its occurrence, unless prevented from doing so by acts of God, government regulations, or other causes beyond Landlord's reasonable control.

(b) **ZONING.** Should the zoning ordinance of the municipality in which this property is located make it impossible for Landlord to repair or rebuild so that Tenant is not able to conduct its business on these premises, then such partial destruction shall be treated as a total destruction as provided in the next paragraph.

(c) **TOTAL DESTRUCTION OF BUSINESS USE.** In the event of destruction or damage of the Leased Premises, including the parking area (if parking area is a part of this lease), so that Tenant is not able to conduct its business on the premises or the then current legal use for which the premises are being used and which damages cannot be repaired within ninety (90) days, this Lease Agreement may be terminated at the option of either the Landlord or

the Tenant. Such termination in such event shall be effected by written notice from one party to the other, within twenty (20) days after such destruction. Tenant shall surrender possession within ten (10) days after such notice issues and each party shall be released from all future obligations, and Tenant shall pay rent pro rata only to the date of such destruction. In the event of such termination of this Lease Agreement, Landlord, at its option, may rebuild or not, at its discretion.

15. **CONDEMNATION.**

(a) **DISPOSITION OF AWARDS.** Should the whole or any part of the Leased Premises be condemned or taken for any public or quasi-public purpose, each party shall be entitled to retain, as its own property, any award payable to it. Or in the event that a single entire award is made on account of the condemnation, each party will then be entitled to take such proportion of said award as may be fair and reasonable.

(b) **DATE OF LEASE TERMINATION.** If the whole of the demised premises shall be condemned or taken, the Landlord shall not be liable to the Tenant except and as its rights are preserved in paragraph 15(a) above.

16. **DEFAULT, NOTICE OF DEFAULT AND REMEDIES.**

EVENTS OF DEFAULT

A. Each of the following shall constitute an event of default by Tenant:

1. Failure to pay monthly lease payments when due under the Lease Agreement.

2. Failure to observe or perform any duties, obligations, agreements or conditions imposed on Tenant pursuant to terms of the Lease Agreement.

3. Abandonment of the premises. "Abandonment" means the Tenant has failed to engage in its usual and customary business activities on the premises for more than fifteen (15) consecutive business days.

4. Institution of voluntary bankruptcy proceedings in which the Court orders relief against the Tenant as a debtor; assignment for the benefit of creditors of the interest of Tenant under this Lease Agreement; appointment of a receiver for the property or affairs of Tenant, where the receivership is not vacated within ten (10) days after the appointment of the receiver.

NOTICE OF DEFAULT

B. Landlord shall give Tenant a written notice specifying the default and giving the Tenant ten (10) days in which to correct the default. If there is a default (other than for nonpayment of a

monetary obligation of Tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of the Tenant, Tenant shall propose an additional period of time in which to remedy the default. Consent to additional time shall not be unreasonably withheld by the Landlord. Landlord shall not be required to give Tenant any more than three (3) notices for the same default within any 365-day period.

REMEDIES

C. In the event Tenant has not remedied a default in a timely manner following a Notice of Default, Landlord may proceed with all available remedies at law or in equity, including, but not limited to, the following:

1. Termination. Landlord may declare this Lease Agreement to be terminated and shall give Tenant a written notice of such termination. In the event of termination of this Lease Agreement, Landlord shall be entitled to prove claim for and obtain judgment against Tenant for the balance of the rent agreed to be paid for the term herein provided, plus all expenses incurred by Landlord in regaining possession of the premises and the reletting thereof, including attorneys' fees and court costs, crediting against such claim, however, any amount obtained by reason of such reletting.

2. Forfeiture. If a default is not remedied in a timely manner, Landlord may then declare this Lease Agreement to be forfeited and shall give the Tenant a written notice of such forfeiture, and may, at the time, give Tenant the Notice to Quit provided for in Chapter 648 of the Iowa Code.

17. **RIGHT OF EITHER PARTY TO MAKE GOOD ANY DEFAULT OF THE OTHER.** If default shall be made by either party in the performance of, or compliance with, any of the terms or conditions of this Lease Agreement, and such default shall have continued for thirty (30) days after written notice thereof from one party to the other, the person aggrieved, in addition to all other remedies now or hereafter provided by law, may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the rate of 9% per annum, from date of advance.

18. **SIGNS.**

(a) Tenant shall have the right and privilege of attaching, painting or exhibiting signs on the Leased Premises, provided only: (1) that any sign shall comply with the ordinances of municipality in which the property is located and the laws of the State of Iowa; (2) such sign shall not change the structure of the building; (3) such sign, if and when removed, shall not damage the building; and (4) such sign shall be subject to the written approval of the Landlord, which approval shall not be unreasonably withheld.

(b) Landlord, during the last ninety (90) days of this Lease Agreement, or extension, shall have the right to maintain in the windows or on the building or on the premises either a "For Rent" or "For Sale" sign or both, and Tenant will permit, at such time, prospective tenants or buyers to enter and examine the premises without notice during normal business hours.

19. **MECHANIC'S LIENS.** Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any mechanic's liens or other lien of any kind or character whatsoever, upon said premises or upon any building or improvement thereon, or upon the leasehold interest of the Tenant, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alterations, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

20. **LANDLORD'S LIEN AND SECURITY INTEREST.**

(a) Landlord shall have, in addition to any lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa, upon all personal property and all substitutions thereof, kept and used on said premises by Tenant. Landlord may proceed at law or in equity with any remedy provided by law or by this Lease Agreement for the recovery of rent, or for termination of this Lease Agreement because of Tenant's default in its performance.

21. **ENVIRONMENTAL.**

A. Landlord. To the best of Landlord's knowledge to date:

1. Neither Landlord nor Landlord's former or present tenants are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

2. Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state and local codes, rules and regulations.

3. No leak, spill release, discharge, emission or disposal of toxic or hazardous substances has occurred on the premises.

4. The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances.

5. Landlord shall assume liability and shall indemnify and hold Tenant harmless against all liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which condition is not a result of actions of the Tenant or which condition arises after date of execution but which is not a result of actions of the Tenant.

B. Tenant. Tenant expressly represents and agrees:

1. During the lease term, Tenant's use of the property will not include the use of any hazardous substance without Tenant first obtaining the written consent of Landlord. Tenant understands and agrees that Landlord's consent is at Landlord's sole option and complete discretion and that such consent may be withheld or may be granted with any conditions or requirements that Landlord deems appropriate.

2. During the lease term, Tenant shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the property by Tenant, and Tenant shall give immediate notice to Landlord of any violation or any potential violation of any environmental regulation, rule, statute or ordinance relating to the use, storage or disposal of any hazardous substance.

3. Tenant, at its sole cost and expense, agrees to remediate, correct or remove from the premises any contamination of the property caused by any hazardous substances which have been used or permitted by Tenant on the premises during any term of this lease. Remediation, correction or removal shall be in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Tenant reserves all rights allowed by law to seek indemnity or contribution from any person, other than Landlord, who is or may be liable for any such cost and expense.

4. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, causes of action, damages, loss, costs, expenses, penalties, fines, lawsuits, liabilities, attorney fees, engineering and consulting fees, arising out of or in any manner connected with hazardous substances, which are caused or created by Tenant on or after the date of this lease and during any term of this lease, including, but not limited to, injury or death to persons or damage to property, and including any diminution of the value of any Leased Premises which may result from the foregoing. This indemnity shall survive the cessation, termination, abandonment or expiration of this Lease Agreement.

22. **SUBSTITUTION OF EQUIPMENT, MERCHANDISE, ETC.**

(a) During its tenancy, the Tenant shall have the right to sell or otherwise dispose of any personal property of the Tenant situated on the premises, when in the judgment of

the Tenant it shall have become obsolete, outworn or unnecessary in connection with the operation of the business on the premises; provided, however, that the Tenant shall, in such instance (unless no substituted article or item is necessary) at its own expense, substitute for such items a new or other item in substitution thereof, in like or greater value. Any sale or disposal of any personal property that is subject to the Asset Purchase Agreement, Promissory Note or Security Agreement shall not release the Tenant's obligation, including all terms and conditions of said Agreements until the Promissory Note is paid in full.

(b) Nothing herein contained shall be construed as denying to Tenant the right to dispose of inventoried merchandise in the ordinary course of the Tenant's trade or business.

23. **RIGHTS CUMULATIVE.** The various rights, powers, options, elections and remedies of either party, provided in this Lease Agreement, shall be construed as cumulative and not one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

24. **NOTICES AND DEMANDS.** Notices as provided for in this Lease Agreement shall be given to the respective parties hereto at the respective addresses designated on page one (1) of this Lease Agreement unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication, such message shall be considered given under the terms of this Lease Agreement when sent, addressed as above designated, postage prepaid, by certified mail deposited in a United States mail box.

Landlord: Side by Side Own, L.L.C.
Attn: Keith Billick
2035 26th Street NW
Cedar Rapids, Iowa 52405

Tenant: City of Hiawatha, Iowa
Attn: City Clerk
101 Emmons Street
Hiawatha, Iowa 52233

25. **PROVISIONS TO BIND AND BENEFIT SUCCESSORS, ASSIGNS, ETC.** Each and every covenant, provision, term and condition contained in this Lease Agreement shall extend to and be binding upon the respective successors, heirs, administrators, executors and assigns of the parties; except that if any part of this Lease Agreement is held in joint tenancy, the successor in interest shall be the surviving joint tenant.

26. **CHANGES TO BE IN WRITING.** None of the covenants, provisions, terms or conditions of this Lease Agreement shall be modified, waived or abandoned, except by a written instrument duly signed by the parties. This Lease Agreement contains the whole agreement of the parties.

27. **CHOICE OF LAW.** Any claim related to this Lease Agreement will be governed by Iowa procedural and substantive law and will be adjudicated in a state or federal court located in Linn County, Iowa.

28. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

29. **ATTORNEY FEES.** The prevailing party in any legal action brought by either the Landlord or the Tenant to enforce any provision or requirement of this Lease Agreement shall be entitled to reasonable attorney fees and costs.

30. **OTHER TERMS.**

A. Landlord and Tenant each agree that there shall be no smoking in the building during the term of this Lease Agreement.

B. Each party signing on behalf of each entity to this Agreement covenants that each party has the authority to enter into this Agreement and the authority to bind the respective party.

DRAFT

SIDE BY SIDE OWN, L.L.C.– LANDLORD

_____

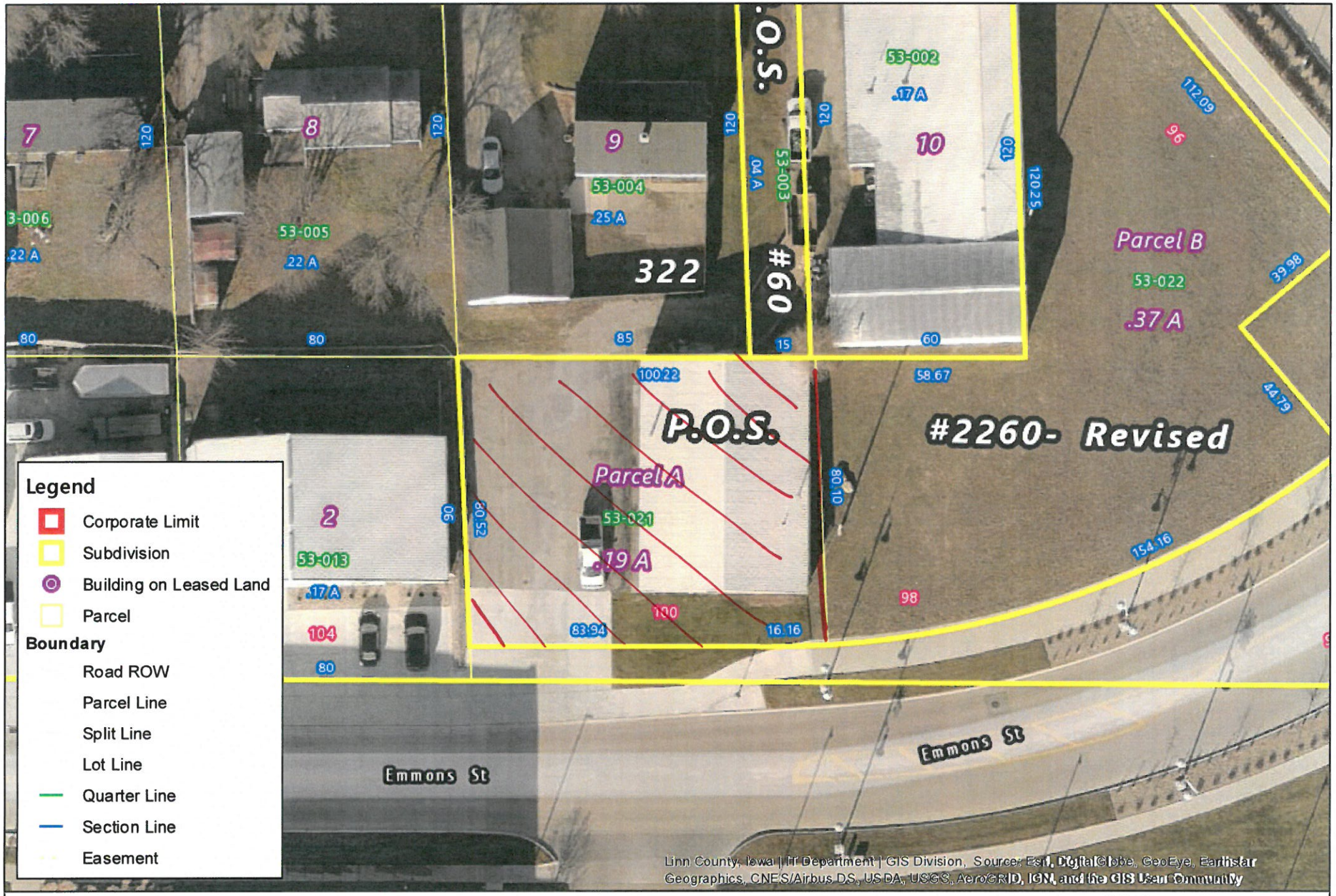
Keith Billick, its Manger/Member

CITY OF HIAWATHA, IOWA – TENANT

_____

Bill Bennett, Mayor

DRAFT



Linn County, Iowa

Linn County, Iowa Land Records

Date Printed: 4/15/2019 2:22:02 PM

N W E S

0 25 50 Feet

1 inch = 47 feet

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