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RESOLUTION NO. 19-
City Council

APPROVING PURCHASE AGREEMENT FOR PROPERTY LOCATED AT 107 N B AVENUE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA approving entering into a purchase agreement for property located at 107 N B Avenue, legally described in the attached Exhibit "A", following the provisions as outlined in the Real Estate Purchase Agreement Exhibit "A" with a purchase price of $4,200.00 and payment as follows: $500.00 to be paid with this Agreement and $3,700.00 to be paid in cash at the time of closing.

AYES:
NAYS:
ABSENT:

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

_____
Bill Bennett, Mayor

ATTEST:

_____
Kari Graber, City Clerk

REAL ESTATE PURCHASE AGREEMENT

TO: **THE ESTATE OF SANDRA BREWER**

The undersigned BUYER hereby offers to buy, and the undersigned SELLER, by its acceptance, agrees to sell a portion of real property locally known as 107 N B Avenue, approximately 27,563 square feet, situated in Hiawatha, Linn County, Iowa, and legally described as follows:

Parcel #: 11333-76011-00000
Parcel #: 11333-76012-00000
Parcel #: 11333-76015-00000
Parcel #: 11333076016-00000

(the "Property"), together with any easements and appurtenant servient estates, but subject to any reasonable easements of record for public utilities or roads, any zoning restrictions, customary restrictive covenants and mineral reservations of record, if any, upon the following terms and conditions. A copy of a Site Plan is attached hereto and marked as Exhibit "A" showing the four (4) lots that make up the Property.

1. **PURCHASE PRICE**. The Purchase Price shall be **$4,200.00,** and the method of payment shall be as follows:

BUYER shall present to SELLER the sum of **Five Hundred Dollars ($500.00)** with this Agreement and $3,700.00 to be paid in cash at the time of closing. This Agreement is not contingent upon BUYER obtaining such funds through bank financing.

2. **REAL ESTATE TAXES**.

A. BUYER shall pay all real estate taxes that are due and payable as of the date of closing and constitute a lien against the Property, including any unpaid real estate taxes for any prior years and all taxes due and payable in the fiscal year in which possession is given.

B. BUYER shall pay its prorated share, based upon the date of possession, of the real estate taxes for the fiscal year in which possession is given (ending June 30, 2019) due and payable in the subsequent fiscal year (commencing July 1, 2020). BUYER agrees to pay any and all real estate taxes through the date of closing.

C.

D. BUYER shall pay, if applicable, all subsequent real estate taxes.

3. **SPECIAL ASSESSMENTS**.

A. SELLER shall pay all special assessments, if any, which are a lien on the Property as of the date of acceptance of this Agreement.

B. All charges for solid waste removal, sewage and maintenance that are attributable to SELLER'S possession, including those for which assessments arise after closing, shall be paid by SELLER.

C. Any preliminary or deficiency assessment which cannot be discharged by payment shall be paid by SELLER through an escrow account with sufficient funds to pay such liens when payable, with any unused funds returned to SELLER.

4. **RISK OF LOSS AND INSURANCE**. SELLER shall bear the risk of loss or damage to the Property prior to closing or possession, whichever first occurs. SELLER agrees to maintain existing insurance and BUYER may purchase additional insurance. In the event of substantial damage or destruction prior to closing, this Agreement shall be null and void; provided, however, BUYER shall have the option to complete the closing and receive insurance proceeds regardless of the extent of damages. The property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the closing date.

5. **POSSESSION AND CLOSING**. If BUYER timely performs all obligations, possession of the Property shall be delivered to BUYER on or before May 15, 2019, or upon mutual agreement of SELLER and BUYER. Closing shall occur after approval of title by BUYER'S attorney and prior to possession by BUYER. If possession is given on a day other than closing, the parties shall make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed upon the filing of title transfer documents and receipt of all funds then due at closing from BUYER under the Agreement.

6. **FIXTURES**. Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached, such as: N/A

7. **CONDITION OF PROPERTY**.

A. The property 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.

B. BUYER shall have the opportunity to inspect the Property prior to executing this Agreement.

8. **ABSTRACT AND TITLE**. BUYER, at its expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement, and deliver it to BUYER'S attorney for examination. It shall show merchantable title in SELLER in conformity with this Agreement, Iowa law, and Title Standards of the Iowa State Bar Association. The SELLER shall make every reasonable effort to promptly perfect title. If closing is delayed due to SELLER'S inability to provide marketable title, this Agreement shall continue in force and

effect until either party rescinds the Agreement after giving ten (10) days written notice to the other party. The abstract shall become the property of BUYER when the purchase price is paid in full. SELLER shall pay the costs of any additional abstracting and title work due to any act or omission of SELLER, including transfers by or the death of SELLER or its assignees.

9. **SURVEY**. BUYER may, at BUYER'S expense prior to closing, have the property surveyed and certified by a Registered Land Surveyor. If the survey shows any encroachment on the Property or if any improvements located on the Property encroach on lands of others, the encroachments shall be treated as a title defect. If the survey is required under Chapter 354, SELLER shall pay the cost thereof.

10. **ENVIRONMENTAL MATTERS**.

A. SELLER warrants, to the best of its knowledge and belief, that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos or urea-formaldehyde foam insulation which require remediation under current governmental standards, and SELLER has done nothing to contaminate the Property with hazardous wastes or substances. SELLER warrants that the Property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. SELLER shall also provide BUYER with a properly executed GROUNDWATER HAZARD STATEMENT showing no wells, private burial sites, solid waste disposal sites, hazardous waste and underground storage tanks on the Property unless disclosed here:

B. BUYER may, at its expense, within twenty (20) days after the date of acceptance, seek to obtain a report from a qualified engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the Property. In the event any hazardous materials, substances, conditions or wastes are discovered on the Property, BUYER'S obligation hereunder shall be contingent upon the removal of such materials, substances, conditions or wastes or other resolution of the matter reasonably satisfactory to BUYER. SELLER shall grant BUYER'S engineer access to the Property for any required inspections and testing. However, in the event SELLER is required to expend any sum in excess of $0.00 to remove any hazardous materials, substances, conditions or wastes, SELLER shall have the option to cancel this transaction and declare this Agreement null and void. The expense of any inspection shall be paid by BUYER. The expense of any action necessary to remove or otherwise make safe any hazardous material, substance, conditions or waste shall be paid by SELLER, subject to SELLER'S right to cancel this transaction as provided above.

11. **DEED**. Upon payment of the purchase price, SELLER shall convey the Property to BUYER by warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. General warranties of title shall extend to the time of delivery of the deed, excepting liens or encumbrances suffered or permitted by BUYER.

12. **JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE**. If SELLER,

immediately preceding acceptance of the offer, holds title to the Property in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the SELLER, then the proceeds of this sale, and any continuing or recaptured rights of SELLER in the Property, shall belong to SELLER as joint tenants with full rights of survivorship and not as tenants in common; and BUYER, in the event of the death of any SELLER, agrees to pay any balance of the price due SELLER under this contract to the surviving SELLER and to accept a deed from the surviving SELLER consistent with Paragraph 15.

13. **JOINDER BY SELLER'S SPOUSE**. SELLER'S spouse, if not a title holder immediately preceding acceptance, executes this agreement only for the purpose of relinquishing all rights of dower, homestead and distributive share or in compliance with Section 561.13 of the Code of Iowa and agrees to execute the deed or real estate contract for this purpose.

14. **STATEMENT AS TO LIENS**. If BUYER intends to assume or take subject to a lien on the Property, SELLER shall furnish BUYER with a written statement prior to closing from the holder of such lien, showing the correct balance due.

15. **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, if any, of others.

16. **REMEDIES OF THE PARTIES**.

A. If BUYER fails to timely perform this Agreement, SELLER may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLER'S option, upon thirty (30) days written notice of intention to accelerate the payment of the entire balance because of BUYER'S default (during which thirty days the default is not corrected), SELLER may declare the entire balance immediately due and payable. Thereafter this agreement may be foreclosed in equity and the Court may appoint a receiver.

B. If SELLER fails to timely perform this Agreement, BUYER has the right to have all payments made returned to it.

C. BUYER and SELLER are also entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

17. **NOTICE**. Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or by certified mail, return receipt requested, addressed to the parties at the addresses given below.

18. **CERTIFICATION**. BUYER and SELLER each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly

on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

19. **GENERAL PROVISIONS**. In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement shall survive the closing. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender according to the context.

20. **ADDITIONAL PROVISIONS**:

A. Closing Documents. BUYER, at its expense, shall prepare the deed, groundwater hazard statement and declaration of value.

B. BUYERS, at its expense, agree to be responsible for removal of all items on the Property. SELLER shall give to BUYER a bill of sale for the mobile home located on the Property.

C. This Agreement is subject to Iowa DHS approval.

21. **ACCEPTANCE**. When accepted, this Agreement shall become a binding contract. If not accepted and delivered to BUYER on or before the _____ day of _____, 2019, this Agreement shall be null and void and all payments made shall be returned immediately to the City of Hiawatha, Attn: City Clerk.

Accepted: _____, 2019

SELLER – ESTATE OF SANDRA BREWER

By: _____
Tammy Northup, Executor

Address: _____

_____

BUYER - CITY OF HIAWATHA, IOWA

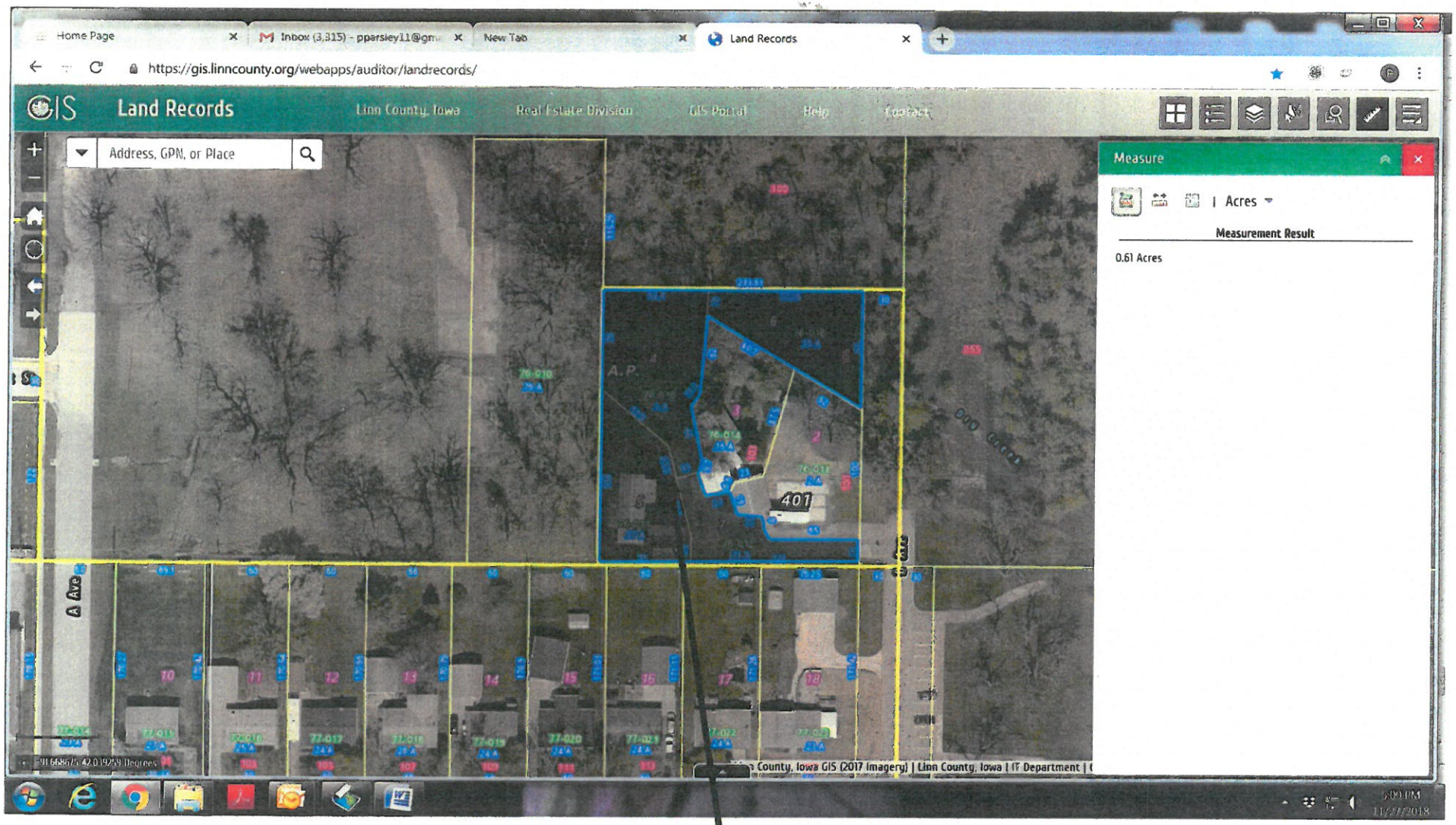
By: _____
William Bennett, its Mayor

Federal ID No.: _____

Address: 101 Emmons Street
Hiawatha, IA 52233

Telephone: (319) 393-1515

DRAFT



The Sandra Brewer property is about .61 acres and includes the highlighted areas.