

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the “Agreement”) is made on or as of the ____ day of _____, 2023, by and between the CITY OF INDIANOLA, IOWA, a municipality (the “City”), established pursuant to the Code of Iowa and acting under the authorization of Chapter 364 and Chapter 403 of the Code of Iowa, 2023, as amended, and THE WARREN COUNTY HISTORICAL SOCIETY, an Iowa non-profit corporation (the “Buyer”).

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Hillcrest/Downtown Unified Urban Renewal Area (the “Urban Renewal Area”); and

WHEREAS, the City is the owner of certain real property located within the foregoing Urban Renewal Area more particularly described as

The North 170’ of the following:

Outlot One Hundred Twenty-two (122) of Auditor’s Plat of Outlots to the City of Indianola, Iowa, subject to easements of record;

AND

Part of Lots 4, 5 and 11, Day’s Outlots, City of Indianola, Iowa described as follows: Beginning at the Northwest corner of said Lot 4, thence East 48.0 feet to the West right-of-way of South J St.; thence South 01°01' East along said right-of-way 501.9 feet to the right-of-way of Highway 92; thence South 64°43' West along said right-of-way 56.2 feet; thence North along the West side of said Lots 11, 5 and 4 a distance of 525.5 feet to the point of beginning. Said tract contains .565 of an acre, more or less, subject to easements of record

(the “Property”); and

WHEREAS, the Plan provides for, among other things, the disposition of properties for development or redevelopment as an urban renewal project; and

WHEREAS, pursuant to a separate Offer to Buyer Real Estate between the City and the Buyer (the “First Offer”), the Buyer has proposed to purchase the remainder of the parcels comprising the Property (the Property being limited to the North 170 feet of the parcels); and

WHEREAS, the Buyer has proposed to purchase the Property from the City, and the City is willing to sell the Property to Buyer under the terms and conditions set forth herein; and

WHEREAS, the City believes that the sale of the Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and in accord with the public purposes of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

1. PROPERTY. The City hereby agrees to sell, and the Buyer agrees to buy, the real property legally described above subject to any (i) zoning restrictions, (ii) appurtenant servient estates, and (iii) easements and restrictive covenants currently of record (the “Property”); provided, however, that Buyer intends to re-zone the property to permit Buyer’s proposed use following Closing.

2. PURCHASE PRICE. The Purchase Price shall be Sixty-Eight Thousand Five Hundred Dollars (\$68,500) (the “Purchase Price”). The Buyer shall pay the Purchase Price as follows: (i) \$3,000 as an earnest money deposit (“Deposit”) upon acceptance of this offer to be payable to and held in trust by the City Clerk of the City of Indianola, Iowa, and (ii) the balance of the Purchase Price paid by cashier’s check or wire transfer at the time of closing with proper adjustments as may be provided in this Agreement.

3. CLOSING AND POSSESSION. Closing shall occur on or before February 15, 2023, or such other date as the parties herein mutually agree in writing (the “Closing Date”). Possession of the Property (“Possession”) shall be delivered to Buyer on the Closing Date. This transaction shall be considered closed upon: (i) the filing of all title transfer documents, and (ii) the City’s receipt of all funds due from the Buyer under this agreement (“Closing”).

4. ABSTRACT AND TITLE; DEED. The Buyer, at its expense, may obtain an abstract of title for the Property. Such abstract shall be delivered to an attorney of Buyer’s choosing for a title opinion for Buyer. Such abstract of title shall show merchantable title in the City in conformity with this Agreement, the land title laws of the State of Iowa and the Iowa Title Standards of the Iowa State Bar Association.

At Closing, the City shall convey the Property to Buyer by special warranty deed; provided, however, that if the Buyer and City have also executed the First Offer, then the City shall only provide a single deed to convey the real estate that is the subject of the First Offer and that is the subject of this Agreement.

5. CLOSING COSTS. At Closing, the City shall pay transfer taxes, recording fees necessary to cure title (consistent with Section 4 of this Agreement), and other fees and expenses normally attributable to sellers of real estate in Iowa and incidental to the City’s sale of the Property, and other such expenses as set forth in the Agreement. At Closing, Buyer shall pay the cost to prepare any abstract under Section 4 of this Agreement, the balance of the Purchase Price, the recording fee to record the deed, and other fees and expenses normally attributable to buyers of real estate in Iowa and incidental to the Buyer’s purchase of the Property. Each party shall be responsible for paying its own attorney fees.

6. USE OF PURCHASE PRICE. The parties agree that at time of settlement, funds of the Purchase Price may be used to pay taxes, other liens, and to acquire outstanding interests, if any, prior to the proceeds being paid to the City.

7. REAL ESTATE TAXES.

a. The City shall pay all real estate taxes that are due and payable as of the Closing Date and constitute a lien against the Property, if any, including any unpaid real estate taxes for any prior years.

b. The City shall pay its pro-rated share, based upon the Closing Date, of the real estate taxes for the fiscal year in which the Closing Date occurs, which are due and payable in the subsequent fiscal year, if any. If there is such a proration, then the Buyer shall be given a credit for such proration at Closing based upon the last known actual real estate taxes payable according to the public record.

c. Buyer (or its permitted successors, assigns, or transferees) shall pay or cause to be paid, when due, all real property taxes payable with respect to all and any parts of the Property acquired and owned by it for periods subsequent to Closing.

8. SPECIAL ASSESSMENTS AND OTHER FEES AGAINST PROPERTY. The City shall pay in full all special assessments that are certified as liens against the Property on the public record at Closing, if any. Any preliminary or deficiency assessments which cannot be discharged by payment shall be paid through an escrow account with sufficient funds to pay such liens when payable with any unused funds returned to the City. All charges for solid waste removal, sewage and assessments for maintenance that are attributable to the City's possession of the Property shall be paid by the City.

9. SURVEY. If a survey is required under Iowa Code Chapter 354, or applicable city or county ordinances, the Buyer shall pay the costs thereof. Buyer may, at Buyer's expense prior to Closing, have the Property surveyed and certified by a Registered Land Surveyor. If any 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.

10. RISK OF LOSS AND INSURANCE. The City shall bear the risk of loss or damage to the Property prior to Closing or Possession, whichever first occurs. The City shall maintain any existing insurance carried by the City on the Property until Closing. Buyer may, at its election, seek additional insurance on the Property. 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 the insurance proceeds payable under City's and Buyer's insurance policies 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.

11. CONDITION OF PROPERTY; INSPECTION.

a. Environmental Matters. The Buyer agrees to take the Property “As Is,” including with respect to environmental matters. Except as specifically set forth in this Agreement, the City makes no warranties or representations as to the condition of the Property. The City and Buyer acknowledge and agree that City has undertaken no investigations with respect to the suitability of the Property for Buyer’s proposed uses, including but not limited to subsurface investigations regarding the soil conditions of the Property. Notwithstanding anything herein to the contrary, Buyer hereby waives all claims against the City as to the condition of the Property. Buyer agrees to indemnify, release, defend, and hold harmless the City for all claims, damages, or costs relating to the Property that arise after the date of Closing.

b. Included Property. Included with the Property shall be all buildings, structures, improvements, and fixtures that integrally belong to, are specifically adapted to, or are a part of the Property, whether attached or detached.

c. Groundwater Hazards. The City represents and warrants to Buyer that there is no known private burial site, well, solid waste disposal site, underground storage tank, hazardous waste, or private sewage disposal system on the Property as described in Iowa Code Section 558.69, and therefore this transaction is exempt from the requirement to submit a groundwater hazard statement.

12. DISCLAIMER OF WARRANTIES.

a. No Reliance. Buyer acknowledges and agrees that (a) any environmental, engineering or other third party report with respect to the Property which is delivered by City to Buyer, if any, shall be for general informational purposes only, (b) Buyer shall not have any right to rely on any such report delivered by City to Buyer, but rather will rely on its own inspections and investigations of the Property and reports commissioned by Buyer with respect thereto, and (c) neither the City, any affiliate of the City, nor the person or entity which prepared any such report delivered by the City to Buyer shall have any liability to Buyer for any inaccuracy in or omission from any such report.

b. Disclaimers. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED HEREIN, IT IS UNDERSTOOD AND AGREED THAT THE CITY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT AT THE CLOSING, THE CITY SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS”. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND THE CITY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY THE CITY, OR THE CITY’S OFFICERS, EMPLOYEES, AND AGENTS, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING. BUYER REPRESENTS TO THE CITY THAT BUYER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE PHYSICAL AND ENVIRONMENTAL

CONDITION THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY. AT THE CLOSING, BUYER SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED THE CITY (AND CITY'S OFFICERS, EMPLOYEES, AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE CITY (AND CITY'S OFFICERS, EMPLOYEES, AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY.

c. Effect and Survival of Disclaimers. The City and Buyer acknowledge that the compensation to be paid to the City for the Property takes into account that the Property is being sold subject to the provisions of this Article. The City and Buyer agree that the provisions of this Article shall survive Closing.

13. REMEDIES OF THE PARTIES.

a. If Buyer breaches, repudiates, or otherwise fails to timely perform this Agreement, then the City may elect to (i) terminate this Agreement by written notice to the Buyer and retain the Deposit, or (ii) to enforce this Agreement by any remedy available to it under law, including specific performance.

b. If the City breaches, repudiates, or otherwise fails to timely perform this Agreement, then the Buyer's sole and exclusive remedy will be to terminate this Agreement by written notice to the City and to recover its actual out-of-pocket expenses associated with this transaction from the City (including, but not limited to, the Deposit).

14. NOTICE. Any notice required or permitted under this Agreement shall be deemed given when it is received in writing by hand delivery, overnight express delivery or certified mail, postage prepaid, return receipt, addressed to the other party at the address listed below, or at such other address or to such other person as such party designates by a written notice to the other party.

If to Seller:
City of Indianola, Iowa
c/o City Clerk
110 N. 1st Street,
Indianola, IA 50125

If to Buyer:
The Warren County Historical Society
c/o President
1300 W. 2nd Ave.,
Indianola, IA 50125

15. GENERAL PROVISIONS.

a. 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.

b. Neither party shall have the right to assign this Agreement without the prior written consent of the other party. This Agreement shall apply to and bind the successors in interest of the parties.

c. The respective agreements, duties, warranties and representations of the parties hereunder shall survive Closing and shall not be merged into the deed or any other agreement or document, unless otherwise specifically agreed, in writing, by the parties.

d. This Agreement contains the entire agreement of the parties and shall not be amended except by a written instrument duly signed by the City and Buyer.

e. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement.

f. 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.

g. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. The parties, by their execution of this Agreement, submit to the jurisdiction of the courts of the State of Iowa.

h. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

i. This Agreement reflects the entire agreement between the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

16. SEVERABILITY. The parties agree that if a dispute between the parties arises out of this Agreement, they would want the court to interpret this Agreement as follows:

- a. With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;
- b. If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of this Agreement will remain in effect;
- c. By holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and
- d. If modifying or disregarding the unenforceable provision would result in failure of

an essential purpose of this agreement, by holding the entire Agreement unenforceable.

17. NO REAL ESTATE AGENT OR BROKER. The City and Buyer each represent and warrant to the other that no brokerage commission, finder's fee or other compensation is due and payable hereunder. The City and Buyer each represent that it knows of no other fee, commission or payment due to any broker, finder, agent or other person or entity, in connection with the transactions contemplated herein. The City and Buyer each, one to the other, indemnify, protect, defend and hold the other harmless from and against all losses, claims, costs, expenses and damages (including but not limited to reasonable attorney fees) resulting from the claims of any broker, finder or other such party claiming by, through or under the acts or agreements of the indemnifying party. The warranties and obligations of the parties pursuant to this paragraph shall survive the termination of this Agreement and the Closing.

18. CERTIFICATION. Buyer and the City 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. To the extent allowed by law, 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 my breach of the foregoing certification.

19. FURTHER ASSURANCES. At or after Closing, the parties shall prepare, execute, and deliver, at their respective expense, such additional instruments and other documents and shall take or cause to be taken such other action as is reasonably requested by the other party at any time or from time to time in order to effectuate and comply with all the terms of this Agreement and the transactions contemplated hereby.

20. COUNTERPART AND ELECTRONIC SIGNATURES. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile and PDF signatures shall be given the same effect as original signatures.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Buyer has caused this Agreement to be duly executed in its name and behalf all on or as of the day first above written.

[Remainder of page intentionally left blank; Signature page follows]

(SEAL)

CITY OF INDIANOLA, IOWA

By: _____
Stephanie Erickson, Mayor

ATTEST:

By: _____
Jackie Raffety, City Clerk

STATE OF IOWA)
) SS
COUNTY OF WARREN)

On this _____ day of _____, 20____, before me a Notary Public in and for said State, personally appeared Stephanie Erickson and Jackie Raffety, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Indianola, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Purchase Agreement – City of Indianola]

THE WARREN COUNTY HISTORICAL SOCIETY, an Iowa non-profit corporation

By: _____
Debbie Sue Larrison, President

STATE OF IOWA)
) SS
COUNTY OF WARREN)

On this _____ day of _____, 20___, before me the undersigned, a Notary Public in and for said State, personally appeared Debbie Sue Larrison to me personally known, who, being by me duly sworn, did say that they are the President of The Warren County Historical Society, and that said instrument was signed on behalf of said corporation; and said officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by them voluntarily executed.

Notary Public in and for said state

[Signature page to Purchase Agreement – Buyer]

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