



City of Omaha  
Jean Stothert, Mayor

RECEIVED

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CITY CLERK  
OMAHA, NEBRASKA

April 29, 2014

Planning Department

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 1100  
Omaha, Nebraska 68183  
(402) 444-5150  
Telefax (402) 444-6140

James R. Thele  
Director

Honorable President

and Members of the City Council,

The attached Resolution transmits the Flatiron Building Tax Increment Financing (TIF) Redevelopment Project Plan located at 1722 St. Mary's Avenue. The project plan contemplates the rehabilitation of the building. The existing ground floor tenants will remain: the Flatiron Café, an upscale restaurant, and The Bath & Tile Company. The project plan contemplates The Bath & Tile Company expanding its square footage; there will be additional square footage on the ground floor for a new commercial tenant. The project plan also proposes the conversion of the office spaces on floors 2 - 4 to provide for 30 new market-rate apartments: 10 residential apartment units per floor. The unit mix is as follows: 3-studios, 24-one bedrooms, and 3-two bedrooms. Basement space will be utilized as tenant storage. Parking, about 30 stalls, will be provided at a surface lot west of the Flatiron, which is also controlled by the ownership of Flatiron Building.

The Redevelopment Project Plan recommends the City's participation in the redevelopment of this project site through the allocation of TIF in an amount up to \$876,000.00 to offset TIF eligible costs such as acquisition, rehabilitation construction costs, site work, architectural and engineering fees and any public improvements as may be necessary, which includes \$15,000.00 of the TIF proceeds/loan toward streetscaping in the area and/or public enhancement improvements at nearby intersections. The total estimated project costs are \$5,033,645.00, but are subject to change as final costs come in.

Your favorable consideration of this Resolution will be appreciated.

Respectfully submitted,

*James R. Thele* 4/14/14  
James R. Thele Date  
Planning Director *Booth*

Referred to City Council for Consideration:

*Jean Stothert* 4/18/14  
Jean Stothert Date  
Mayor's Office

Approved:

*Stephen B. Curtiss* 4/15/14  
Stephen B. Curtiss Date  
Finance Director *vcf*

*Robert G. Stubbe* 4-13-14  
Robert G. Stubbe, P.E. Date  
Public Works Director

2001 dlh

Notice of Publication: May 1, 2014 and May 8, 2014

Public Hearing: May 20, 2014

**INTER-OFFICE COMMUNICATION**  
**City of Omaha, Nebraska**  
**Planning Department**

**TO:** Chairman and Members of the Planning Board

**FROM:** James Thele, Planning Director

**DATE:** March 26, 2014

**SUBJECT:** FLATIRON TIF REDEVELOPMENT PROJECT PLAN  
1722 ST. MARY'S AVENUE  
Case #C3-14-069

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**Project Summary**

This redevelopment project plan envisions a renewal of the Flatiron Building. The Flatiron Building is a four-story, triangular-shaped building located at 1722 St. Mary's Avenue in downtown Omaha.

The Flatiron Hotel Building was constructed in 1911-12, by Augustus F. Kountze, a prominent local banker and landowner, and designed in the Georgian Revival style of architecture. The Flatiron Building in New York City was a symbol of the skyscraper era and considered the nation's first true skyscraper. The architectural style of Omaha building favors the Flatiron Building in New York City, which was constructed around 1903 and designed to "fit" within its triangular-shaped parcel. Omaha's version of this same architectural style was also designed to "fit" within its triangular-shaped parcel. The building was initially designed for commercial and office use, but was adapted to a hotel use two years later and remained a hotel for a long time. The 2<sup>nd</sup> - 4<sup>th</sup> floors were later converted to office use and have remained in that state. The building was added to the National Register of Historic Places on September 21, 1978.

In 1983, TIF was approved on the Flatiron Building solely for the purposes of financing public improvements around the building such as new sidewalks, new curbs, landscaping, diagonal parking along Howard Street, a landscaped plaza at the east corner of the building and other right-of-way improvements. The goal was to enhance the site and help establish it as a strong anchor in the southern section of Downtown Omaha. This TIF redevelopment project plan will allow for rehabilitation to the Flatiron Building itself.

**Project Description**

The ground floor comprises the primary tenants: the Flatiron Café, which is an upscale restaurant that occupies 2,500 square feet; and The Bath & Tile Company, which currently occupies 2601 square feet.

**Commercial Space - 1<sup>st</sup> Floor**

The project plan contemplates keeping the current commercial tenants in their respective spaces on the ground floor. However, the Bath and Tile Company's space will increase another 740 sf. An additional 1,694 square feet of space will be available once the building is complete.

**Residential Space - 2<sup>nd</sup>-4<sup>th</sup> Floors**

The project plan envisions 10 residential apartment units per floor for a total of 30 residential apartment units. The unit mix is as follows: 3-studios; 24-one bedrooms; 3-two bedrooms.

Basement space will be utilized as tenant storage. The developers will provide parking through lease arrangements, about 30 stalls, just west of the building for residential tenants.

# CITY OF OMAHA

## LEGISLATIVE CHAMBER

Omaha, Nebraska

RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

WHEREAS, the primary objectives of the City of Omaha’s Master Plan and Community Development Program are to encourage additional private investment and infill development within inner-city neighborhoods; and to eliminate conditions which are detrimental to public health, safety and welfare, by developing vacant, underutilized property within these neighborhoods; and,

WHEREAS, the redevelopment project site located at 1722 St. Mary’s Avenue is within a community redevelopment area, as the area meets the definition of blighted and substandard per the Community Development law and is in need of redevelopment; and,

WHEREAS, the Flatiron Building Tax Increment Financing (TIF) Redevelopment Project Plan was approved by the TIF Committee and subsequently by the City of Omaha Planning Board at their April 2, 2014 meeting; and,

WHEREAS, the project site for the Flatiron Building Tax Increment Financing (TIF) Redevelopment Project Plan is located at 1722 St. Mary’s Avenue and is legally described in Exhibit “A” which is attached hereto and herein incorporated by reference; and,

WHEREAS, the Flatiron Building Tax Increment Financing (TIF) Redevelopment Project Plan contemplates the rehabilitation of the building including the conversion of the office spaces on floors 2 – 4 to provide for 30 new market-rate apartments and parking at a surface parking lot to the west of the building as described in Exhibit “B” attached hereto and herein incorporated by reference, and;

WHEREAS, the Flatiron Building Tax Increment Financing (TIF) Redevelopment Project Plan recommends City’s participation in the redevelopment of this project site through the allocation of TIF in an amount up to \$876,000.00 to offset TIF eligible costs such as acquisition, rehabilitation construction costs, site work, architectural and engineering fees and any public improvements as may be necessary, which includes \$15,000.00 of the TIF proceeds/loan toward streetscaping in the area and/or public enhancement improvements at nearby intersections for a project with total estimated costs of \$5,033,645.00; and,

By.....  
Councilmember

Adopted.....

.....  
City Clerk

Approved.....  
Mayor

# CITY OF OMAHA

LEGISLATIVE CHAMBER

Omaha, Nebraska

Page 2

WHEREAS, the Plan presents a project based on estimated figures and projections that are subject to change as project costs are finalized, and is required to comply with all Planning Department requirements and Planning Board recommendations; and,

WHEREAS, Section 18-2108 of the Nebraska Revised Statutes requires the City of Omaha to adopt a redevelopment plan before taking an active part in a redevelopment project; including the division of ad valorem taxes for a period not to exceed fifteen years under Sections 18-2147 through 18-2150, Revised Statutes of Nebraska; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

THAT, the attached Flatiron Building Tax Increment Financing (TIF) Redevelopment Project Plan located at 1722 St. Mary's Avenue which contemplates the rehabilitation of the building including the conversion of the office spaces on floors 2 – 4 to provide for 30 new market-rate apartments and parking at a surface parking lot to the west of the building, recommending the City's participation through the allocation of TIF in an amount up to \$876,000.00 to offset TIF eligible costs such as acquisition, rehabilitation construction costs, site work, architectural and engineering fees and any public improvements as may be necessary, which includes \$15,000.00 of the TIF proceeds/loan toward streetscaping in the area and/or public enhancement improvements at nearby intersections, but is subject to change as final costs come in, containing a provision for the division of ad valorem taxes under Section 18-2147 through 18-2150, Revised Statutes of Nebraska, as recommended by the City Planning Department, be and hereby is approved.

APPROVED AS TO FORM:

  
Deputy CITY ATTORNEY      4/14/14  
DATE

2001 dlh

By.....  
Councilmember

Adopted.....

.....  
City Clerk

Approved.....  
Mayor

**INTER-OFFICE COMMUNICATION**  
**City of Omaha, Nebraska**  
**Planning Department**

**TO:** Chairman and Members of the Planning Board

**FROM:** James Thele, Planning Director

**DATE:** March 26, 2014

**SUBJECT:** FLATIRON TIF REDEVELOPMENT PROJECT PLAN  
1722 ST. MARY'S AVENUE  
Case #C3-14-069

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In 1983, TIF was approved on the Flatiron Building solely for the purposes of financing public improvements around the building such as new sidewalks, new curbs, landscaping, diagonal parking along Howard Street, a landscaped plaza at the east corner of the building and other right-of-way improvements. The goal was to enhance the site and help establish it as a strong anchor in the southern section of Downtown Omaha. This TIF redevelopment project plan will allow for rehabilitation to the Flatiron Building itself.

**Project Description**

The ground floor comprises the primary tenants: the Flatiron Café, which is an upscale restaurant that occupies 2,500 square feet; and The Bath & Tile Company, which currently occupies 2601 square feet.

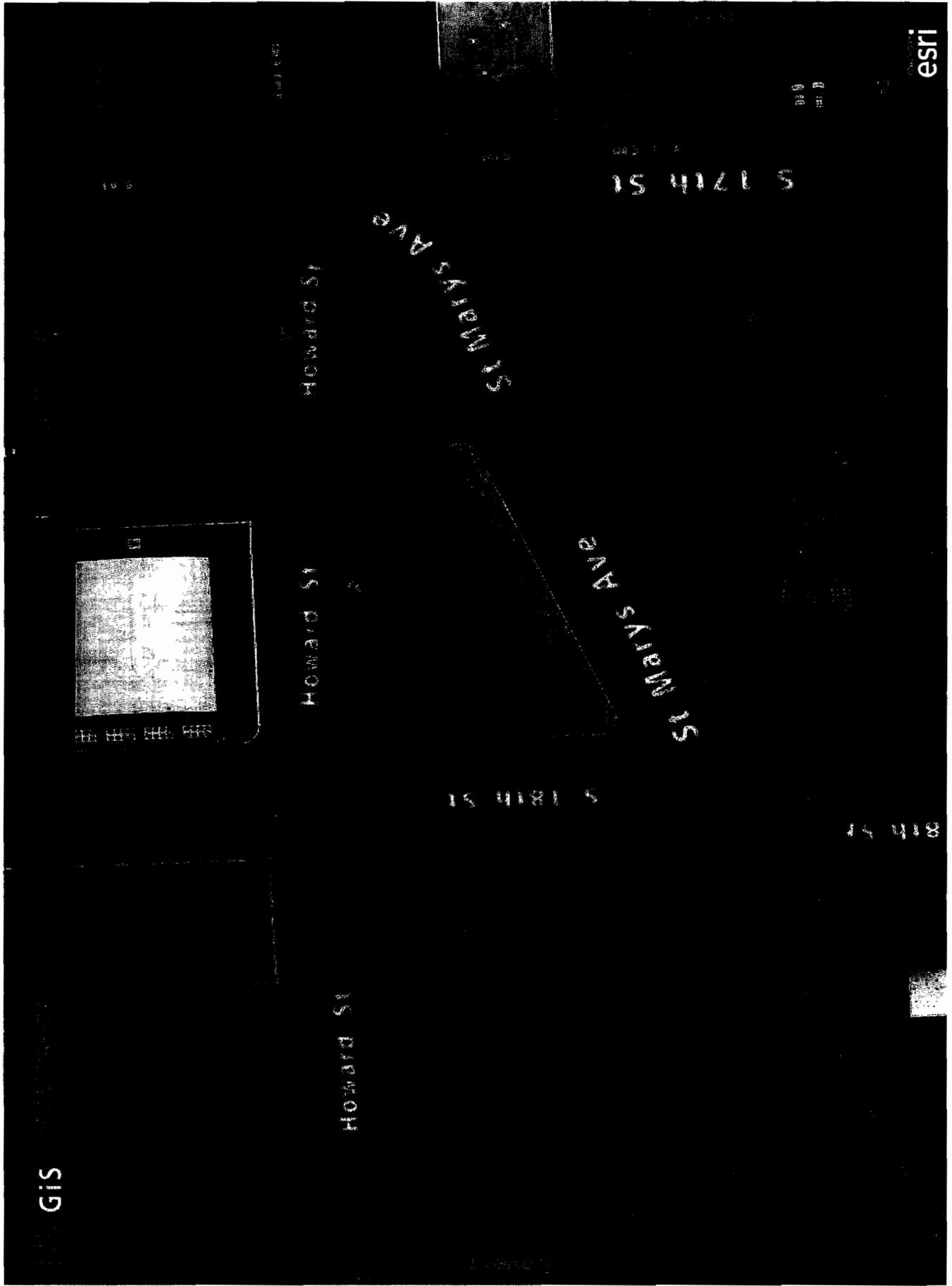
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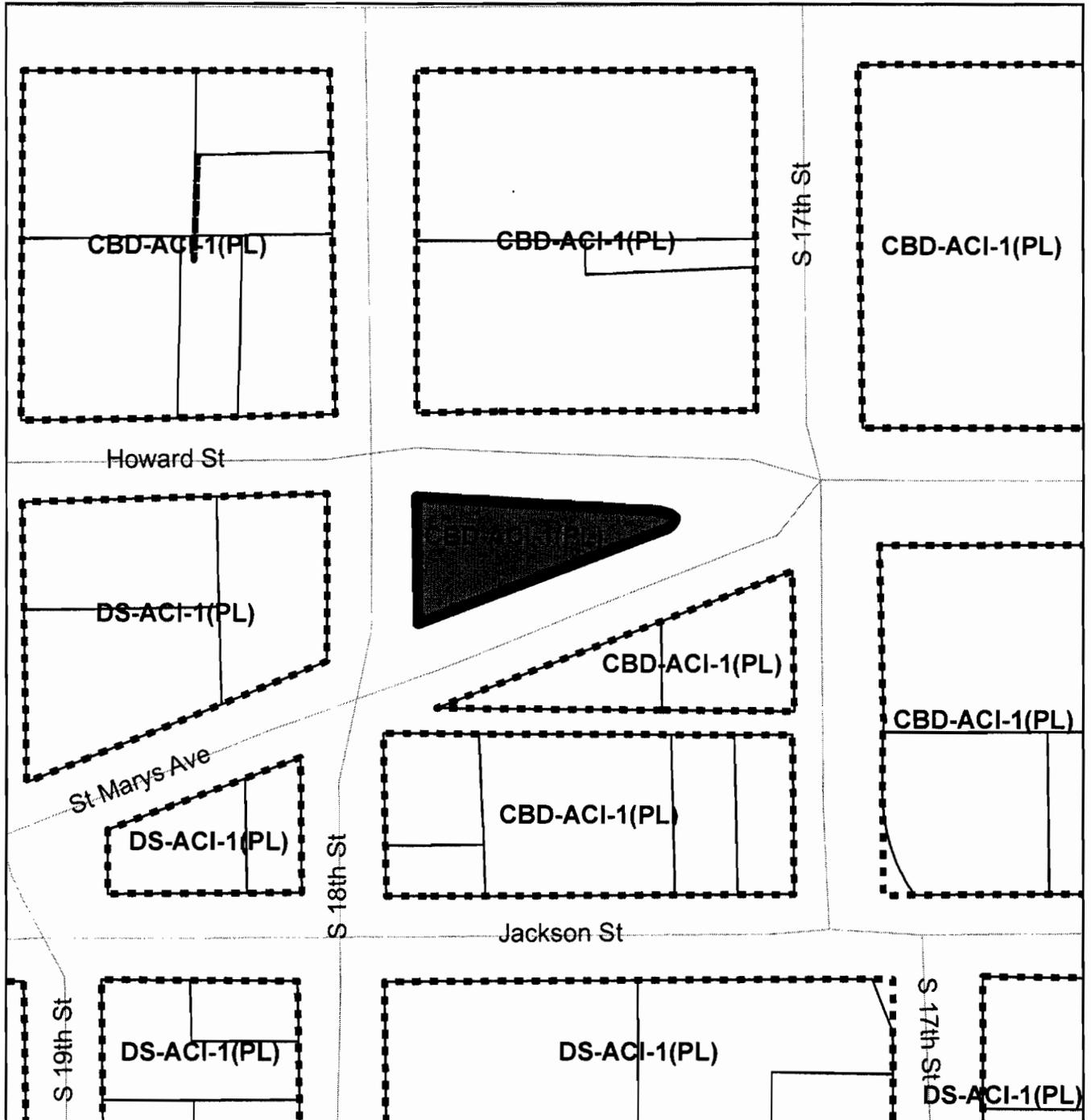
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CASE: C3-14-069  
APPLICANT: Planning Department on behalf of the City of Omaha  
REQUEST: Approval of the FLATIRON TIF REDEVELOPMENT PROJECT PLAN  
LOCATION: 1722 St. Mary's Avenue

SUBJECT AREA IS SHADED - APRIL 2014



## INTER-OFFICE COMMUNICATION

**Date:** March 17, 2014

**To:** TIF Committee:  
James Thele, Stephen Curtiss, AL Herink, Paul Kratz, Robert Stubbe,  
Todd Pfitzer, Cassie Seagren, Gail Braun

**From:** Bridget A. Hadley - City Planning

**Applicant:** City of Omaha Planning Department

**Project Name:** Flatiron Building TIF Redevelopment Project Plan

**Location:** 1722 St. Mary's Avenue

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Basement space will be utilized as tenant storage. The developers will provide parking through lease arrangements, about 30 stalls, just west of the building for residential tenants.

The project is anticipated to be completed by spring 2015.

### **Project Finance Summary - Sources & Uses**

<b>Sources of Funds</b>	
Owner Equity*	\$ 343,332.00
Other Financing – Dundee Bank , 4.75%	\$3,204,191.00
Historic Tax Credits – Dundee Bank , 4.5%	\$610,122.00
Tax Increment Financing*	\$876,000.00
<b>Total Sources of Funds</b>	<b>\$5,033,645.00</b>
<b>Uses of Funds</b>	
Acquisition of Land and Building	\$1,200,000.000
Site Prep and Construction Costs	\$2,955,567.00
Architectural & Engineering Fees	\$219,945.00
Contingency & Tenant Improvement	\$360,656.70
Other Project Costs	\$297,476.30
<b>Total Uses of Funds</b>	<b>\$5,033,645.00</b>

**\*Note: There is a need for \$876,000.00 in TIF proceeds. The bank requires a TIF note of \$876,000 in order to issue a note for \$744,000.00; the difference of \$132,000.00 will be self-financed by the developer, i.e. additional equity that the developer must contribute.**

### **Land Use and Zoning**

The building's most current use accommodates a mix of uses: commercial retail on the ground floor and offices on the top floors. The project plan proposes keeping the current commercial uses on the ground floor, but converting the top office floors to residential uses: apartment units.

The property is zoned CBD; no changes to zoning.

### **Utilities and Public Improvements**

Basic utilities (electrical, water, sewer) exist at the site.

Basic streetscaping improvements such as street trees may be required. The TIF contribution will go toward a bike path which is to be installed along St. Mary's Avenue this year.

**Transportation**

No transportation issues.

**Cost Benefit Analysis – (from the TIF application)**

1. No tax shifts result from the approval of the use of funds pursuant to Section 18-2147 because the City of Omaha will continue to receive tax revenue on the base value for the Property.
2. The Property currently is served with sufficient public infrastructure.
3. The Project will provide a residential option for employers and employees of firms locating or expanding in the area of the redevelopment project.
4. The Project will provide a residential option for employers and employees within the city of Omaha and the immediate area that are located outside of the boundaries of the area of the redevelopment project.

This redevelopment project benefits the City of Omaha because it redevelops a largely vacant historic property.

**TIF Justification**

The project site is located within a Community Redevelopment Area, meets the requirements of Nebraska Community Development Law and qualifies for the submission of an application for the utilization of Tax Increment Financing to cover costs associated with project development as submitted for approval through the Tax Increment Financing process. The project is/or will be in compliance with the Master Plan, appropriate Ordinances and development regulations of the City.

This redevelopment project plan will help continue revitalization efforts and re-investment near the southern edge of the downtown core by preserving and re-purposing a historic building, and by utilizing vacant space for residential purposes. Ultimately, this project plan will enhance the tax base for various taxing jurisdictions. This project will be required to comply with all Planning Department and Planning Board recommendations.

TIF will be used to offset TIF eligible costs such as acquisition, rehabilitation construction costs, site work, architectural and engineering fees and any public improvements as may be necessary. We will request \$15,000.00 of the TIF proceeds/loan toward streetscaping in the area, or public enhancement improvements at the corner of Howard St. and St. Marys Avenue, or public enhancement improvements at nearby intersections, and/or toward a bike path which is to be installed along St. Mary's Avenue later this year. The total estimated project costs are \$5,033,645.00. TIF Eligible costs are as follows:

Land & Building Acquisition	\$1,200,000.00
Site Prep and Construction Costs	\$2,955,567.00
Contingency	\$ 295,556.70
<u>Architectural &amp; Engineering</u>	<u>\$ 219,945.00</u>
Total	\$4,671,068.70

TIF Fees	\$ 9,140.00
Total TIF Eligible	\$4,680,208.70

The TIF is 17.4% of the total project costs.

**Request:** The TIF request is for up to \$876,000.00, inclusive of capitalized interest; at an interest rate of 4.5%. Using the current levy rate of 2.19974% and other assumptions of the TIF calculation spreadsheet supports the TIF request, inclusive of capitalized interest. See attached TIF calculation spreadsheet(s).

**TIF Fee Schedule:** 500.00 application fee was paid; the processing fee of \$3,000.00 will be collected; \$5,640.00 in administrative fees. Total fees will be \$9,140.00.

**Recommendation:** Approval

#### **ATTACHMENTS**

TIF Application

TIF Calculation Spreadsheet

Applicant: Flatiron

PRO FORMA

DATE	Total Taxable Valuation	Less Pre-Development Base	TIF Taxable Valuation	Tax Levy	Tax Revenues	Treasurer's 1% Collection Fee	Revenues Available For TIF Loan	Debt Service Payments		Total	Loan Balance	Capitalized Interest	Interest at 4.50%
								Principal	Interest at 4.50%				
0													
0.5	\$	\$	\$	2.19974	\$	\$	\$	\$	\$	\$	\$810,000	\$	\$
1	\$	\$	\$	2.19974	\$	\$	\$	\$	\$	\$	\$828,225	\$	\$
1.5	\$	\$	\$	2.19974	\$	\$	\$	\$	\$	\$	\$846,860	\$	\$
2	\$	\$	\$	2.19974	\$	\$	\$	\$	\$	\$	\$865,914	\$	\$
2.5	\$	\$	\$	2.19974	\$	\$	\$	\$	\$	\$	\$885,397	\$	\$
3	\$	\$	\$	2.19974	\$	\$	\$	\$26,493	\$19,921	\$46,414	\$858,904	\$	\$
3.5	\$	\$	\$	2.19974	\$	\$	\$	\$27,089	\$19,325	\$46,414	\$831,815	\$	\$
4	\$	\$	\$	2.19974	\$	\$	\$	\$27,698	\$18,716	\$46,414	\$804,117	\$	\$
4.5	\$	\$	\$	2.19974	\$	\$	\$	\$28,321	\$18,093	\$46,414	\$775,796	\$	\$
5	\$	\$	\$	2.19974	\$	\$	\$	\$28,959	\$17,455	\$46,414	\$746,837	\$	\$
5.5	\$	\$	\$	2.19974	\$	\$	\$	\$29,610	\$16,804	\$46,414	\$717,227	\$	\$
6	\$	\$	\$	2.19974	\$	\$	\$	\$30,276	\$16,138	\$46,414	\$686,951	\$	\$
6.5	\$	\$	\$	2.19974	\$	\$	\$	\$30,958	\$15,456	\$46,414	\$655,993	\$	\$
7	\$	\$	\$	2.19974	\$	\$	\$	\$31,654	\$14,760	\$46,414	\$624,339	\$	\$
7.5	\$	\$	\$	2.19974	\$	\$	\$	\$32,366	\$14,048	\$46,414	\$591,973	\$	\$
8	\$	\$	\$	2.19974	\$	\$	\$	\$33,095	\$13,319	\$46,414	\$558,878	\$	\$
8.5	\$	\$	\$	2.19974	\$	\$	\$	\$33,839	\$12,575	\$46,414	\$525,039	\$	\$
9	\$	\$	\$	2.19974	\$	\$	\$	\$34,601	\$11,813	\$46,414	\$490,438	\$	\$
9.5	\$	\$	\$	2.19974	\$	\$	\$	\$35,379	\$11,035	\$46,414	\$455,059	\$	\$
10	\$	\$	\$	2.19974	\$	\$	\$	\$36,175	\$10,239	\$46,414	\$418,884	\$	\$
10.5	\$	\$	\$	2.19974	\$	\$	\$	\$36,989	\$9,425	\$46,414	\$381,895	\$	\$
11	\$	\$	\$	2.19974	\$	\$	\$	\$37,821	\$8,593	\$46,414	\$344,074	\$	\$
11.5	\$	\$	\$	2.19974	\$	\$	\$	\$38,672	\$7,742	\$46,414	\$305,402	\$	\$
12	\$	\$	\$	2.19974	\$	\$	\$	\$39,542	\$6,872	\$46,414	\$265,860	\$	\$
12.5	\$	\$	\$	2.19974	\$	\$	\$	\$40,432	\$5,982	\$46,414	\$225,428	\$	\$
13	\$	\$	\$	2.19974	\$	\$	\$	\$41,342	\$5,072	\$46,414	\$184,086	\$	\$
13.5	\$	\$	\$	2.19974	\$	\$	\$	\$42,272	\$4,142	\$46,414	\$141,814	\$	\$
14	\$	\$	\$	2.19974	\$	\$	\$	\$43,223	\$3,191	\$46,414	\$98,591	\$	\$
14.5	\$	\$	\$	2.19974	\$	\$	\$	\$44,196	\$2,218	\$46,414	\$54,395	\$	\$
15	\$	\$	\$	2.19974	\$	\$	\$	\$45,190	\$1,224	\$46,414	\$9,205	\$	\$
15	\$	\$	\$	2.19974	\$	\$	\$	\$46,207	\$207	\$46,414	\$0	\$	\$
					\$1,218,958	\$12,194	\$1,206,764	\$922,399	\$284,365	\$1,206,764	\$75,397	\$75,397	\$

ASSUMPTIONS: (F9 = calculate)

1. Assume No Pre-Development Base
2. Loan Amount: \$810,000
3. Interest Rate: 4.50%
4. Project Hard Costs: \$4,736,169
5. Increment Base: \$4,262,552

NOTE: This information is provided to assist in analyzing the specific request to the TIF committee. This information is subject to change based on actual tax assessments. This schedule assumes a 90% real estate valuation and a 1.0 debt coverage ratio. The actual TIF amount available to fund site specific project cost will change based on the cost of public improvements.

Annual Incremental Tax Payment \$ 93,766

APPLICATION OF  
FLATIRON HOTEL, LLC  
TO CITY OF OMAHA  
FOR TAX INCREMENT FINANCING  
FOR REDEVELOPMENT OF  
THE FLATIRON BUILDING  
1722 ST. MARY'S AVENUE  
OMAHA, NEBRASKA

**Applicant:**

Flatiron Hotel, LLC  
c/o Mr. James Thorburn  
Mr. Royce Maynard  
11506 Nicholas St., #200  
Omaha, NE 68154  
(402) 934-2900

**Prepared and Submitted by:**

Daniel D. Walsh  
Walsh Law, P.C., L.L.O.  
11605 Miracle Hills Drive, Suite 205  
Omaha, NE 68154  
(402) 697-1161

And

Andrea Kathol  
Field Day Development  
1516 Cuming Street  
Omaha, NE 68102  
(402) 215-6759

## TIF APPLICATION

### (Executive Summary)

**Project Name: The Flatiron Building**

<b>Project legal description:</b> Lot 8, in Block 1, in E. KOUNTZE ADD., Omaha, with a triangular parcel (for complete legal description see page 1 of Exhibit A	<b>Project Address:</b> 1722 St. Mary's Av
<b>Property Owner/Applicant Name:</b> Flatiron Hotel, LLC	<b>Owner Address:</b> 11506 Nicholas St., #200 Omaha, NE 68154
<b>Estimated Total Project Cost:</b> <b>\$5,033,645</b>	<b>TIF Request and/or Amount of Redevelopment Note:</b> <b>\$876,000</b>
<b>New Construction: No</b>  <b>Rehabilitation: Yes</b>	<b>Proposed Project Size: 12,070 sq.ft.</b> <b>Gross Square Feet: 9,370 sq.ft.</b> <b>Net Square Feet:</b> <b>Number of Acres: .27</b> <b>Lot/Parcel Size: 12,070 sq.ft.</b>
<b>LIHTC Project: No</b>	
<b>Market Rate Project: Yes</b>	
<b>Historic Tax Credit Project: Yes</b>	
<b>Current Use:</b> <b>Commercial/Office</b>	<b>Proposed Use:</b> <b>Commercial/Residential</b>
<b>Current Zoning:</b> CBD-ACI-1 (PL)	<b>Proposed Zoning:</b> CBD-ACI-1 (PL)
<b>Current Annual Real Estate Taxes:</b> <b>2013 Tax Year: \$19,726</b>	
<b>Current Assessed Tax Valuation</b> <b>2013 Tax Year</b> <b>Land: \$93,100.00</b> <b>Improvement: \$831,400.00</b> <b>Total: \$924,500.00</b>	

## Application Requirements

**A. Project Description.** The Applicant proposes to substantially rehabilitate the Flatiron Building, provided it is able to obtain approval of TIF from the City of Omaha.

1. **Background and History of the Property.** The Flatiron Building is a four-story, triangular-shaped building located at 1722 St. Mary's Avenue in downtown Omaha on a triangular shaped piece of property that is legally described on the attached Exhibit A, and a survey of the Flatiron Building is attached hereto as page 2 of Exhibit A. The Flatiron Hotel Building was constructed in 1911-12, by Augustus F. Kountze, a prominent local banker and landowner. The building was initially designed for commercial/office use, but was adapted to a hotel two years later and remained a hotel for a long time. The building was added to the National Register of Historic Places on September 21, 1978, and a copy of the Nomination/Approval Form to the National Register of Historic Places for the Flatiron Hotel building that was obtained from the Nebraska State Historical Society is attached hereto marked as Exhibit B and incorporated herein by this reference.
2. **Current Zoning and Use of Property.** The Flatiron Building is zoned CBD-ACI-1 (PL). The first floor has commercial uses, currently has two tenants: the Flatiron Café, which is an upscale restaurant that occupies 2,500 square feet; and The Bath & Tile Company, which currently occupies 2601 square feet. The second floor is completely vacant. Floors 3 and 4 are currently configured for office uses, and Floors 3 and 4 will be completely vacant by May 1, 2014.
3. **Narrative Description of Rehabilitation Project.**
  - a. **First Floor Commercial Use.** The Applicant's plan for rehabilitation includes retaining the first floor commercial use and retaining both of the current commercial tenants. The Flatiron Café will continue to occupy Suite 100 that is depicted on page 1 of the attached Exhibit C. The Bath & Tile Company's space shall increase another 740 square feet once the rehabilitation has been completed, so that The Bath & Tile Company will occupy Suite 105 (which is its current space) and Suite 120 (which is the additional space that it will occupy). An additional 1,694 square feet of space will be available once the building is complete, which is shown as Suite 110 on page 1 of Exhibit C.
  - b. **Residential Uses for Floors Two through Four.** The Applicant's plan also includes modifying floors two through four into residential market rate apartments. Applicant's plan envisions 10 residential apartment units per floor for a total of 30 residential apartment units. The floor plan for the second floor, which was prepared by the Applicant's architectural firm of Holland Basham Architects, is attached hereto as page 2 of Exhibit C and incorporated herein by this reference. The floor plan for the second floor will be utilized for floors three and four. The unit mix is as follows: 3-studios; 24-

one bedrooms; 3-two bedrooms. Thirty parking stalls are provided for the residential tenants just west of the building through lease. The current available basement will be used as a utility area for the building and for tenant storage. The Flatiron Café will continue to use the part of the basement that it currently uses.

4. **Information Regarding Applicant and Development Team Members.** The Applicant was formed specifically for the acquisition, rehabilitation and operation of The Flatiron Building. The Applicant is comprised of an entity in which Mr. James M. Thorburn and Mr. Royce Maynard are involved. Mr. Thorburn and Mr. Maynard are principals in Dicon Corp., the contractor for this Project, and they have substantial construction, development and redevelopment experience that involves TIF. The architectural firm of Holland Basham Architects will provide the architectural services for this Project. Dicon Corp will be the contractor for this Project, and Seldin Company will be providing the management services for this Project.

The Flatiron Building is located within the downtown area that has been declared to be substandard and blighted by the City of Omaha based upon the “Blighted Area Map” attached to the City of Omaha’s Tax Increment Financing Guidelines.

**B. Development Financing Plan.** The Applicant’s development financing plan, which includes a sources and uses of funds, a current estimated project cost, and a TIF Necessity Analysis, is attached hereto marked as Exhibit D and incorporated herein by this reference.

**C. A Preliminary Loan Commitment.** A copy of the Applicant’s preliminary loan commitment is attached hereto as Exhibit E.

**D. Project Costs.** See Exhibit D.

**E. Statement and Demonstration that The Project Would Not Proceed Without TIF.** This development will not be viable without TIF. See the TIF Needs Analysis that is part of Exhibit D.

**F. Evaluation Criteria**

**Mandatory Criteria.** This project meets the following mandatory criteria that are set forth in Omaha’s TIF policy:

1. The Property is located in a an area designated as a community redevelopment area, as defined by the Community Development Law for areas that meet the substandard and blight definition, and therefore this Proposed Redevelopment Project (hereafter “the Project”) meets the first mandatory criteria.
2. The use of TIF for the project will not result in the loss of preexisting tax revenue to the City and other taxing jurisdictions. The Property will continue to generate property taxes on the base value of \$924,500. Therefore, this Project meets the second mandatory criteria.

3. This Project would not be economically feasible in Omaha without the use of Tax Increment Financing, the “But for” test, as demonstrated on page 3 of Exhibit D. Therefore, this Project meets the third mandatory criteria.
4. This Project is consistent with and furthers the objectives of the City’s Comprehensive Plan, including but not limited to the following: (1) strengthen the CBD as the city’s image center; (2) preserve and protect unique natural and historic features which serve as a foundation for Omaha’s overall image; (3) preserve and promote the city’s physical, ethnic and cultural heritage by preserving historic structures; (4) reverse deterioration in older areas of the central city; and (5) encourage private investment. Therefore, this Project meets the fourth mandatory criteria.

Therefore, this Project meets all of the mandatory criteria.

**G. Preliminary Concept for Project.** See the floor plans attached as Exhibit C.

**H. Development Schedule.** The Applicant anticipates that the project will be completed within 12-18 months after commencement of construction. Applicant desires to commence construction in May, 2014. A development schedule is attached as Exhibit F.

**I. TIF Eligible Improvements.** The Applicant proposes to use the TIF proceeds to defray the costs of any public improvements that are expressly agreed to in the written Redevelopment Agreement between the Applicant and the City of Omaha, as well as to defray the substantial costs of rehabilitation of the Building and all other TIF eligible expenses.

**J. Cost – Benefit Analysis**

1. No tax shifts result from the approval of the use of funds pursuant to Section 18-2147 because the City of Omaha will continue to receive tax revenue on the base value for the Property.
2. The Property currently is served with sufficient public infrastructure.
3. The Project will provide a residential option for employers and employees of firms locating or expanding in the area of the redevelopment project.
4. The Project will provide a residential option for employers and employees within the city of Omaha and the immediate area that are located outside of the boundaries of the area of the redevelopment project.
5. This redevelopment project benefits the City of Omaha because it redevelops a largely vacant historic property.

**K. Corporation Documents.** The Applicant was formed as a Nebraska limited liability company on September 13, 2013. Attached hereto marked as Exhibit G is a true and correct copy of the Certificate of Organization for the Applicant that was filed in the Office of the Secretary of State for the State of Nebraska on September 13, 2013. Also attached hereto as Exhibit G is (1) a copy of the Operating Agreement for the Applicant and (2) a copy of the

Applicant's unanimous consent that indicates that either James M. Thorburn or Royce Maynard, as Manager of the Applicant, will be executing the Redevelopment Agreement on behalf of the Applicant if approved by the City of Omaha.

**L. Financial Statements.** Since the Applicant was formed solely for this project, the Applicant does not have an audited financial statement.

**M. Construction Budget.** Attached hereto as Exhibit H is a construction budget.

**N. Pro Forma.** Page 2 of Exhibit D sets forth a 3 year pro forma.

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NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES  
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SEE INSTRUCTIONS IN HOW TO COMPLETE NATIONAL REGISTER FORMS  
TYPE ALL ENTRIES -- COMPLETE APPLICABLE SECTIONS

1 NAME

HISTORIC

AND/OR COMMON

Flatiron Hotel

2 LOCATION

STREET & NUMBER

1722 St. Mary's Avenue

NOT FOR PUBLICATION

CITY, TOWN

Omaha

CONGRESSIONAL DISTRICT

Second

STATE

Nebraska

VICINITY OF

CODE

031

COUNTY

Douglas

CODE

055

3 CLASSIFICATION

CATEGORY	OWNERSHIP	STATUS	PRESENT USE
<input type="checkbox"/> DISTRICT	<input type="checkbox"/> PUBLIC	<input checked="" type="checkbox"/> OCCUPIED	<input type="checkbox"/> AGRICULTURE
<input checked="" type="checkbox"/> BUILDING(S)	<input checked="" type="checkbox"/> PRIVATE	<input type="checkbox"/> UNOCCUPIED	<input checked="" type="checkbox"/> COMMERCIAL
<input type="checkbox"/> STRUCTURE	<input type="checkbox"/> BOTH	<input type="checkbox"/> WORK IN PROGRESS	<input type="checkbox"/> EDUCATIONAL
<input type="checkbox"/> SITE	<b>PUBLIC ACQUISITION</b>	<b>ACCESSIBLE</b>	<input type="checkbox"/> ENTERTAINMENT
<input type="checkbox"/> OBJECT	<input type="checkbox"/> IN PROCESS	<input type="checkbox"/> YES: RESTRICTED	<input type="checkbox"/> GOVERNMENT
	<input type="checkbox"/> BEING CONSIDERED	<input checked="" type="checkbox"/> YES: UNRESTRICTED	<input type="checkbox"/> INDUSTRIAL
		<input type="checkbox"/> NO	<input type="checkbox"/> MILITARY
			<input type="checkbox"/> MUSEUM
			<input type="checkbox"/> PARK
			<input type="checkbox"/> PRIVATE RESIDENCE
			<input type="checkbox"/> RELIGIOUS
			<input type="checkbox"/> SCIENTIFIC
			<input type="checkbox"/> TRANSPORTATION
			<input type="checkbox"/> OTHER:

4 OWNER OF PROPERTY

NAME

Union Casualty Underwriters

STREET & NUMBER

100 Aquila Court

CITY, TOWN

Omaha

VICINITY OF

STATE

Nebraska

5 LOCATION OF LEGAL DESCRIPTION

COURTHOUSE,  
REGISTRY OF DEEDS, ETC.

Register of Deeds, Omaha/Douglas Civic Center

STREET & NUMBER

1819 Farnam Street

CITY, TOWN

Omaha

STATE

Nebraska

6 REPRESENTATION IN EXISTING SURVEYS

TITLE

Omaha City Architecture

DATE

1977

FEDERAL STATE COUNTY LOCAL

DEPOSITORY FOR  
SURVEY RECORDS

Cynthia Schneider, 314 North 67 Street

CITY, TOWN

Omaha

STATE

Nebraska

EXHIBIT

B

## 7 DESCRIPTION

CONDITION		CHECK ONE	CHECK ONE
<input type="checkbox"/> EXCELLENT	<input type="checkbox"/> DETERIORATED	<input type="checkbox"/> UNALTERED	<input checked="" type="checkbox"/> ORIGINAL SITE
<input checked="" type="checkbox"/> GOOD	<input type="checkbox"/> RUINS	<input checked="" type="checkbox"/> ALTERED	<input type="checkbox"/> MOVED    DATE _____
<input type="checkbox"/> FAIR	<input type="checkbox"/> UNEXPOSED		

---

### DESCRIBE THE PRESENT AND ORIGINAL (IF KNOWN) PHYSICAL APPEARANCE

The triangular-shaped Flatiron Hotel is located in downtown Omaha on a block bounded by 18th Street, Howard Street, and St. Mary's Avenue, prominently displayed to the westbound traffic on the arterial St. Mary's Avenue (see photo #6). Augustus F. Kountze, prominent local banker and land-owner, had the building erected in 1911-12 for commercial/office use. Within two years it was adapted into a hotel by Payne & Slater, local realtors.

The steel frame structure faced with brick and limestone trim was designed in the Georgian Revival style with symmetrical facades and simple detailing. The main entrance is placed in the center of the St. Mary's Avenue side. The wall above the entrance projects slightly as was typical of the style and topped by a wall cornice, frieze, and metal railing. The cut-stone lintels, keystones, and skewbacks and corbelled brick and metal cornice are prominent features of the facades. The circular corner tower is strategically placed at the apex of the triangle and is high-lighted by elongated brick châfnes and the stone antepagment around the second story window with its iron balustrade above the console-supported sill.

The main floor plan, divided into several rental units, is presently rather complicated in internal arrangement. The original condition is not presently known. The original entrance from St. Mary's Avenue presently leads to a small lobby with access to a finely detailed curved stairway which occupies a triangular-shaped space at the center of the building. Above, the plan becomes more coherent. Suites and rooms occupy the perimeter of the building. Access is via the triangularly arranged hallway which surrounds the triangular stairway, adjacent light-court and three interior rooms. A double-loaded hallway extends from the apex of the triangular hall to provide access to the acute corner of the building.

The first floor frontage originally had large glass windows with transoms separated by piers; however, it has been remodeled several times. The main entrance has also been altered and the Howard Street entrance was added in 1948 (see photo #2).

The Flatiron has been operated as a hotel to the present day by several different owners. Rehabilitation as an apartment house is currently being planned.

# 8 SIGNIFICANCE

PERIOD	AREAS OF SIGNIFICANCE -- CHECK AND JUSTIFY BELOW			
<input type="checkbox"/> PREHISTORIC	<input type="checkbox"/> ARCHEOLOGY-PREHISTORIC	<input type="checkbox"/> COMMUNITY PLANNING	<input type="checkbox"/> LANDSCAPE ARCHITECTURE	<input type="checkbox"/> RELIGION
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> ARCHEOLOGY-HISTORIC	<input type="checkbox"/> CONSERVATION	<input type="checkbox"/> LAW	<input type="checkbox"/> SCIENCE
<input type="checkbox"/> 1500-1599	<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> ECONOMICS	<input type="checkbox"/> LITERATURE	<input type="checkbox"/> SCULPTURE
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> ARCHITECTURE	<input type="checkbox"/> EDUCATION	<input type="checkbox"/> MILITARY	<input type="checkbox"/> SOCIAL/HUMANITARIAN
<input type="checkbox"/> 1700-1799	<input type="checkbox"/> ART	<input type="checkbox"/> ENGINEERING	<input type="checkbox"/> MUSIC	<input type="checkbox"/> THEATER
<input type="checkbox"/> 1800-1899	<input checked="" type="checkbox"/> COMMERCE	<input type="checkbox"/> EXPLORATION/SETTLEMENT	<input type="checkbox"/> PHILOSOPHY	<input type="checkbox"/> TRANSPORTATION
<input checked="" type="checkbox"/> 1900-	<input type="checkbox"/> COMMUNICATIONS	<input type="checkbox"/> INDUSTRY	<input type="checkbox"/> POLITICS/GOVERNMENT	<input type="checkbox"/> OTHER (SPECIFY)
		<input type="checkbox"/> INVENTION		

SPECIFIC DATES      1911-12; 1913-14      ~~BUILDER~~/ARCHITECT      George B. Prinz, Omaha

## STATEMENT OF SIGNIFICANCE

The major significance of the Flatiron Hotel lies in its unique contours in the Omaha streetscape. The Flatiron took advantage of the unusual-shaped site to create a three-sided landmark in downtown Omaha. A triangular block is most unusual in Omaha which was platted on a grid plan and no other building in the city has used a triangular site as dramatically as this. St. Mary's Avenue is the only street which cuts diagonally through downtown. For several blocks east of the hotel, the Flatiron dominates the two street views.

Architect George B. Prinz has more or less applied the Georgian Revival style to the exterior with the symmetrical facade on the St. Mary's Avenue facade, slightly projecting wall surface at the entrance and the trim. An Ohio native, George B. Prinz (1864-1946) was educated at M.I.T., possibly where he met Thomas R. Kimball of Omaha as a fellow student, and studied for two years in Europe. Prinz moved to Omaha in 1891 to work for Kimball who was starting an architectural practice. Thomas R. Kimball was Omaha's most prominent architect (see Omaha Public Library, Douglas County and Hall County Courthouse, NRHP). Prinz began his own firm in 1909 and practiced until 1940.

Augustus F. Kountze, the original owner of the building, was a member of one of the most prominent banking families in Omaha. Kountze Brothers banking office was opened in 1857 by his father Herman and his four brothers. The banking office is now First National Bank. The Kountze Brothers were extensive land owners in the city, Nebraska, Iowa, and Minnesota. The land on which the hotel stands was platted by Augustus Kountze, his uncle. The Kountze Brothers also organized banks in Denver, Cheyenne and New York and Augustus F. and his two brothers were the owners and managers of the New York bank after the death of the first generation.



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CONTINUATION SHEET Bibliography      ITEM NUMBER 9      PAGE 2

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Landmarks, Inc. file on Flatiron Hotel. MS. filed with Cynthia Schneider 314 N. 67 Street, Omaha, Nebraska.

Omaha World-Herald, Nov. 30, 1946, page 18, George B. Prinz obituary.

Sanborn-Perris Map Co., Insurance Maps of Omaha, Nebraska, New York, 1887, 1890, 1905.

Sorenson, Alfred. The Story of Omaha from Pioneer Days to the Present Times. Omaha: National Printing Company, 1923.

Votava, Benjamin A., A.I.A., Omaha, Nebraska. Measured Drawings, December 22, 1977.

Whiffen, Marcus. American Architecture Since 1780. Cambridge, Mass.: M.I.T. Press, 1969.

The following 6 photos by James Abdo, Omaha, 1978. Negatives filed with Benjamin A. Votava, AIA, Barker Building, Omaha, Nebraska.



Photo 1. view to the northwest

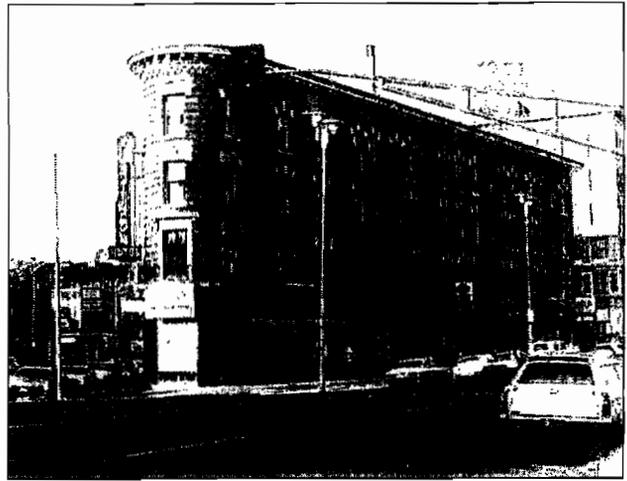


Photo 2. view to the southwest

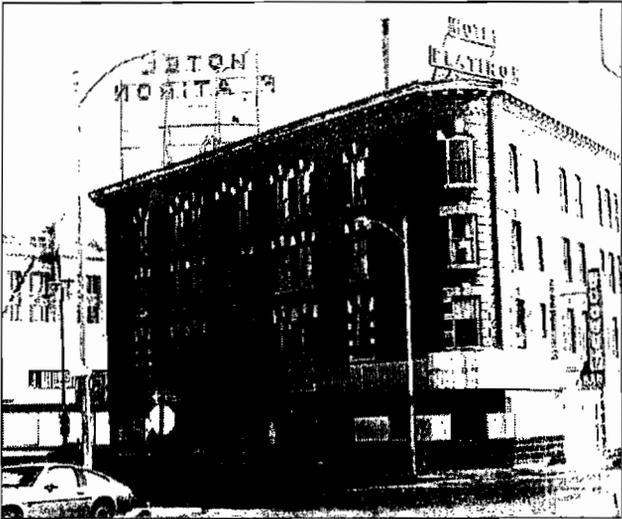


Photo 3. view to the northeast



Photo 4. detail of southeast corner, view to the north

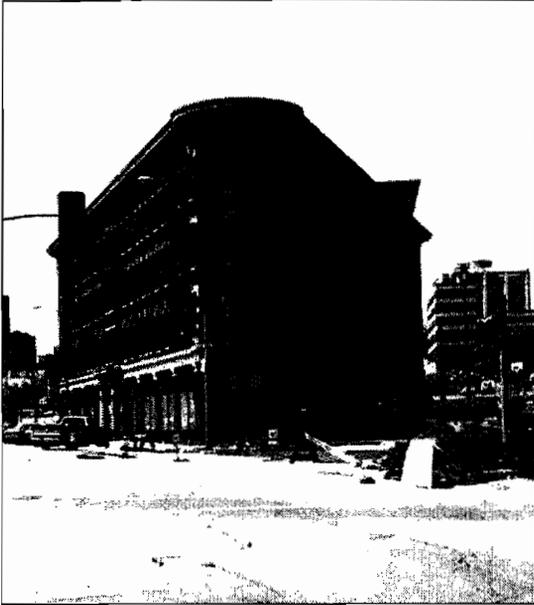


Photo 5. detail of south wall, view to the north

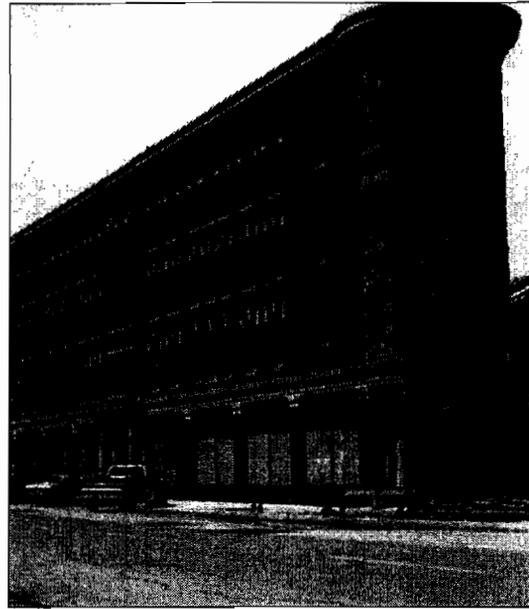


Photo 6. view to the west

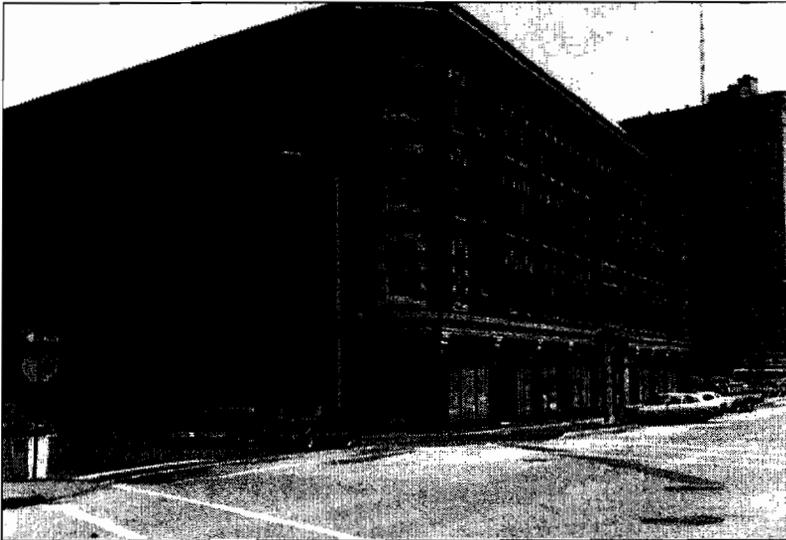
1983 photos. Photographer unknown.



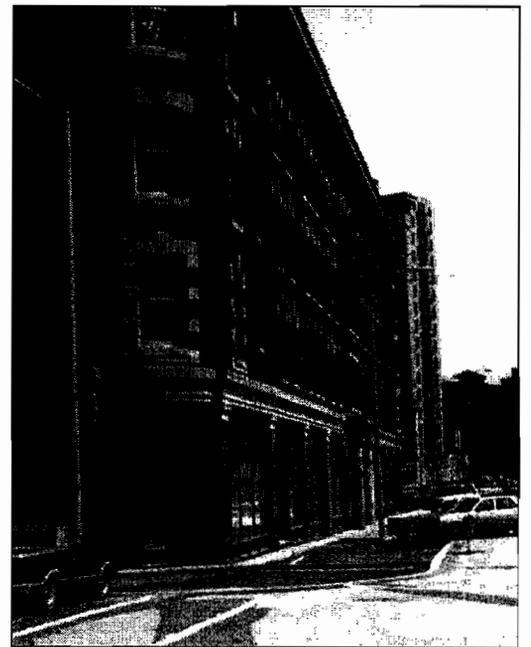
View looking west



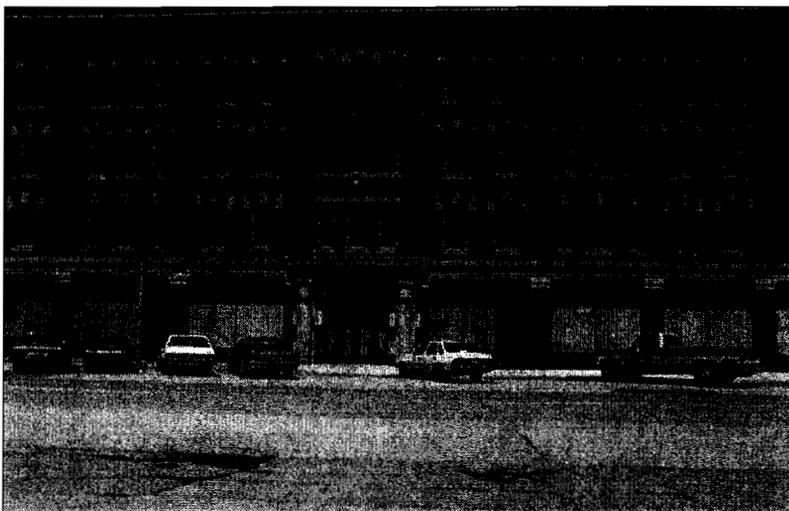
View looking northwest



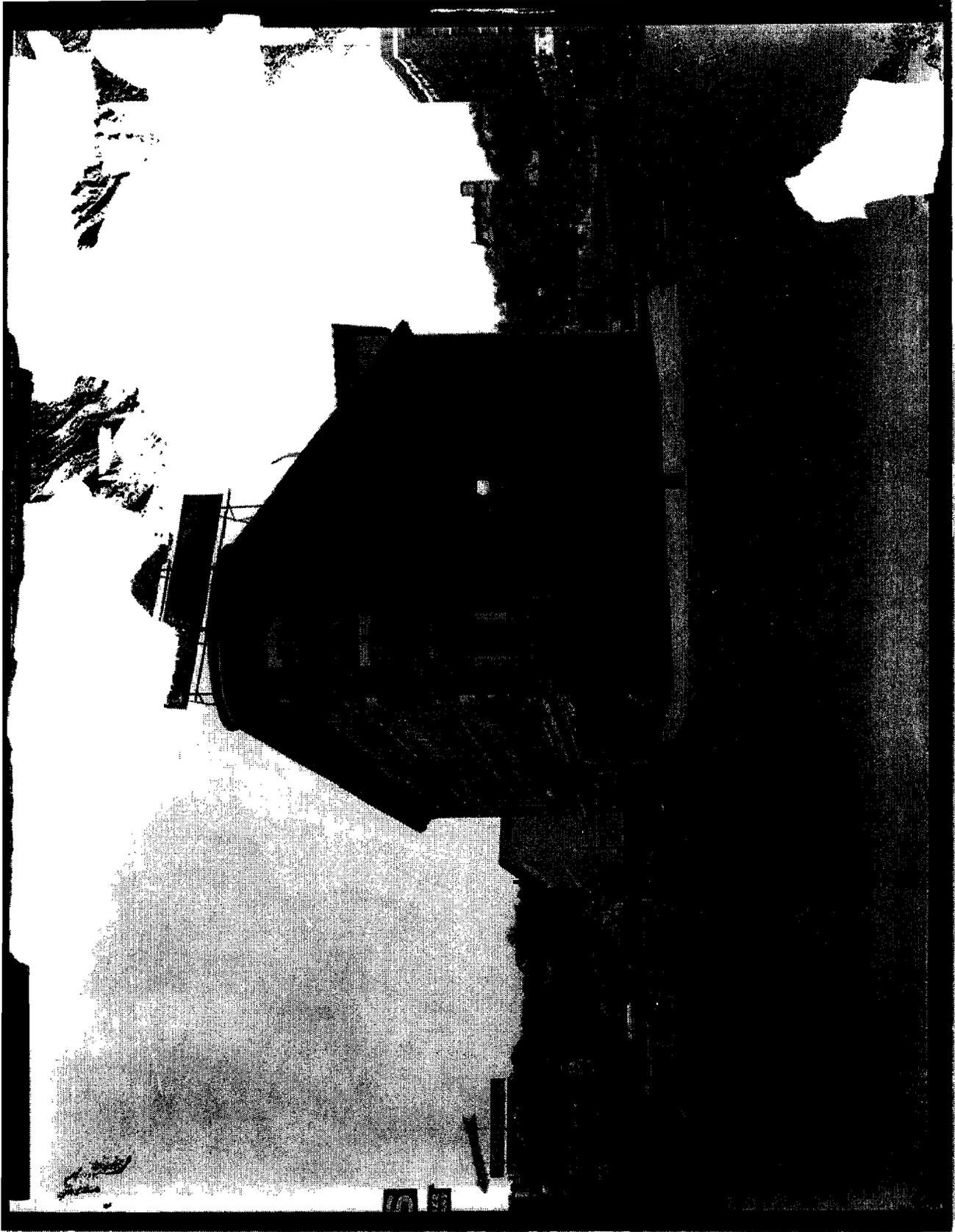
West facade



Storefronts, west end



South facade



Historic view from the Nebraska State Historical Society Dewell Collection—uncat. June 1983.

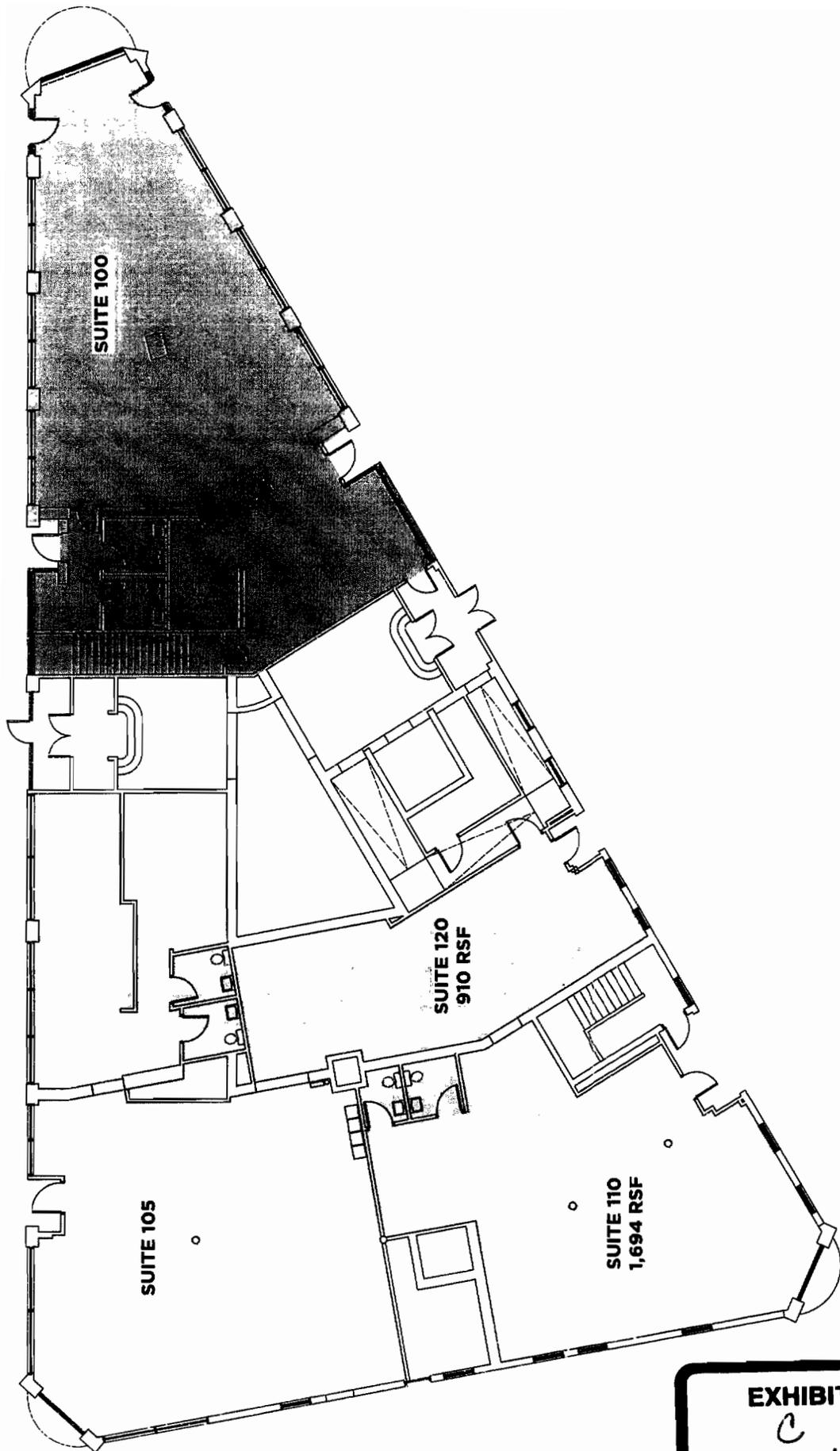


EXHIBIT  
C  
page 1



EXHIBIT D (page 1)

DEVELOPMENT FINANCING PLAN, INCLUDING SOURCES AND  
USES OF FUNDS - FLATIRON BUILDING

PROJECT USES

Acquisition cost of Land and Building	\$ 1,200,000.00	
Site Prep and Construction Costs	\$ 2,955,567.00	
Architectural and Engineering Fees	\$ 219,945.00	
Contingency @ 10% of hard costs	\$ 295,556.70	
Tenant Improvements (commercial)	\$ 65,100.00	
TOTAL ELIGIBLE PROJECT COSTS		\$4,736,168.70

Other project costs		
Interest, financing costs, insurance	\$ 197,476.30	
Professional/developer fees	\$ 100,000.00	
TOTAL "OTHER" PROJECT COSTS		\$ 297,476.30

TOTAL USES		<u>\$5,033,645.00</u>
------------	--	-----------------------

SOURCES OF FUNDS

TIF Loan*	\$ 744,000.00	
Permanent Financing (estimated)	\$ 3,204,191.00	
Owner Equity	\$ 475,332.00	
Historic Equity	\$ 610,122.00	

\*Assumes a Redevelopment Note in principal amount of at least  
\$876,000

TOTAL SOURCES		<u>\$ 5,033,645.00</u>
---------------	--	------------------------

## EXHIBIT D (page 2)

PROJECTED INCOME AND  
OPERATING EXPENSES -  
FLATIRON BUILDING

ITEM/DESCRIPTION	\$ psf	Per Year		
		2015	2016	2017
<b>INCOME</b>				
Residential	\$1.62	\$ 390,600	\$ 398,412	\$ 406,380
Commercial	\$13.97	\$ 107,647	\$ 109,800	\$ 111,996
Other Income		\$ 38,880	\$ 39,658	\$ 40,451
Gross Income		\$ 537,127	\$ 547,870	\$ 558,827
Less: Vacancy		\$ 24,559	\$ 25,050	\$ 25,551
NET Income Collected		\$ 512,568	\$ 522,819	\$ 533,276
<b>Annual Operating Expenses</b>				
Management Fee		\$ 26,856	\$ 27,662	\$ 28,492
Snow/landscaping		\$ 6,260	\$ 6,448	\$ 6,641
Utilities		\$ 12,000	\$ 12,360	\$ 12,731
Trash		\$ 1,800	\$ 1,854	\$ 1,910
Maintenance?Repairs		\$ 21,485	\$ 22,130	\$ 22,793
Cleaning		\$ 12,650	\$ 13,030	\$ 13,420
Real Estate Taxes		\$ 118,714	\$ 122,275	\$ 125,944
Insurance		\$ 20,000	\$ 20,600	\$ 21,218
Subtotal		\$ 219,765	\$ 226,358	\$ 233,149
NOI		\$ 292,803	\$ 296,461	\$ 300,127
P&I		\$ 248,475	\$ 248,475	\$ 248,475
Cash Flow		\$ 44,328	\$ 47,986	\$ 51,652
DSC Ratio		\$ 1.18	\$ 1.19	\$ 1.21

EXHIBIT D (page 3)

TIF IMPACT ON FINANCIAL PRO FORMA - THE FLATIRON

Annual Operating Income (Net)

	<u>Without TIF</u>	<u>With TIF</u>
Amount Financed	\$ 3,948,191.00	\$ 3,204,191.00
Net Operating Income (from above)	\$ 290,214.00	\$ 290,214.00
Annual Debt Service @ 20 year amortization @ 4.75%	\$ 306,170.00	\$ 248,475.00
Annual cash flow	\$ (15,956.00)	\$ 41,739.00
Debt Coverage Ratio*	\$ 0.95	\$ 1.17
ROI (annual)*	-3%	9%

\*Without TIF, debt service coverate is insufficient to obtain a loan and the return on invested equity is likewise inadequate to attract investors.



dundee bank

February 21, 2014

Flatiron Hotel, LLC  
Attn: Messrs James Thorburn and Royce Maynard  
11506 Nicholas St. Suite 100  
Omaha, NE 68154

RE: Construction Financing Loan  
Flatiron Building, 1722 St. Mary's Avenue  
Omaha, Nebraska 68102

Messrs Thorburn and Maynard,

Please accept this letter as formal notice of loan approval that Dundee Bank, a Branch of Security State Bank is willing to provide Flatiron Hotel, LLC and the subject property at 1722 St. Mary's Avenue a Tax Increment Financing Loan in the amount of no more than \$744,000 or 85% of the TIF Note with the City of Omaha. This loan shall have an interest rate of 4.5% fixed for three years and Wall Street Prime plus 1.00% with a floor of 4.50% thereafter for a period of no more than 15 years. The loan amount, interest rate and all other terms of the loan are subject to final approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'Pat Zach'.

Patrick Zach

EXHIBIT

E

Page 1 of 2



dundee bank

February 21, 2014

Flatiron Hotel, LLC  
Attn: Messrs James Thorburn and Royce Maynard  
11506 Nicholas St. Suite 100  
Omaha, NE 68154

RE: Construction Financing Loan  
Flatiron Building, 1722 St. Mary's Avenue  
Omaha, Nebraska 68102

Messrs Thorburn and Maynard,

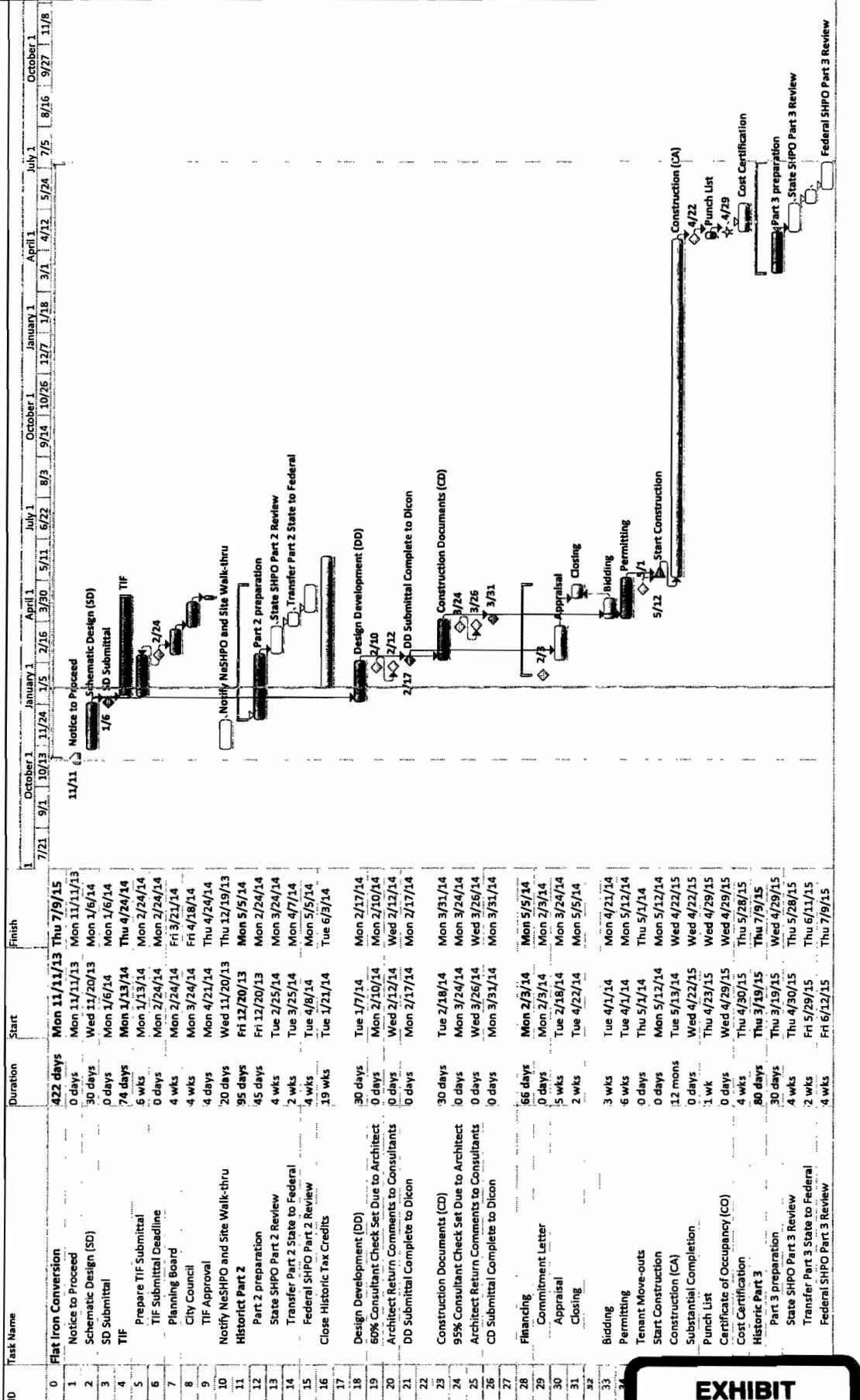
Please accept this letter as formal notice of loan approval that Dundee Bank, a Branch of Security State Bank is willing to provide Flatiron Hotel, LLC and the subject property at 1722 St. Mary's Avenue a Construction Line of Credit in the amount of no more than \$3,200,000 or 75% of the "subject to completion" appraised value of the Subject Property. This loan shall have an interest rate of 4.75%. The loan and its terms are subject to final approval.

Respectfully,

Patrick Zach



Exhibit E  
Page 2 of 2



**EXHIBIT**  
F

Project: Flat Iron Conversion  
 Date: Tue 1/21/14  
 HBA: Dicon  
 Historic: City of Omaha  
 Split: Milestone  
 Summary: Project Summary  
 External Tasks: External Milestone  
 Deadline: Progress  
 Tue 1/21/14

# CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY

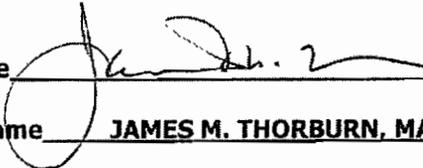
1. The name of the Limited Liability Company is: **FLATIRON HOTEL, LLC**
2. The complete street and mailing addresses of the initial designated/principal office:  
**11506 NICHOLAS STREET, SUITE 100, OMAHA, NE 68154**
3. The name and complete address of the registered agent:  
**MICHAEL C. CARTER, 11506 NICHOLAS STREET, SUITE 103, OMAHA, NE 68154**
4. The name and address of at least one member or manager of the limited liability company:

Name:	Address:
<u>JAMES M. THORBURN</u>	<u>11506 NICHOLAS ST. SUITE 100, OMAHA, NE 68154</u>
_____	_____
_____	_____

5. Mailing address for future correspondence (annual report notices):  
**MICHAEL C. CARTER, 11506 NICHOLAS STREET, SUITE 103, OMAHA, NE 68154**

6. Future effective date of filing (optional):

Signature of a manager, member or authorized person.

Signature 

Typed Name JAMES M. THORBURN, MANAGER

Signature \_\_\_\_\_

Typed Name: \_\_\_\_\_



## **OPERATING AGREEMENT**

**OF**

**FLATIRON HOTEL, LLC**

**I.**

### **Management**

1.1 **Management Board.** The Members of the Company hereby vest the management of the Company with a Management Board, which shall have sole power and authority to conduct the affairs of the Company except to the extent management powers are expressly reserved to the Members by this Operating Agreement, the Certificate of Organization or the Nebraska Uniform Limited Liability Company Act, Neb. Rev. Stat. §§21-101 *et seq.* (the "Act") (RULLCA). The Management Board shall be comprised of one or more Managers, who shall be elected at the annual meeting of the Members by the affirmative vote of a majority of interest of the Members. Each Manager shall be elected for a term of one year and shall serve until his or her successor is duly elected or, if earlier, until such Manager's death, resignation or removal.

1.2 **Liabilities of Managers.** In carrying out their duties hereunder, the Manager shall not be liable to the Company or to any Member for any actions taken in good faith and reasonably believed by them to be in the best interest of the Company or in reliance on the provisions of this Operating Agreement or the Certificate of Organization, or for good faith errors of judgment, but shall only be liable for wilful misconduct or gross negligence in the performance of their duties as Managers. The Managers shall not be expected to devote their full time and attention to the affairs of the Company, but shall devote such amounts of time and attention as are reasonable and appropriate in their good faith judgment under the circumstance prevailing from time to time.

1.3 **Contracting Authority.** The Company shall not enter into any contracts, agreements, documents, instruments, notes, deeds, mortgages, deeds of trust, or other documents of conveyance or indebtedness, except upon the affirmative vote of a majority of the Managers at a duly convened meeting of the Management board at which a quorum is present. No Manager shall take any action on behalf of the Company or otherwise bind the Company except upon the affirmative vote of a majority of the Managers at a duly convened meeting of the Management Board at which a quorum is present.

1.4 **Competing Ventures.** Each of the Members understands that a Manager, Member or their affiliates may have other business activities which will take the major part of the Manager's, Member's or their affiliates' time devoted to business matters. Accordingly, a Manager, Member or their affiliates shall not be bound to devote any substantial portion of his time to the affairs of the Company, but shall devote such time and attention to the Company's business as may be required for him to fulfill the Manager's duties to the Company. During the continuance of this Operating Agreement, a Manager, Member or their affiliates may: (i) engage in any activity whether or not in direct competition with the Company for such Manager's, Member's or their affiliates' own profit and advantage without the consent of any Member, or the Company; or (ii) possess an interest in any other business venture of any nature or description independently or with others regardless of whether such is in direct competition with the Company. Neither the Company nor any Member, Member or their affiliates shall have any right by virtue of this Agreement in and to any Manager's separate business venture or to the income or profits derived therefrom.

**II.**  
**Meetings**

2.1 **Meetings of Members.** Meetings of Members of the Company may be called by any Manager or Member and shall be held at the principal place of business of the Company, or elsewhere as the notice of such meeting shall direct. A majority in interest of the Members shall constitute a quorum for purposes of transacting business. Members may attend any such meeting in person, by proxy, or by telephonic or video conference call. Except as otherwise provided in this Operating Agreement, the Certificate of Organization, or the Act, the vote of a majority in interest of the Members present at a duly convened meeting of the Members at which a quorum is present shall constitute the act of the Members.

2.2 **Meetings of the Management Board.** Meetings of the Management Board may be called by any Manager and shall be held at the principal place of business of the Company, or elsewhere as the notice of such meeting shall direct. Attendance by a majority of the Managers shall constitute a quorum for purposes of transacting business. Managers may attend any such meeting in person or by telephonic or video conference call. Except as otherwise expressly provided in this Operating Agreement, the Certificate of Organization, or the Act, the affirmative vote of a majority of the Managers present at a duly conveyed meeting of the Management Board at which a quorum is present shall constitute the act of the Management Board.

**III.**  
**Notice of Meetings**

3.1 **Members' Meetings.** Written notice to every meeting of the Member of the Company, stating the place, date, hour of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered by the manager or Member calling the meeting to each Member at least ten (10) days prior to this meeting, unless such notice is waived in accordance with Article 14 hereof.

3.2 **Management Board Meetings.** Written or oral notice of every meeting of the Management Board, stating the place, date and hour of the meeting, and the purpose or purposes for which the meeting is called, shall be given by the Manager calling the meeting to each other Manager at least twenty-four (24) hours prior to this meeting, unless such notice is waived in accordance with Article 14 hereof.

**IV.**  
**Contributions to Capital**

4.1 **Initial Contributions.** Each member agrees to make on the date hereof the initial contribution to the capital of the Company described in Exhibit "A" attached hereto. No Member may take any additional, voluntary contributions to the capital of the Company except with the prior written consent of majority in interest of the Members of the Company.

4.2 **Additional Contributions.**

The Company, acting by its Management Board then serving, shall have the authority to require the Members that have provided any guaranty with respect to any debt of the Company (or any successor to the Company interests of any such Member) (together, the "Obligated Members") to contribute additional capital when additional capital is reasonably needed to pay debt service with respect to such guaranteed debt. Calls for capital shall not be discriminatory. When there is a call for

capital Obligated Members shall be required to contribute capital based upon each Obligated Member's guaranteed amount. A required contribution of capital must be made within fifteen days from the date the call is issued.

If an Obligated Member does not satisfy a cash call obligation in full, other Obligated Members may pay the deficiency on a pro rata basis and such payments shall be treated as a loan by such Obligated Members to the Company (the "Capital Loans"). Such Capital Loans shall contain such terms, including rates of interest and repayment schedules, as may be determined by the Management Board at the time such Capital Loans are made. The amount of any Capital Loan made by a Obligated Member shall be deemed for all purposes to be a loan rather than a capital contribution and such Obligated Member will be deemed a creditor of the Company with respect to the amount of such Capital Loan.

In addition, the Management Board may charge interest on any unpaid required capital contribution if the amount remains unpaid after the expiration of the fifteen-day period. The Management Board may institute legal action against a delinquent Obligated Member and the delinquent Obligated Member shall be responsible for paying all costs and legal fees reasonably incurred by the Company in connection with the action.

All additional capital contributions made under this Section shall be treated as additional capital contribution by the Members providing such capital contribution, without adjustment to the contribution amount or share amounts indicated on Schedule A hereto.

#### **V. Maintenance of Capital Accounts**

5.1 **Maintenance Provisions.** A Capital Account shall be maintained on the books and records of the Company with respect to each Member, such that:

(a) To each Member's Capital Account there shall be credited:

(i) the cash and the fair market value (as reasonably agreed by the Members in good faith) of any property other than cash contributed by such Member to the capital of the Company;

(ii) such Member's allocable share of profits, and any items of income or gain which are specially allocated to the Member; and

(iii) the amount of any Company liabilities assumed by such Member or which are secured by any property of the Company distributed to such Member.

The principle amount of the promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note shall not be credited to the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and only to the extent) principal payments are made on the note.

(b) To each Member's Capital Account there shall be debited:

(i) the amount of cash and the fair market value of any property (as reasonably agreed by the Members in good faith) of the Company distributed to such member;

(ii) such Member's allocable share losses and any items of expense or loss which are specially allocated to the Member; and

(iii) the amount of any liabilities of such Member assumed by the Company which are secured by any property contributed by such Member to the Company.

5.2 Transfer of Capital Accounts. In the event that all or a portion of an interest in the Company is transferred in accordance with the terms of the Certificate of Organization and this Operating Agreement, the transferee shall succeed to that portion of the Capital Account of the transferor which is allocable to the transferred interest.

5.3 Capital Contributions. For purposes of this Agreement, "capital contribution" means, with respect to any Member, the amount of money and the fair market value of any property (as reasonably agreed by the Members in good faith) contributed to the Company with respect to the interest held by such Member.

## **VI.**

### **Allocation of Profits and Losses**

6.1 Allocations. The Company's profits or losses for any fiscal year shall be allocated among the Members in accordance with their respective cumulative capital contributions, adjusted to reflect any withdrawals of capital by such Members. The percentage of the capital, profits and losses of the Company allocable to a Member, determined in the manner set forth in this Section 6.1, shall be referred to herein as such Member's "Percentage Interest" in the Company.

### 6.2 Other Allocation Rules.

(a) For purposes of determining the profits, losses, or any of the items allocable to any period, profits, losses, and such other items shall be determined on a daily, monthly, or other basis, as determined by the Managers, using any permissible method under Internal Revenue Code Section 706 and the Regulations thereunder.

(b) The members are aware of the income tax consequences of the allocations made by this Section 6 and hereby agree to be bound by the provisions of this Section 6 in reporting their shares of Company income and loss for income purposes.

## **VII.**

### **Non Liquidating Distributions**

7.1 Discretionary Distributions. To the extent that the Company's assets exceed its liabilities (other than liabilities to Members on account of their capital contributions), the Company, with the approval of the Management Board in its sole and absolute discretion, may make non-liquidating distributions of cash or other property to Members from time to time on a pro rata basis in accordance with the Members' respective Percentage Interests.

## **VIII.**

### **Dissolution and Winding Up**

8.1 Liquidating Events. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following (each a "Liquidating Event"):

(a) The written agreement of all the Members to dissolve, wind up, and liquidate the Company, or

(b) The death, retirement, withdrawal, resignation, expulsion, bankruptcy, or dissolution of any Member in the Company, unless the business of the Company is continued by written consent of at least two-thirds majority in interest of the remaining Members.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Liquidating Event. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating event, the Members hereby agree to continue the business of the Company without a winding up or liquidation until the occurrence of a Liquidating Event.

8.2 Winding Up. Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in a orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the assets of the Company have been distributed pursuant to this Section and the Company has terminated. The Management Board shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the Company's liabilities and assets, shall cause the assets to be liquidated as promptly as is consistent with obtaining the fair market value, therefore, to be applied and distributed in the manner required by the Act. In the discretion of the Management Board, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to section 8.2 hereof may be:

(a) distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Management Board, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 8.2 hereof; or

(b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withheld amounts shall be distributed to the Members as soon as practicable.

## **IX.**

### **Transferability of Interests**

9.1 Restrictions on Transfer. Except to the extent otherwise provided below, no Member may transfer or assign by contract or operation of law all or any portion of such member's interest in the Company except as set forth herein.

9.2 Admission or Transfer of an Interest of or by a Member. On the admission of a Member or the transfer of an Interest of a Member that was undertaken in compliance with this Agreement, this Agreement shall be promptly amended as necessary to reflect any changes in the profit and loss allocations of Members, to reflect the capital contributions of the newly admitted Member or the withdrawal of capital by a withdrawing Member, and to set forth any new provisions or

to amend any existing provisions of this Agreement which may be necessary or desirable in light of such admission or transfer.

**9.3 Transfer by any Member.** Any Member may assign or pledge all or any portion of its Interest in the Limited liability company only with the written consent of the Management Board, which such consent may be withheld in the sole discretion of the Management Board, and, provided that all the following requirements are either satisfied or waived by the Management Board:

- (i) The assignment or pledge must be of the entire Interest of such Member;
- (ii) The assignor and assignee must give Notice of the proposed assignment or pledge to the Member and execute, acknowledge and deliver to the Management Board such instruments of assignment or pledge as the Management Board may require;
- (iii) No transfer, assignment or pledge of all or any part of the Interest of a Member may be made unless the Member and the Limited liability company are provided with an opinion of counsel acceptable to them to the effect that such transfer or pledge or assignment (A) may be effected without registration of the Interest under the Securities Act of 1933, as amended, and (B) does not violate any state securities laws (including any investment suitability standards) applicable to the Limited liability company;
- (iv) The assignee must represent in writing that he or she is acquiring the Interest in the Limited liability company for his or her own account for long-term investment and it is not being acquired with a view toward resale; and
- (v) No sale, exchange, assignment or pledge of all or any part of the Interest of a may be made if the sale, exchange or assignment of the Interest would, in the opinion of counsel for the Member and the Limited liability company, result in the Limited liability company being considered to have been terminated within the meaning of Section 708 of the Code.

**9.4 Substitution of Members.** An assignee of a Member shall become a Substituted Member only if the conditions herein and the following additional conditions are satisfied:

- (i) The assignor has indicated such intention of substitution in the written assignment or the transfer results by death or operation of law;
- (ii) The assignee has executed a counterpart of this Agreement (as modified from time to time) and such other Instruments as the Management Board deem necessary to confirm the undertaking of such assignee to be bound by all the terms and provisions of this Agreement and has executed the power of attorney in favor of the Member;
- (iii) The Management Board has Consented in writing to such admission, which Consent the Management Board may withhold in its sole, absolute discretion; and
- (iv) The assignee has, if requested by the Management Board made payment of the sum necessary to reimburse the Limited liability company and the Management Board for any reasonable expenses incurred in connection with such admission, including legal, accounting and filing fees.

- (v) The assignee shall agree to indemnify the assignor to the extent of any distributions received by the assignee from the Members for any and all payments made by the assignor after assignment of the interest under any guaranties, whether pro rata or joint and several, entered into by the assignor with respect to any obligations of the Members.

#### **9.5 Substituted Members and Assignees.**

9.5.1 A transferee who becomes a Substituted Member shall succeed to all the rights and powers and shall be subject to all of the obligations, restrictions and liabilities of a Member with respect to the Interest in the Limited liability company acquired by the transferee.

9.5.2 A transferee who does not become a Substituted Member shall be entitled only to receive the share of cash and in kind distributions and the return of capital contributions to which the Member from whom such transferee acquired such transferee's Interest in the Limited liability company would have been entitled with respect to the Interest acquired but, notwithstanding any other provisions in this Agreement to the contrary, shall have no right to require any information or account of Limited liability company transactions, no right to inspect the Limited liability company books and no other rights or powers of a Member. Any such transferee nevertheless shall be subject to all of the provisions of this Agreement and to all of the obligations, restrictions and liabilities under this Agreement with respect to the Interest acquired.

#### **9.5.3 Effect upon A Limited Liability Company Interest Acquired without Consent**

If any person, organization or agency should acquire the Interest of a Member, including voting rights, as the result of:

- a. an order of a court of competent jurisdiction which the Limited liability company is required by law to recognize; or
- b. being subject to a lawful "charging order" by a court of competent jurisdiction; or
- c. a levy or other transfer of a Limited liability company Interest, with voting rights, which the Limited liability company has not approved but which the Limited liability company is required by law to recognize,

the person, organization or agency receiving such interest (the "Receiving Party") shall be (A) required to indemnify the Member from whom the Receiving Party received such Interest (the "Former Member") to the extent of any distributions received by the Receiving Party from the Limited liability company for any and all payments made by the Former Member after the acquisition of the interest by the Receiving Party, under any guaranties, whether pro rata or joint and several, entered into by the Former Member with respect to any obligations of the Limited liability company, and (B) bound by all the terms and provisions of this Agreement as a Member with respect to such interest, including without limitation the obligation to make capital contributions set forth herein to the extent the Former Member was an Obligated Member. In addition, the Limited liability company shall have the unilateral option to acquire all or any portion of the Interest of the Receiving Party for its fair market value upon the following terms and conditions.

**(I) Written Notice of Intent to Purchase**

The Limited liability company shall have the option to acquire the Interest by giving written notice to the transferee of its intent to purchase the Interest within ninety days from the date it is finally determined that the Limited liability company is required to recognize the transfer.

**(ii) Exercise of Option and Date of Valuation**

The Limited liability company shall have 180 days from the first day of the month following the month in which it delivers notice exercising its option to purchase the Limited liability company Interest. The valuation date for the Limited liability company Interest will be the first day of the month following the month in which notice is delivered.

**(iii) Written Appraisal Requirement**

Unless the Limited liability company and the transferee agree otherwise, the fair market value of a Member's Limited liability company Interest to be acquired by the Limited liability company is to be determined by the written appraisal by a person or firm qualified to perform business appraisals and to value Limited liability company Interests.

**(iv) Acceptance or Rejection of Appraisal**

The transferee must accept or reject the valuation report within 30 days from the date it is delivered. If not rejected in writing within the required period, the report will be accepted as written. If rejected, closing of the sale will be postponed until the first Tuesday of the month following the month in which the valuation of the Limited liability company Interest is resolved. The transferee will be considered a non-voting owner of the Limited liability company Interest, but will be entitled to all items of income, deduction, gain or loss from the Limited liability company Interest, plus any additions or subtractions therefrom and until closing.

**(v) Date of Closing**

Closing of the sale will occur at the principal office of the Limited liability company (as designated in this agreement) at 10 o'clock A.M. on the first Tuesday of the month following the month in which the valuation report is accepted by the transferee (the "closing date").

**(vi) Payment of Terms upon Exercise of Option**

In order to reduce the burden upon the resources of the Limited liability company, the Limited liability company will have the option, to be exercised in writing delivered at closing, to pay its purchase money obligation in thirty equal annual installments (or, if the remaining term of the Limited liability company is less than thirty years, in equal annual installments over the remaining term of the Limited liability company) with interest thereon at market rates, adjusted annually as of the first day of each calendar year at the option of the Limited liability company.

(a) Interest

The term "market rates" will mean the rate of interest identified as the "prime rate" by the "Wall Street Journal" in its *Money Rates* column, or, if two or more rates are reported as the "prime rate", the average of the two or more. If Internal Revenue Code Sections 483 and 1274A apply to this transaction, the minimum rate of interest of the purchase money obligation will be fixed at the rate of interest then required by those sections.

(b) Payment Dates

The first installment of principal, with interest due thereon, will be due and payable on the first day of the calendar year following the closing date, and subsequent annual installments, with interest due thereon, will be due and payable, in order, on the first day of each calendar year which follows until the entire amount of the obligation, principal and interest, is fully paid. The Limited liability company shall have the right to prepay all or any part of the purchase money obligation at any time without premium or penalty.

(vii) Suspension of Voting Rights during Option Period

Except for a Member whose Interest is being acquired without its consent, neither the transferee of an unauthorized transfer or the Member consenting to or causing the transfer will have the right to vote during the prescribed option period or, if the option to purchase is timely exercised, until the sale is actually closed.

9.5.4 Assignee to Assume Tax Liability

An assignee of any Limited liability company Interest as well as any person who acquires a charging order against such Interest shall report income, gains, losses, deductions and credits with respect to such Limited liability company Interest each year. The assignee shall receive all state forms and Federal 1065 K-1 forms with respect to the income from such Limited liability company Interest.

9.5.5 Assignee to Assume Member's Liability

An assignee shall assume all obligations set forth under Section 9.5.1.

9.6 Transfers and Assignments. The term "transfer" as used in this Agreement shall include any sale, assignment, pledge encumbrance, gift, devise, attachment or attempt to deliver or have executed upon a security interest of an Interest in the Company except as permitted by this Agreement.

9.7 Death, Bankruptcy, Incompetency of a Member or Illegal Transfer of a Member's Interest. Notwithstanding the foregoing, in the event of the death of a Member, the decedent's personal representative, devisee or heir shall be entitled to receive the deceased Member's Interest and to be admitted to the Limited liability company as a Substituted Member but only upon the execution of appropriate instruments as required by the Management Board.

In the event that a Member's personal representative, devisee or heir refuses to sign the appropriate documents required by the Managers or if any Member attempts to transfer its Interest in the Limited liability company in violation of this Agreement, becomes incompetent, files a voluntary

petition in bankruptcy or fails to discharge an involuntary petition in bankruptcy or attachment of his Interest within thirty (30) days after it is filed, the Limited liability company shall have the right (but not the obligation) to purchase (or to designate a purchaser to purchase) such Member's Interest, from such Member's purported transferee, personal representative, heir, devisee, guardian or trustee, for an amount equal to the fair market value of such Interest as of the end of the calendar year preceding the date of transfer. The fair market value of such Interest shall be determined by the independent Certified Public Accountant retained by the Management Board at the time of the purchase and his determination shall be conclusive, final and binding on all of the parties. Such Certified Public Accountant shall have the right to appoint an appraiser to provide an MAI appraisal of the Property at the expense of the Member transferor and to rely on the appraisal so obtained. The limited liability company's (or the Limited liability's designee's) election to purchase a Member Interest pursuant to this paragraph shall be made by written notice to the last address supplied by the Member and the purchase and closing shall take place at the office of the Limited liability company thirty (30) days after such notice has been given.

9.8 Withdrawal. No Member may withdraw from the Limited liability company without the prior written Consent of the Management Board.

9.9 Invalid Transfer. Any transfer of an Interest in the Limited liability company which does not comply with the provisions of this Agreement shall be invalid and shall not vest any Interest in the transferee.

#### **X.** **Fiscal Year**

The fiscal year of the Company shall be from January 1 to December 31.

#### **XI.** **Accounting**

The Company shall at all times maintain full and accurate books of account, in which shall be entered all the transactions of the Company. The books of account shall be kept at the principal office of the Company, and shall be open to reasonable inspection and examination by the Members and their duly authorized representatives during normal business hours. The Company shall deliver to each Member within ninety (90) days after the expiration of each Company fiscal year financial statements of the for such fiscal year compiled on an income tax basis of accounting by an independent certified public accountant, together with the information regarding the Company for such fiscal year required to be provided to the Member for income tax purposes, a statement of each Member's allocated share of profits or losses for the fiscal year, and the balance in each Member's Capital Account as of the end of such fiscal year.

#### **XII.** **Salaries of Officers**

The compensation, if any, to be paid to a Member in exchange for such Member's services to the Company shall be fixed from time to time by the Company in its sole discretion.

#### **XIII.** **Indemnification**

13.1 General Indemnity Provision. The Company may indemnify any person who is a party (or is threatened to be made a party) to any action, suit or proceeding (whether civil, criminal, administrative or investigative), if such a person is a party by reason of the fact that he or she is or was a Manager, Member, employee or agent of the Company, or is or was serving at the request of the Company as a member, manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust, other enterprise. Such a person may be indemnified against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding.

13.2 Insurance. The Company may purchase and maintain insurance on behalf of any person who is or was a Manager, Member, employee or agent of the Company or is or was serving at the request of the Company as a manager, member, officer, director, employee or agent of another limited liability company, corporation, joint venture, trust, or other enterprise, against any liability asserted against such person and incurred in any capacity or arising out of his or her status as such.

#### XIV.

##### Waiver and Consent

14.1 Written Waiver. Whenever any notice whatsoever is required to be given under the provisions of this Operating Agreement or under the provisions of the Certificate of Organization or the Act, waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

14.2 Waiver by Attendance. Presence of a Member at any Member's meeting or any Manager at a Management Board meeting shall be deemed to be a waiver of the notice otherwise required for such meeting, unless such Member or Manager, as the case may be, is present solely to protest inadequate notice of such meeting.

14.3 Consent to Action Without Meeting. Unless otherwise provided by law, any action required to be or which may be taken at any meeting of the Members or the Management Board, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members or Managers entitled to vote with respect to such action.

#### XV.

##### Proxies

At all meetings of the Members, a Member may vote by proxy executed in writing by such Member. Such proxy shall be filed with the Management Board before or at the time of the meeting.

#### XVI.

##### Miscellaneous

16.1 Successors. This Operating Agreement and all the terms and provisions thereof shall be binding upon the Members and any new Members and their respective legal representatives, heirs, successors and permitted assigns.

16.2 Notices. All notices or other communications under this Operating Agreement shall be in writing (unless otherwise expressly provided herein) and shall be considered properly given if delivered by hand or mail by first class United States Mail, postage prepaid, addressed in care of the respective Members or Managers at their last known address. Notice may also be delivered by means

of a confirmed telecopy, provided the original of the notice is also promptly deposited in the United States Mail, first class, postage prepaid, addressed to the Member or Managers at such address. Unless actual receipt of a notice is required by an express provision hereof, and such notice shall be deemed to be effective as of the earliest date of (a) the date of delivery or confirmed telecopy, or (b) the third business day following the date of deposit with the United States Post Office or in a regularly maintained receptacle for the deposit of United States Mail. Any refusal to accept delivery of any such communication shall be considered successful delivery thereof.

16.3 Applicable Law. This Operating Agreement and the rights and obligations of the Members thereunder shall be construed and interpreted under the laws of the State of Nebraska.

16.4 Amendments. Upon the affirmative vote of two-thirds majority in interest of the Members of the Company, amendments to this Operating Agreement may be adopted, and each Member shall promptly execute such amendments under the law of the State of Nebraska.

16.5 Waiver of Partition. Each of the Members of the Company irrevocably waives any right to maintain any action for partition with respect to the property of the Company.

16.6 Company Property. The legal title to any real or personal property or interest therein now or hereafter acquired by the Company shall be owned, held or operated in the name of the Company, and no Member, individually, shall have any ownership interest in such property.

16.7 Acceptance of Prior Acts by New Members. Each person becoming a Member, by becoming a Member, ratifies all action duly taken by the Company, pursuant to the terms of this Operating Agreement, prior to the date such person becomes a Member.

16.8 Section Headings. The division of this Operating Agreement into sections, subsections and exhibits is for convenience of reference only and shall not affect the interpretation or construction of this Operating Agreement.

16.9 Severability. In the event that one or more of the provisions contained in this Operating Agreement or any provisions thereof are unenforceable or are declared invalid of the remaining terms or portions of this Operating Agreement, and such unenforceable or invalid portion hereof shall be severable from the remainder of this Operating Agreement and the remainder of Operating Agreement shall be interpreted as if such unenforceable or invalid provision or portion thereof had not been included as a part thereof.

16.10 Agreement for Further Execution. At any time or times, upon the request of any Member, the other Member agrees to sign and swear to any certificate required by the Act, to sign and swear to any amendment to or cancellation of such certificate whenever such amendment or cancellation is required by law or by this Operating Agreement, and to cause the filing of any of the same of record wherever such filing is required by law.

16.11 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall constitute as an original and all of which, taken together, shall constitute a single agreement.

16.12 Time. Time is an essential element to the performance of this Operating Agreement by each Member.

16.13 Contracts with Related Parties: Competition. Nothing in this Agreement or in law shall prevent or be construed to prevent any of the Members, or related parties to any Member, from dealing with the Company as determined by a majority in interest of the other members.

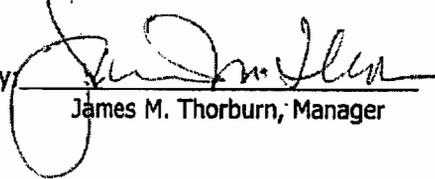
16.14 No Brokers. Each Member hereby represents and warrants to the others that no broker, finder, or other person performing similar services is entitled to any commission, fee or other compensation on account of such Member's entry to this Operating Agreement, and each Member hereby agrees to indemnify the other Members harmless from and against any such commission, fees or other compensation as may be claimed on account of dealings between the claimant and the Indemnifying Member.

16.15 Copies Reliable and Admissible. This agreement shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Operating Agreement or a counterpart hereof shall be admissible into evidence in any proceeding as though the same were an original.

IN WITNESS WHEREOF, this Operating Agreement is executed on this 13<sup>TH</sup> day of September, 2013.

SOLE MEMBER:  
KEYSTONE, L.L.C., a Nebraska limited  
liability company

By



James M. Thorburn, Manager

**EXHIBIT "A"**

<u>Member</u>	<u>Contributed</u>	<u>Initial Percentage Interest</u>
Keystone, L.L.C.	\$100.00	100.0%

FLATIRON HOTEL, LLC, a Nebraska limited liability company

**UNANIMOUS CONSENT OF MEMBER IN LIEU OF MEETING**

The undersigned, constituting the sole Member of Flatiron Hotel, LLC, a Nebraska limited liability company, in lieu of a meeting, does hereby consent to an approve the following resolutions and actions, waive any requirements of a meeting or notice thereof, and waive any rights which we have to dissent from such actions:

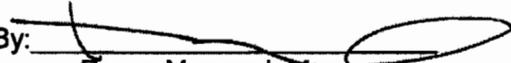
**RESOLVED:** That Flatiron Hotel, LLC, (the "Company"), is hereby authorized to enter into a Redevelopment Agreement with the City of Omaha (the "Redevelopment Agreement") for Tax Increment Financing (TIF) relating to the Company's property known as the Flatiron Building located at 1722 St. Mary's Avenue in Omaha, Nebraska (hereafter "the Property"), upon such terms as may be agreed upon by the Company and the City; and it is

**FURTHER RESOLVED:** That either James M. Thorburn or Royce Maynard as Manager of the Company are hereby authorized and empowered in the name of and on behalf of the Company to execute and deliver to the City all such documents as may be required by the City for said TIF for said Property, including but not limited to the Redevelopment Agreement; and it is

**FURTHER RESOLVED:** That the undersigned hereby agrees that a copy of this document, or any portion thereof that bears a signature of a Member, may be transmitted electronically or by facsimile, and said electronic or facsimile signature of a Member shall have the same binding force and effect as an original signature of the Member. The undersigned hereby agree that the Managers and the Member of the Company and any other person may rely upon a copy of any signatures that are delivered electronically or by facsimile as if such signatures were originals. A Member executing and delivering this document electronically or by facsimile shall promptly thereafter deliver a counterpart signature page of this document containing said member's original signature.

The undersigned hereby certify that the undersigned is the sole Member of the Company, and that this unanimous consent is effective as of February 21, 2014.

**SOLE MEMBER:  
KEYSTONE, LLC**

By:   
Royce Maynard, Manager



**Standard Estimate Report**  
*ON - Flatiron TIF*

**Project name**      ON - Flatiron TIF  
**Job size**            39526 SF  
**Duration**            8 MO

**EXHIBIT**  
    H



Description	Quantity	Total	Amount
<b>1.000</b>			<b>GENERAL REQUIREMENTS</b>
1.041	Project Management		36,057
1.043	Project Administration		3,635
1.045	Project Superintendent		112,823
1.062	Permits		7,330
1.066	Testing		
1.068	Surveying Services		
1.510	Temporary Utilities		21,385
1.580	Project ID & Signs		588
1.590	Field Offices & Sheds		2,717
1.710	Dumpster		15,086
1.720	Project Cleaning		12,208
1.850	Mileage		9,387
1.960	Office Expenses		47
	<b>GENERAL REQUIREMENTS</b>		<b>221,263</b>
	3,138.95 Labor hours		
<b>2.000</b>			<b>SITWORK</b>
2.220	Site Demolition		110,553
2.775	Sidewalk Improvements		100,163
	<b>SITWORK</b>		<b>210,716</b>
<b>3.000</b>			<b>CONCRETE</b>
3.335	S.O.G. Concrete		48,522
	<b>CONCRETE</b>		<b>48,522</b>
<b>4.000</b>			<b>MASONRY</b>
4.100	Brick		10,587
	<b>MASONRY</b>		<b>10,587</b>
<b>5.000</b>			<b>METALS</b>
5.105	Structural Steel		14,160
5.110	Structural Framing		6,617
	<b>METALS</b>		<b>20,776</b>
<b>6.000</b>			<b>WOOD &amp; PLASTICS</b>
6.100	Rough Carpentry		122,876
6.200	Finish Carpentry		162,690
	<b>WOOD &amp; PLASTICS</b>		<b>285,566</b>
<b>7.000</b>			<b>THERMAL-MOIST PROTECTION</b>
7.140	Single Ply Roof		66,959
7.270	Firestopping		33,221
7.920	Caulking & Sealants		16,610
	<b>THERMAL-MOIST PROTECTION</b>		<b>116,790</b>
<b>8.000</b>			<b>DOORS &amp; WINDOWS</b>
8.211	Flush Wood Doors		29,735
8.215	Pre-Hung Wood Doors		34,115
8.610	Wood Windows		66,262
	<b>DOORS &amp; WINDOWS</b>		<b>130,112</b>
	219.76 Labor hours		
<b>9.000</b>			<b>FINISHES</b>
9.250	Gypsum Drywall		264,528



Description	Quantity	Total	Amount
9.300	Metal Studs & Drywall		39,700
9.860	Resilient Tile		131,178
9.900	Painting		127,737
<b>FINISHES</b>			<b>563,143</b>
<b>10.000 SPECIAL CONDITIONS</b>			
10.522	Fire Extinguisher		1,889
10.800	All Toilet Accessories		6,372
<b>SPECIAL CONDITIONS</b>			<b>8,261</b>
23.10	Labor hours		
<b>11.000 EQUIPMENT</b>			
11.452	Kitchen Appliances		70,090
11.999	Equipment		13,317
<b>EQUIPMENT</b>			<b>83,407</b>
135.00	Labor hours		
<b>12.000 FURNISHINGS</b>			
12.999	Furnishings		26,810
<b>FURNISHINGS</b>			<b>26,810</b>
<b>14.000 CONVEYING SYSTEMS</b>			
14.240	Hydraulic Elevators		39,700
<b>CONVEYING SYSTEMS</b>			<b>39,700</b>
<b>15.000 MECHANICAL</b>			
15.330	Wet Pipe Sprinkler System		52,404
15.410	Building Plumbing		362,817
15.510	Building HVAC		196,229
<b>MECHANICAL</b>			<b>611,450</b>
<b>16.000 ELECTRICAL</b>			
16.110	Building Electrical		379,953
<b>ELECTRICAL</b>			<b>379,953</b>

**Estimate Totals**

Description	Amount	Totals	Rate	Cost per l
Labor	158,893			4.020 /SF
Material	327,692			8.291 /SF
Subcontract	2,214,566			56.028 /SF
Equipment				
Other	55,905			1.414 /SF
	<u>2,757,056</u>	2,757,056		69.753 /SF
Liability Insurance	29,112		0.985 %	0.737 /SF
Overhead	111,447		4.000 %	2.820 /SF
Contractor Fee	57,952		2.000 %	1.466 /SF
	<u>198,511</u>	2,955,567		74.775 /SF
<b>Total</b>		<b>2,955,567</b>		<b>74.775 /SF</b>

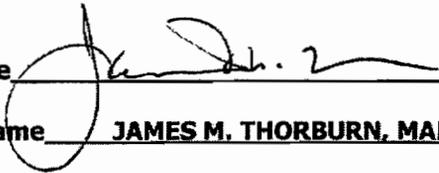
## CERTIFICATE OF ORGANIZATION LIMITED LIABILITY COMPANY

1. The name of the Limited Liability Company is: **FLATIRON HOTEL, LLC**
  
2. The complete street and mailing addresses of the initial designated/principal office:  
**11506 NICHOLAS STREET, SUITE 100, OMAHA, NE 68154**
  
3. The name and complete address of the registered agent:  
**MICHAEL C. CARTER, 11506 NICHOLAS STREET, SUITE 103, OMAHA, NE 68154**
  
4. The name and address of at least one member or manager of the limited liability company:

Name:	Address:
JAMES M. THORBURN	11506 NICHOLAS ST. SUITE 100, OMAHA, NE 68154

5. Mailing address for future correspondence (annual report notices):  
**MICHAEL C. CARTER, 11506 NICHOLAS STREET, SUITE 103, OMAHA, NE 68154**
  
6. Future effective date of filing (optional):

Signature of a manager, member or authorized person.

Signature 

Typed Name JAMES M. THORBURN, MANAGER

Signature \_\_\_\_\_

Typed Name: \_\_\_\_\_



**LEGAL DESCRIPTION**

Lot 8, in Block 1, in E. KOUNTZE ADD., an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska, together with a triangular parcel immediately North of the above described property described as follows:

Beginning at the Northwest corner of said Lot 8, thence Southeasterly along the North line of said Lot 8, 188.40 feet, to the North line of St. Mary's Avenue; thence in a Northeasterly direction, along the North line of St. Mary's Avenue, produced, 16 feet; thence on a curve to the left, whose radius is 7.5 feet, with an external angle of  $155^\circ$ , a distance 20.30 feet; thence West, 198.60 feet, to the Point of Beginning.



EXHIBIT "B"

# FLATIRON BUILDING TIF REDEVELOPMENT PROJECT PLAN

## 1722 ST. MARY'S AVENUE

### APRIL 2014



Jean Stothert, Mayor City of Omaha



James Thele, Acting Director  
Planning Department  
Omaha/Douglas Civic Center  
1819 Farnam Street, Ste. 1111  
Omaha, Nebraska 68183