



City of Omaha
Jean Stothert, Mayor

RECEIVED

14 MAY 21 7 19 AM '14

CITY OF OMAHA
PLANNING DEPARTMENT

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

June 3, 2014

Honorable President
and Members of the City Council

The attached proposed Ordinance approves an Agreement with 24th Street Enterprises, LLC, a Nebraska Limited Liability Corporation, 1536 Cuming Street, Omaha, NE 68102, for the sale by the City of the property located at 219 South 24 Street. The City agrees to sell the property for the appraised amount of \$235,000.00 for the purpose of the development of a 132 room hotel to be constructed on an assemblage of several adjacent properties.

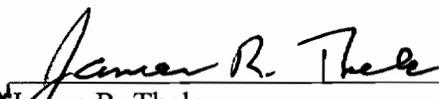
A covenant to be recorded against the property grants the City the right to purchase the property back for the same price if the proposed Hotel Redevelopment of the property is not completed within two years of the conveyance of the site to the developer.

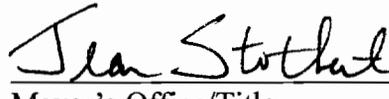
There are no expenditures directly associated with conveying the property.

Your favorable consideration of this Ordinance is requested.

Sincerely,

Referred to City Council for Consideration:


James R. Thele
Planning Director
5/12/14
Date


Jean Stothert
Mayor's Office/Title
5/19/14
Date

Approved as to Funding:


Stephen B. Curtiss
Finance Director
5/14/14
Date

2023 caw

ORDINANCE NO. _____

AN ORDINANCE approving an Agreement for the sale of City-owned real property; to provide that notwithstanding any provisions of the Omaha Municipal Code to the contrary, the City is authorized to enter into the attached Agreement with 24th Street Enterprises, LLC, a Nebraska Limited Liability Corporation, 1536 Cuming Street, Omaha, NE 68102, to sell property described in the attached agreement located at 219 South 24 Street, for development of a 132 room hotel in consideration of the appraised value in the sum of Two Hundred Thirty-Five Thousand and 00/100 Dollars (\$235,000.00); there are no expenditures associated with the conveyance of the property; and to provide the effective date hereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. Notwithstanding any portion of the Omaha Municipal Code to the contrary, the attached Agreement with 24th Street Enterprises, LLC, is hereby approved and the Mayor is hereby authorized to execute, and the City Clerk to attest any documents necessary or appropriate to convey property located at 219 South 24 Street, and legally described in the attached agreement, in consideration of the sum of Two Hundred Thirty-Five Thousand and 00/100 Dollars (\$235,000.00). There are no expenditures directly associated with conveying the properties.

Section 2. Upon completion of the conditions in the attached Agreement, the Mayor of the City of Omaha is hereby authorized and empowered to execute a Warranty Deed to said property, and the City Clerk to attest the same to 24th Street Enterprises, LLC, a Nebraska Limited Liability Corporation.

ORDINANCE NO. _____
PAGE 2

Section 3. That this Ordinance, not being legislative in character, shall take effect upon the date of its passage in accord with Section 2.12 of the Omaha Municipal Code.

INTRODUCED BY COUNCILMEMBER:

APPROVED BY:

Mayor of the City of Omaha

DATE

PASSED _____

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Omaha DATE



Deputy CITY ATTORNEY

5/12/14

DATE

PURCHASE AGREEMENT

24th Street Enterprises, LLC, a Nebraska Limited Liability Corporation, ("Buyer") and **CITY OF OMAHA**, a Municipal Corporation in the State of Nebraska, ("Seller"), hereby agree as follows:

1. **Certain Definitions.** For purposes of this Agreement, the following terms are defined:

- a. "Closing" shall mean the closing and consummation of the transaction described in this Agreement.
- b. "Closing Date" shall mean the date of the Closing.
- c. "Premises" shall mean that certain real estate described as:

Sublot 17 of Lot 3, in CAPITOL ADDITION, an addition to the City of Omaha, as surveyed, platted, and recorded in Douglas County, Omaha, Nebraska (commonly known as 219 S. 24th Street, Omaha, NE)

- d. "Purchase Price" shall mean Two Hundred Thousand Thirty-five and No/100 Dollars (\$235,000.00).

2. **Purchase and Sale.** Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, the Premises for the Purchase Price, subject to fulfillment of the conditions contained herein.

3. **Representations of Seller.** Seller hereby represents and warrants to Buyer, which warranties and representations shall be true as of, and shall survive, the Closing, as follows:

- a. Seller is a Municipal Corporation of the State of Nebraska organized and existing under the laws of the State of Nebraska.
- b. Seller, subject to approval by the City Council of Omaha, Nebraska, has the authority to enter into this Agreement and perform its duties and obligations hereunder,
- c. Seller has good, marketable, fee simple title to the Premises subject to the established and existing covenants, conditions, restrictions and easements on said premises.
- d. To Seller's knowledge: (i) no toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea

formaldehyde, the group or organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on the Property in violation of applicable laws, nor has any activity been undertaken on the Property that would cause or contribute to (aa) the Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., or any similar state laws or local ordinances, (bb) a release or threatened release in violation of applicable law, or toxic or hazardous wastes or substances, pollutants or contaminants, from the Property within the meaning of, or otherwise bring the Property within the ambit of, CERCLA, or any applicable similar state laws or local ordinances, or (cc) the discharge of any pollutants or effluents in to any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., or the Clean Air Act, 42 U.S.C. § 7401 et seq., or any applicable similar state laws or local ordinances; (ii) there are no substances or conditions in or on the Property that support a claim or cause of action under RCRA, CERCLA or any other applicable federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements; and (iii) no above ground or underground tanks are located in or about the Property or have been located under, in or about the Property and have subsequently been removed or filled.

4. **Seller Conditions.** Notwithstanding anything in this Agreement to the contrary, the Closing shall be subject to the following conditions:

- a. This Purchase Agreement must be approved by the City Council of the City of Omaha.
- b. Buyer shall observe and perform all of Buyer's covenants and agreements contained herein.
- c. This property is being sold to Buyer with the understanding that Buyer will secure financing and/or other means sufficient to, and then develop the property in a manner substantially similar to that outlined in the attached "A". As outlined in Item 21 below, a Covenant will be imposed on the property at the time of closing which will provide that should Buyer fail to develop the property within 2 years, that Seller shall be able to purchase the property for the Purchase Price

5. **Title Commitment and Inspection.** Buyer shall promptly obtain a title insurance commitment (the "Title Commitment"). Within ten (10) days after Buyer's receipt of the Title Commitment, Buyer shall give written notice to Seller of any matters disclosed in the Title Commitment which Buyer finds objectionable in its reasonable discretion. Seller shall thereafter use its best efforts to correct and/or cure all such objectionable matters prior to the Closing Date. In the event Seller fails to correct and/or cure all of the objectionable matters prior to the Closing Date, then Buyer may either elect to terminate this Agreement by written notice to Seller, whereupon this Agreement shall be deemed to be null and void, or may waive its objections as to the uncured title matters and complete the Closing. Any matters disclosed in the Title Commitment and not objected to by Buyer are herein called the "Permitted Exceptions."

The City shall make the property available for inspection by the Buyer, Buyer's agent, employees, and contractors for a period of Ninety (90) days from the execution of this Agreement, and Buyer may, at Buyer's sole risk and expense, undertake a complete inspection and survey of the Premises as Buyer deems appropriate, including but not limited to, the performance of soil and environmental tests, a review of applicable zoning laws, covenants, and restrictions, and other necessary investigations to determine to Buyer's satisfaction that the Premises can be used for the construction and operation thereon of the proposed project. If as a result of Buyer's inspection, Buyer finds any condition related to the property which Buyer finds not to be satisfactory, Buyer may elect to terminate this Agreement by written notice to Seller, whereupon this Agreement shall be deemed to be null and void.

6. **Buyer Conditions.** Notwithstanding anything in this Agreement to the contrary, the Closing shall be subject to the satisfaction of the following conditions:

- a. Seller's representations and warranties shall be true and accurate as of the Closing Date.
- b. Seller shall have cured and/or corrected all matters in the Title Commitment found objectionable by Buyer.
- c. Seller shall have observed and performed all of Seller's covenants and agreements contained herein.

7. **Adjustments.** The following shall be apportioned, prorated and/or adjusted between Buyer and Seller on the Closing Date (the "Adjustments"):

- a. All real estate taxes becoming delinquent in the year of Closing (if any) shall be prorated between Buyer and Seller to the Closing Date.
- b. The Seller shall pay all documentary transfer taxes (if any) and shall pay all recording fees.
- c. Buyer shall pay the cost of the Title Commitment (and the title insurance policy issued pursuant thereto).
- d. Buyer and Seller shall pay equally all other usual and customary closing costs and fees.

8. **Closing Date.** The Closing Date shall be on or before December 31, 2014 or within 30 days from date of approval of sale by the Omaha City Council, or such other date as Buyer and Seller may mutually agree. All conditions contained herein must be met prior to closing.

9. **Closing.** The Closing may, at Seller's discretion, be conducted through the offices of Title Company. Title Company shall be responsible for the collection and disbursement of the Purchase Price, including the payment of any liens or encumbrances against the Premises.

10. **Closing Date Transactions.** On the Closing Date, the following transactions shall occur:

- a. Seller shall convey the Premises to Buyer by warranty deed, free and clear of all liens, claims and encumbrances except those of record and subject to the established and existing covenants, conditions, restrictions and easements on said premises.
- b. Seller shall execute such affidavits as Title Company may require in connection with the issuance of the title insurance policy.
- c. Buyer shall pay the Purchase Price (after application of the Adjustments) to Seller by certified or cashier's check or otherwise in immediately available funds.

Without limiting the foregoing, Seller and Buyer agree to execute and deliver such further instruments or documents and take such further acts as may reasonably be required in order to fully effect the sale of the Premises to Buyer.

11. **Eminent Domain**. If, prior to the Closing, all or any portion of the Premises shall be taken by eminent domain, Seller shall promptly give notice thereof to Buyer, and Buyer shall have the right to either waive the event and proceed to effect the Closing or to not waive such event and cause this Agreement to terminate. If there shall be a taking and Buyer shall elect not to terminate this Agreement but instead to effect the Closing, the Purchase Price shall not be reduced, but Seller shall assign to Buyer all of Seller's rights to all proceeds and awards with respect to such taking.

12. **Notices**. All notices and other communications which either party is required or desires to send pursuant to the terms of this Agreement shall be in writing and shall be sent by either certified United States mail, postage prepaid, return receipt requested, or delivered personally. Notices and communications shall be deemed to have been given on the day so mailed or on the date when personally delivered. Such notices and communications shall be addressed to the parties as follows:

IF TO SELLER: Mr. Christopher A. Wayne
Real Estate Manager
City of Omaha
Planning Department
1819 Farnam Street
Omaha, NE 68183

IF TO BUYER: Kirt Trivedi
24th Street Enterprises, LLC
1536 Cuming Street
Omaha, NE 68102

13. **Applicable Law**. Parties to this Agreement shall conform to all existing and applicable city ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the terms and the performance under this Agreement.

14. **Interest to the City**. Pursuant to Section 8.05 of the Home Rule Charter, no elected official or any officer or employee of the City of Omaha shall have a financial interest, direct or indirect, in any City of Omaha contract. Any violation of this section with the knowledge of the person or corporation contracting with the City of Omaha shall render the contract voidable by the Mayor or Council.

15 **Modification.** This Agreement contains the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee or other representative of either party is empowered to alter any of the terms herein unless done in writing and signed by an authorized officer of the respective parties, pursuant to Omaha Municipal Code Section 10-142. The Mayor may, without City Council approval, approve minor administrative amendments to this Agreement.

16. **Assignment.** The parties may not assign its rights or obligations under this Agreement without the express prior written consent of the other party; such consent not to be unreasonably withheld. Seller acknowledges that Buyer may be acquiring the Property to effect a Tax-Free Exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, and as a result Buyer shall have the right to assign its rights and obligations under this Agreement to a qualified intermediary of Buyer's choice for the purpose of completing such an exchange; provided, however, such assignment or exchange shall not delay the Closing or cause additional expense to Seller. Seller agrees to reasonably cooperate with Buyer and such qualified intermediary in a manner necessary to complete the exchange and to provide such documents and consents to Buyer relating thereto as may be consistent with the terms and conditions of this Agreement. Buyer shall indemnify, defend and hold Seller harmless for any costs, damages or other liabilities or obligations relating to this Agreement.

17. **Strict Compliance.** All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made except upon written direction from authorized representatives of the parties.

18 **Partial Invalidity.** If any term, covenant, or condition of this Agreement or the application thereof to any part, person, or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition shall be valid and shall be enforced to the full extent permitted by law.

19. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

20. **Non-Discrimination.** Non-discrimination and Statement of No Personal Financial Interest of City Officials:

- a. Neither myself nor the City shall, in the performance of this Agreement, discriminate or permit discrimination against any person because of race, sex, age, or political or religious opinions, or affiliations in violation of federal or state laws or local ordinances.
 - b. Pursuant to Section 8.05 of the Home Rule Charter of the City of Omaha, no elected official or any officer or employee of the City shall have a financial interest, direct or indirect, in any City Agreement. Any violation of that Section with the knowledge of the party contracting with the City shall render the Agreement voidable.
 - c. Parties to this Agreement shall conform with all existing and applicable City ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Nebraska law will govern the term and the performance under this Agreement.
21. **Covenant.** Buyer and Seller shall execute a Covenant in the form shown on Attachment "B" which shall be recorded with the deed transferring title. The Covenant contemplates that Buyer must begin substantial construction of the structure of the building identified in the project proposed in Attachment "A" no later than two (2) years from the date of actual closing on the sale of the Premises. If substantial construction of the structure has not begun by said two (2) year date, Buyer will, at Sellers sole discretion, convey ownership by Warranty Deed back to Seller for the Purchase Price stated in this agreement, title at such time being free and clear of any liens and encumbrances to the Premises not in place at the time of conveyance to Buyer from Seller.

DATED this 7th day of May, 2014.

BUYER:

24TH STREET ENTERPRISES, L.L.C.

By:


Kirt Trivedi

Its:

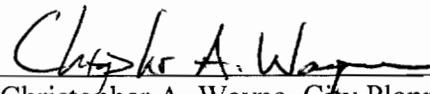
Managing Member

DATED this 7th day of May, 2014.

SELLER:

CITY OF OMAHA

By:


Christopher A. Wayne, City Planner

Its: Community Development Real Estate Manager

APPROVED AS TO FORM:


DEPUTY CITY ATTORNEY

5/12/14
DATE

**TIF APPLICATION TO THE CITY
OF OMAHA**

HOTEL JOSLYN

(Final Name to be Determined)

Farnam & 24th Street Omaha, NE

I) Project Summary

Project Owner: 24th Street Enterprises LLC

Project Address:

219 S 24 ST OMAHA NE 68102,
2232 FARNAM ST OMAHA NE 68102,
2222 FARNAM ST OMAHA NE 68102,
2216 FARNAM ST OMAHA NE 68102,
2212 FARNAM ST OMAHA NE 68102,
2208 FARNAM ST OMAHA NE 68102,
2200 FARNAM ST OMAHA NE 68102

Project Legal Description: CAPITOL ADD LOT 3 BLOCK 0 SUB LT 17 66 X 132, CAPITOL ADD LOT 3 BLOCK 0 SUB LT 18 66 X 132, CAPITOL ADD LOT 3 BLOCK 0 SUB LT 19 66 X 132, CAPITOL ADD LOT 3 BLOCK 0 SUB LOT 20 & W 22 FT SUB LOT 21 88 X 132, CAPITOL ADD LOT 3 BLOCK 0 E 44 W 66 FT SUB 21 44 X 132, CAPITOL ADD LOT 3 BLOCK 0 E 23 W 89 FT SUB 21 23 X 132, CAPITOL ADD LOT 3 BLOCK 0 W 80.08 E 96.3 FT SUB LT 21 LOT 3

Estimated Total Project Cost: \$17,875,071.63,

TIF Request: \$3,400,000.00

Current Use: Vacant Building, Vacant Lots

Current Zoning: CBD

Proposed Use: Hotel/Retail

Current Annual Real Estate Taxes (2012 tax year): \$12,463.42

Current Assessed Tax Valuation (2013 tax year): Land: \$584,100.00

Improvements: \$0

Total: \$584,100.00

DETAILED PROJECT DESCRIPTION:

Only one major project has been completed to help transform this area of Downtown Omaha. This would be the Highline. The developer, NuStyle, of the Highline invested over \$30,000,000.00 to improve this district. We would like to use the momentum that NuStyle has created and continue the redevelopment and making this district friendly for foot traffic, visitors, and future businesses. This project would also create a commercial district that would support Creighton University as well.

The current building will be demolished and the ground will be graded to start a fresh new project. There are hurdles such as asbestos, drainage, project being contingent of purchase of city owned lot. We are confident that the tasks will be overcome. A new hotel - The Hotel Omaha by Express – with parking will be constructed on the existing sites. A new, modern and boutique, five (5) story building will be constructed that will entail 132 LARGE hotel guestrooms, meeting space, covered parking, and ample retail space, all wrapped up in a boutique building. The building will be managed by Trivedi, Inc. This TIF application and project requires the purchase of a City owned lot; the corner lot.

The Hotel Omaha by Express will be the kind of project that can be the anchor for the commercial development around Farnam and 24th Street Neighborhood Development Project. There are multiple reasons that this new enterprise will be a great fit within the existing Joslyn Neighborhood Development plan:

- Although the Hotel Omaha by Express will have an affiliation with the IHG franchise, it will truly provide a boutique hotel experience powered with the largest reservation system in the world and the largest hotel loyalty program ever; IHG Rewards. Anant Enterprises LLC has partnered with a premier, contemporary architecture firm in Omaha, Alley Poyner Macchietto, to help design critical portions of the hotel to give it an unique artistic feel. The affiliation with IHG will give the property access to the most powerful reservation systems in the hospitality industry. This will ensure that the property will drive a large consumer base to the area as well create an economic engine that the rest of the area can benefit from.
- The retail component of this development will include a food and beverage outlet. This restaurant will not only serve the guests of the Hotel Omaha by Express, but will also be a great option for residents of the neighborhood that are currently lacking food and beverage options within walking distance. The remaining retail bays will be occupied by service related tenants such as a high end salon and spa. Tenants such as these will help drive foot traffic and enhance the services that are within walking distance to the current and future permanent residents of the neighborhood.
- Approximately 100 parking spots will also be developed in this project, but with some under the oversized Porte Cache. This design will eliminate the perception of the sea of surface parking in this area. By combining the parking with exposed and covered concepts with heavy landscaping, a truly welcome and visually pleasant atmosphere is created setting the stage for future development to follow.
- By including the IHG name in the hotel title, you are immediately giving brand recognition to this clearly defined neighborhood.

[This Space Above is for Recording Data]

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

CITY OF OMAHA, DOUGLAS COUNTY, NEBRASKA

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (this "Declaration") is made on the date hereinafter set forth by THE CITY OF OMAHA, a Municipal Corporation in the State of Nebraska, hereinafter referred to as the "Declarant."

PRELIMINARY STATEMENT

The Declarant is the owner, pursuant to its statutory powers, of certain real property located within Douglas County, Nebraska and described as follows:

Sublot 17 of Lot 3, in CAPITOL ADDITION, an addition to the City of Omaha as surveyed, platted and recorded in Douglas County, Nebraska (commonly known as 219 S. 24th Street);

herein referred to as the "Lot."

The Declarant desires to have said lot with the intention of incorporating it, along with six (6) adjacent parcels to the east, commonly known as 2200-2232 Farnam Street, for a development consisting of a modern boutique Hotel, with 132 Large hotel rooms, meeting space, partially covered parking spaces, and retail space, within a five (5) story building. It is anticipated that the approximate cost of the project will be \$18,000,000.00, and will be owned by 24th Street Enterprises, LLC, as proposed in the Tax Increment Financing application titled Hotel Omaha, submitted by 24th Street Enterprises, LLC to the City of Omaha (included as an attachment to this document is a section of that application which describes the project).

NOW, THEREFORE, subject to the terms of this Declaration, the Declarant hereby

declares that each and all of the Lot now and hereafter encumbered by this Declaration shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lot. These restrictions, covenants, conditions and easements shall run with such Lot and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as more fully described herein. Subject to the terms of this Declaration, the Lot, and each Lot are and shall be subject to all and each of the following conditions and other terms.

ARTICLE I.
RESTRICTIONS AND COVENANTS

1. The Lot shall be used exclusively for the purpose of being incorporated with six (6) adjacent parcels to the east, commonly known as 2200-2232 Farnam Street, for a development consisting of a modern boutique Hotel, having 132 Large hotel rooms, meeting space, partially covered parking spaces, and ample retail space, within a five (5) story building. It is anticipated that the project will have an approximate cost of \$18,000,000.00, and will be owned by 24th Street Enterprises, LLC, as proposed in the Tax Increment Financing application titled Hotel Omaha, submitted by 24th Street Enterprises, LLC to the City of Omaha (included as an attachment to this document is a section of that application which describes the project).

2. All owners, meaning 24th Street Enterprises, its successors and assigns, must commence construction of the improvement permitted by this Declaration within two (2) year of acquiring title to the lot. In the event that any Owner shall fail to perform its obligations set forth in this Section 2, such Owner shall convey to Declarant all right, title and interest in such Lot for a cost equal to one hundred percent (100%) of the base purchase price paid by such Owner for such Lot, with such Owner responsible for all closing and other costs incurred by Declarant to take title to such Lot (excepting the purchase price set forth above). Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. At Declarant's sole discretion, Declarant may waive its right to have the Lot conveyed back to it as described above.

ARTICLE II.
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration to either prevent or restrain any violation or to recover damages or other dues of such violation. Nothing herein contained shall in any way be construed to impose any obligation, of any kind, upon the Declarant or any successor and assigns of the same, any liability, obligation or requirement to enforce this instrument or any of the provisions contained herein. Failure by the Declarant or by any Owner to enforce any covenant

