



THE COUNCIL OF THE CITY OF BINGHAMTON  
STATE OF NEW YORK

Date: October 7, 2015

Sponsored by Council Members: Webb, Mihalko, Rennia, Motsavage, Matzo, Berg, Papastrat

Introduced by Committee: Planning and Community Development

ORDINANCE

*entitled*

AN ORDINANCE AUTHORIZING THE SALE OF  
72 COURT ST. TO M.B. YONATY  
DEVELOPMENT, LLC FOR \$75,000

WHEREAS, the City of Binghamton is owner of certain real property located at 72 Court Street, Binghamton, New York, Tax Parcel No. 160.41-4-14 (the "Premises"); and

WHEREAS, the City received an Offer to Purchase the Premises for \$75,000 from M.B. Yonaty Development, LLC (the "Applicant"); and

WHEREAS, the Assessor of the City of Binghamton has determined the sale price to be fair and equitable; and

WHEREAS, the Board of Estimate and Apportionment approved and recommended the sale of the Premises on September 30, 2015.

NOW, THEREFORE, the Council of the City of Binghamton, duly convened in regular session, does hereby ordain as follows:

Section 1. That the Mayor of the City of Binghamton, or his designee, is hereby authorized to enter into a contract for sale and to execute all necessary and appropriate documentation, approved as to form and content by the Office of Corporation Counsel, to transfer 72 Court Street, Binghamton, New York, Tax Parcel No. 160.41-4-14 to M.B. Yonaty Development, LLC for \$75,000, to be paid by cash, certified or local bank check.

Section 2. That this Ordinance shall take effect immediately.

Introductory No. 015-68

Permanent No. 015-69

Sponsored by City Council Members:  
Webb, Mihalko, Rennia, Motsavage, Matzo, Berg,  
Papastrat

AN ORDINANCE AUTHORIZING THE SALE OF 72  
COURT ST. TO M.B. YONATY DEVELOPMENT, LLC  
FOR \$75,000

The within Ordinance was adopted by the Council of  
the City of Binghamton.

10/13/15  
Date

[Signature]  
City Clerk

10/14/15  
Date Presented to Mayor

[Signature]  
Date Approved  
[Signature]  
Mayor

|           | Ayes | Nays | Abstain | Absent |
|-----------|------|------|---------|--------|
| Motsavage | X    |      |         |        |
| Mihalko   | X    |      |         |        |
| Rennia    |      |      |         | X      |
| Webb      | X    |      |         |        |
| Papastrat | X    |      |         |        |
| Matzo     | X    |      |         |        |
| Berg      | X    |      |         |        |
| Total     | 6    | 0    | 0       | 1      |

Code of the City of Binghamton

Adopted  Defeated

6 Ayes 0 Nays 0 Abstain 1 Absent

I hereby certify the above to be a true copy  
of the legislation adopted by the Council  
of the City of Binghamton at a meeting  
held on 13 Oct 15. Approved by the  
Mayor on 14 Oct 15.

[Signature]

## Contract of Sale

THIS CONTRACT OF SALE dated as of the \_\_\_\_\_ day of September, 2015, by and between the City of Binghamton, a municipal corporation, City Hall, 38 Hawley Street, Binghamton, New York 13901 ("Seller"), and M. B. Yonaty, Development, LLC, 4164 Lisi Ln Binghamton, New York, 13903("Purchaser").

### WITNESSETH:

WHEREAS, the Seller owns certain real property located at 72 Court Street, Binghamton, New York, Parcel ID Number: 160.41-4-14 (the "Premises"); and

WHEREAS, the Seller is willing to sell the Premises and the Purchaser is willing to purchase the Premises, upon the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

#### 1. Sale and Purchase.

1.1 The Seller agrees to sell and convey, and the Purchaser agrees to purchase the Premises.

1.2 This sale does not include any right, title and interest, if any, of the Seller in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining the Premises, to the center line thereof. Seller will retain title to any such land.

1.3 This sale includes all right, title and interest of the Seller in and to any award made or to be made by reason of eminent domain prior to the closing of title.

2. Purchase Price. The purchase price for the Premises is Seventy-Five Thousand 00/100 Dollars (\$75,000.00), payable as follows:

2.1 A deposit (the "Deposit") of Seven Thousand, Five Hundred and 00/100 Dollars (\$7,500.00) on the signing of this Contract, by check payable to the Seller to be held in trust by the City of Binghamton Finance Department pending closing or earlier termination of this contract;

2.2 Sixty-Seven Thousand, Five Hundred and 00/100 Dollars (\$67,500.00) by wire transfer, certified or bank check payable to the order of the Seller on the delivery of the deed as hereinafter provided.

2.3 On December 11, 2014, the New York State Regional Economic Development Council awarded the Seller \$500,000 for improvements to the Premises. The Seller will provide such funds for the Premises in accordance with the award. The award will be payable as

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reimbursement for eligible expenses once construction, as described in paragraph 8 below, is complete. The Purchaser agrees to accept the award and be bound by any terms and conditions of the award. A copy of the award letter is annexed hereto as Exhibit "A".

2.4 Except as provided in paragraph 6 and 7 below, if the Purchaser fails to close for any reason, other than failure to obtain site plan and/or special use permit after a good faith application, as provided in Section 6 below, the Deposit will be released to the City of Binghamton as liquidated damages and this Contract will be null and void. If the Seller cannot transfer title are required by this Contract or if Purchaser does not obtain site plan and/or special use permit after a good faith application, or if Seller defaults hereunder, the Deposit will be returned to the Purchaser.

3. Condition of the Premises. (a) The Purchaser is relying solely on its own inspection and investigation to determine whether to purchase the Premises. If Purchaser proceeds to Closing, Purchaser will accept the Premises in its "AS IS" condition, i.e., a vacant commercial parcel. Seller makes no representations or warranties regarding the condition of the Premises or any information supplied to or reviewed by Purchaser. Seller will remove the benches, tables, and fence on the Premises. Seller will fill in any holes. Seller will not remove the existing sidewalk paths.

4. Subject to Provisions. The Premises are to be transferred subject to the following:

4.1 Purchaser's review of title pursuant to paragraph "7" below.

4.2 Rights of the public in and to that portion of the Premises lying within the bounds of any public street or highway.

4.3 Zoning, building, and other ordinances and regulations, if any, provided they are not violated by the existing use, subject to Purchaser's rights as set forth in Section 6 below.

4.6 Subject to a easement for ingress and egress for the benefit of 92 Court Street, as annexed hereto as Exhibit B.

5. Adjustments.

5.1 Real property taxes and special assessments, if any, are to be apportioned as of the closing date on the basis of the fiscal year for which assessed. If the closing of the title shall occur before the tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation.

5.2 The Seller shall obtain a final water/sewer reading not more than two (2) business days prior to or after the time herein set for closing title. Seller shall be responsible for the final water/sewer bill, if any, generated as a result of said meter reading.

5.3 Any errors or omissions in computing apportionments at closing shall be corrected by the parties. This provision shall survive the delivery of the deed for thirty (30) days.

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## 6. Contingency.

(a) Purchaser shall have ninety (90) days from the date of this Contract (the "Due Diligence Period") to conduct such research, review, investigation and analysis as Purchaser deems necessary to evaluate the Property, including an Environmental Assessment, if applicable, zoning, title, survey, permitting etc. Seller shall permit Purchaser and Purchaser's agents, contractors, engineers, consultants and employees, upon reasonable notice to Seller, to enter onto and into the Property, from time to time prior to the Closing Date to conduct and make any and all studies, examinations, surveys, inspections and investigations of, or concerning, the Property, including, without limitation, traffic studies, soil borings and tests; engineering and geotechnical studies; drainage and flood plains and wetlands, if any; evaluation of the integrity of underground storage facilities, if any; and inspection and testing for the presence of any and all hazardous substances (all of the foregoing tests, studies, examinations, inspections and investigations are hereinafter collectively referred to as "Tests"). Purchaser shall repair and otherwise be liable for any damage or injury which occurs on the Property caused by Purchaser's investigations during Purchaser's or Purchaser's agents', employees', contractors' or subcontractors' inspection(s), shall indemnify, defend and hold Seller harmless for all loss and damage (including reasonable attorneys' fees) and shall maintain (and provide to Seller prior to entering onto the Premises) Commercial General Liability insurance coverage, in an amount not less than \$1,000,000.00, naming Seller as additional insured.

If Purchaser determines, in its sole discretion, at any time on or before 5:00 p.m. on the last day of the Due Diligence Period that the Property is unsatisfactory to it for any reason or no reason, Purchaser may terminate this Contract, whereupon the entire Initial Deposit will be returned to Purchaser by the Seller's attorney and neither party shall have any further rights against the other party or any liabilities to the other party (except for those provisions which are stated to survive termination of this Contract).

(b) Within thirty (30) days from the expiration of the Due Diligence Period, the Purchaser shall submit an application to the City of Binghamton Planning Commission for site plan and/or special use permit, the Zoning Board of Appeals, if necessary, the Commission on Architecture and Urban Design (CAUD) and the New York State Historic preservation Office (SHPO) for a four to six story mixed-use building with commercial or retail tenants on the ground level and market rate residential units on the upper floors. The Purchaser will pursue these applications in good faith. If the Purchaser is proceeding in good faith but has not received a final decision on the requested approvals within ninety (90) days of the expiration of the Due Diligence Period, then the City will extend Purchaser's time to obtain such approvals for up to an additional four (4) months. If, after a good faith application, the Purchaser is denied such approvals or does not receive a decision within the above deadlines, including any extension, then the Purchaser may either (i) agree to waive this contingency and purchase the Premises as otherwise provided in this Contract; or (ii) cancel this Contract and the Deposit will be returned to the Purchaser.

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7. Title to be Conveyed and Deed.

(a) The transfer shall be by Quit Claim Deed. Nonetheless, if Purchaser is unable to obtain title insurance insuring good and marketable title to the Premises pursuant to a current ALTA Owner's Policy of Title Insurance, then Purchaser may cancel this Contract and the Deposit will be returned to the Purchaser. Seller may, at its sole cost and expense and prior to closing, cure any title defects, including by way of title endorsement.

8. Closing, Transfer of Title and Construction. Transfer of title shall occur on or about thirty (30) days from the date Purchaser receives approvals as provided in Section 6 above. The closing will take place be at City Hall, 38 Hawley Street, Binghamton, New York, at a mutually convenient time.

Purchaser will construct and obtain a permanent certificate of occupancy for an approved four to six story mixed-use building with commercial or retail tenants on the ground level and market rate residential units on the upper floors within eighteen (18) months of the Closing Date. Purchaser will be required to post a performance bond, in a form acceptable to the City of Binghamton Engineer and Corporation Counsel, to guaranty timely construction.

9. Transfer Tax and Recording Fees. At the closing Purchaser shall deliver a check to the order of the recording officer of Broome County for the amount of the New York State and Broome County transfer tax, documentary stamps, if any, and all recording fees and costs.

10. Possession. Possession of the Premises shall be delivered by Seller to Purchaser at closing.

11. Pre-closing Inspection. The Purchaser shall have the right to inspect the Premises within twenty four (24) hours prior to closing to ascertain whether Seller has complied with the terms and conditions of this Contract.

12. Broker. Seller and Purchaser represent to one another that no broker was involved in this transaction. The parties agree to indemnify and hold each other harmless against any and all costs and expenses, including reasonable attorney's fees, by any broker claiming that he/she represented the other party. This paragraph will survive the closing of title.

13. Risk of Loss. General Obligations Law Section 5-1311 establishes the risk of loss and obligation of the parties in the event of the destruction or taking by eminent domain of all or a portion of the Premises being conveyed prior to closing.

14. Compliance with Law. All notice or notices of violations of law, rules, statutes, ordinances, orders, requirements, etc. issued by any Federal, State or local government or

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agency thereof against or affecting the Premises at the date hereof, shall be complied with by the Seller and the Premises shall be conveyed free of the same. Upon request of the Purchaser, the Seller shall furnish the Purchaser with an authorization to make the necessary searches therefore.

15. Seller's Representations/Warranties. Seller represent and warrants to Purchaser as follows:

15.1 Seller has the right to enter into this Contract and consummate the transaction contemplated hereby without the consent of others. All resolutions, authorizations and other governmental processes and procedures have been obtained or will be obtained prior to Closing.

15.2 To the best of Seller's knowledge, Seller has marketable title to the real property and owns, free and clear of any liens or encumbrances the fixtures, appliances and equipment at the Premises, if any.

15.3 There is no pending or threatened eminent domain or other legal or administrative proceeding affecting the Premises.

15.4 To the best of Seller's knowledge, the Premises has access to and from public highways and roads and Seller have no knowledge of any fact or condition which would result in termination of such access.

15.5 Seller agrees that from the date of execution of this Contract, to and including the date of closing, it will provide Purchaser with a copy of any notices, citations, complaints, or other directives from agencies having jurisdiction whereby Seller's compliance with environmental statutes, rules or regulations is called into question.

15.6 To the best of Seller's knowledge, Seller has duly complied in all material respects with all applicable laws and regulations of federal, state, and local governments, including but not limited to environmental laws and regulations as they relate to the Premises.

15.7 There is no litigation, actions, investigation, proceedings or notices of the same and Seller, to the best of its knowledge, is not aware of any potential litigation, actions, investigations or proceedings with respect to or relating to the Premises.

15.8 The representations and warranties made by the Seller shall be complete and correct on the closing date.

15.9 These representations will not survive the closing of title.

16. Notices. All notices required or otherwise given under this Contract shall be deemed effective when received and shall be in writing, delivered, personally or by prepaid U.S.

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Certified Mail, return receipt requested, Federal Express, or similar overnight courier addressed as follows:

Seller: Corporation Counsel  
City Hall, 38 Hawley Street  
Binghamton, NY 13901

Purchaser: Mark Yonaty  
M.B. Yonaty Development, LLC  
4164 Lisi Lane  
Binghamton, New York, 13903

With a copy to:

Levene Gouldin & Thompson, LLP  
ATTN: Howard M. Rittberg, Esq.  
450 Plaza Drive  
Vestal, New York

17. Miscellaneous.

17.1 This Contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

17.2 This Contract shall not be recorded in the Clerk's Office in the County in which the property is located.

17.3 Neither this Contract nor any provision thereof may be waived, changed or canceled except in writing signed by the party to be charged.

17.4 Any and all disputes hereunder will be determined under the laws of the State of New York. Venue for any action or proceeding will be Broome County, New York.

17.5 It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in this Contract, which alone fully and completely expresses their agreement with respect to the subject matter hereof.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Contract has been duly executed by the parties hereto as of the day and year first above written.

SELLER:  
CITY OF BINGHAMTON

By: \_\_\_\_\_  
Richard C. David, Mayor

Dated: \_\_\_\_\_

PURCHASER:  
M. B/ Yonaty Development, LLC

By: \_\_\_\_\_  
Mark Yonaty, Member/Manager

Dated: 9/9/15

# Empire State Development

December 19, 2014

Bob Murphy  
Director of Economic Development  
City of Binghamton  
38 Hawley Street  
Binghamton, New York 13901

Re: Mixed Use Development Project 70-72 Court St.,

Dear Mr. Murphy:

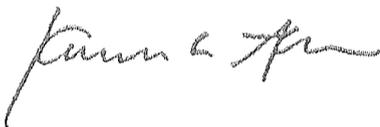
In 2011, Governor Cuomo launched the Regional Economic Development Councils and the Consolidated Funding Application (CFA) to provide each region with the tools to create and implement their own roadmap for economic prosperity and job creation. This community-based model uses local assets to drive local economic growth and has resulted in unprecedented partnerships and collaboration that are building a reinvigorated economy.

After three successful rounds, the 2014 CFA made \$750 million in economic development resources available from over 30 programs across thirteen state agencies. The agency programs provide resources for projects focused on community development and job creation, tourism, waterfront revitalization, energy and environmental improvements, sustainability, and low-cost financing. Empire State Development is proud to have contributed over \$220 million to this year's Consolidated Funding Application.

As announced by Governor Cuomo on December 11, 2014, we are pleased to inform you that City of Binghamton has been recommended for an award of up to \$500,000 from the Empire State Development Grants Program. ESD's Southern Tier Regional Office will contact you to clarify specifics about the project in order to issue a formal Incentive Proposal. The Incentive Proposal, which must be signed and returned to ESD, will outline funding requirements, including next steps, disbursement terms, minority- and women-owned business hiring goals, employment requirements, environmental and historic preservation review requirements, and other terms and conditions required by the ESD funding processes. Grant funding is conditioned on approval by the ESD Directors, which typically is requested at the time of project completion, and funds are disbursed in arrears, as reimbursement for expenses undertaken. If you applied for funding from other ESD programs or other State agencies, you will receive information from those programs/agencies separately.

Congratulations, and we look forward to working with you on this important project.

Best regards,



Kenneth Adams  
President & CEO, Empire State Development  
Commissioner, NYS Department of Economic Development

cc: Bonnie Palmer

633 Third Avenue | New York, NY 10017 | (212) 803-3100  
[www.esd.ny.gov](http://www.esd.ny.gov)

Exhibit "A"

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, made the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Binghamton, City Hall, 38 Hawley Street, Binghamton, New York 13901 ("Grantor") and 33 State Street Associates LLC, 2194 Hazard Hill Rd., Binghamton, NY 13903 ("Grantee")

### WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located at 72 Court St., Binghamton, New York, Parcel ID No. 160.41-4-14, and as further described in a deed filed in the Office of the Broome County Clerk in Book 2201 page 490 (the "Grantor's Property"); and

WHEREAS, Grantee is the owner of certain real property located at 92 State St., Binghamton, New York, Parcel ID No. 160.41-4-15, and as further described in a deed filed in the Office of the Broome County Clerk in Book 2313 page 88 (the Grantee's Property"); and

WHEREAS, buildings on Grantor's Property and Grantee's Property previously shared a common wall, including interior stairs and an access between the buildings; and

WHEREAS, Grantor has demolished its building, requiring Grantee to replace the prior interior stairs with stairs suitable for exterior use; and

WHEREAS, the stairs are located on the Grantor's Property; and

WHEREAS, the parties wish to provide for an easement for the construction, use maintenance, repair, and replacement of exterior stairs for ingress and egress to and from the Grantee's Property.

NOW, THEREFORE, the parties hereto, in consideration of \$1.00 paid by Grantee to Grantor and intending to be legally bound hereby, agree as follows:

1. Grantor hereby grants and conveys to Grantee a permanent easement over a portion of the Grantor's Property as described in Exhibit "A" annexed hereto and made a part hereof (the "Easement Area").
2. The Grantee shall use the Easement Area to construct, use, maintain, repair, and replace <sup>existing</sup> exterior stairs <sup>from the basement to ground level</sup> for ingress and egress to and from the Grantee's Property.
3. Grantee shall construct, use, maintain, repair, and replace <sup>above described</sup> the exterior stairs at its sole cost and expense.

Exhibit "B"

4. Grantee will comply with all City of Binghamton and New York State Fire Prevention and Building Code requirements regarding construction and maintenance of the exterior stairs.
5. Grantee agrees to indemnify and hold Grantor harmless from any liability, cost, or expense, including reasonable attorney's fees, incurred by Grantor by reason of injury to persons or damage to property arising out of or in connection with use of the exterior stairs and the Easement Area.
6. Grantee shall maintain general liability insurance in amounts consistent with general liability insurance for Grantee's Property or any such other amounts as the Corporation Counsel of the City of Binghamton may reasonably require, naming the Grantor as an additional insured and providing Grantor with not less than thirty (30) days notice of cancellation.
7. Grantee will repair any damage to the Easement Area, unless such damage is caused by Grantor, or Grantor's employees, agents, or contractors.
8. Nothing herein shall preclude Grantor, its heirs, successors and assigns, from constructing improvements above the exterior stairs or relocating the exterior stairs, provided such construction or relocation does not eliminate the ingress and egress intended by this Easement Agreement.
9. In the event of any default under this Easement Agreement either party may give written notice to the defaulting party and a reasonable opportunity to cure said default. If Grantee fails or refuses to cure any default within said cure period or if Grantee fails or refuses to maintain or discontinues its general liability insurance, then Grantor may, upon two (2) business days written notice to Grantee, terminate use of the Easement Area.
10. Any notices hereunder shall be delivered either personally or by certified mail, return receipt requested to the party at the above address. Either party may amend the address by giving written notice to the other party. Any notice to the City of Binghamton shall be to the attention of the Mayor with a copy to the Corporation Counsel.
11. The laws of the State of New York shall apply to this Easement Agreement and venue for any action or proceeding hereunder shall be Broome County, New York.

IN WITNESS WHEREOF, the parties hereto have caused this Easement Agreement to be duly executed the day and year first above written.

33 STATE STREET ASSOCIATES LLC

By: \_\_\_\_\_

THE CITY OF BINGHAMTON

By: \_\_\_\_\_  
Richard C. David, Mayor

STATE OF NEW YORK    )  
  ) SS:  
COUNTY OF BROOME    )

On the    day of \_\_\_\_\_ in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK    )  
  ) SS:  
COUNTY OF BROOME    )

On the    day of \_\_\_\_\_ in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard C. David, Mayor of the city of Binghamton, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public