

CITY OF COOS BAY URBAN RENEWAL AGENCY
Agenda Staff Report

MEETING DATE February 21, 2017	AGENDA ITEM NUMBER
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TO: URA Chair Kramer and Board Members

FROM: Rodger Craddock, Agency Manager

ISSUE: Purchase of the American Building

SUMMARY:

The South Coast Development Council Inc. (SCDC) has proposed a public-private partnership with the Coos Bay Urban Renewal Agency (along with other public and private partners) for the creation of the Rural Entrepreneurship Ecosystem Framework (REEF), a one-stop business development services center. The REEF is a collaborative, regional effort of partners who hope to stimulate and support entrepreneurs and small businesses on the rural coast of Oregon. This "ecosystem" will help to nurture small businesses through the steps of creation, implementation and operation. The ecosystem will help develop business plans, mentor new entrepreneurs, provide financial assistance resources, and house the South Coast's best and brightest business development advisers to help generate development.

The proposed location of the REEF is the American Building which is located in downtown Coos Bay. The American Building is arguably a blighted and underutilized building. While SCDC is working with state and federal granting agencies on a number of significant grants in an effort to remodel and reoccupy the entire building, they are requesting the URA assistance in purchasing the building for them.

Under the direction of the Agency, staff has negotiated with the owner of the building resulting in a tentative offer of \$700,000 for the purchase of the building. Should the Agency wish to proceed, we would need to enter into a sales agreement which requires a \$20,000 non-refundable earnest payment and a nine month closing deadline to allow SCDC to raise the necessary minimum of \$3,000,000 which is calculated to remodel one half of the building. Under the planned public-private partnership, once SCDC has secured the funds for the initial remodel, the URA would complete the purchase; and thereafter, transfer the deed for the building to SCDC with agreeable conditions.

ACTION REQUESTED:

A motion to allow the Agency Manager to sign the American Building purchase agreement.

**SALE AGREEMENT AND
RECEIPT FOR EARNEST MONEY**

DATE: February __, 2017
SELLER: GREGORY FLANDERS, through FARMERS AND MERCHANTS TRUST
COMPANY, Custodian FBO IRA Account Gregory Flanders
PO Box 891
Long Beach, CA 90801-0891
BUYER: URBAN RENEWAL AGENCY of the City of Coos Bay
500 Central Ave.
Coos Bay, OR 97420

Recital

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property with all improvements located on it commonly known as the American Building, with Street addresses of 190 Central Avenue (tax lot 25S13W26CDTL0400000), 140 N 2nd Street (tax lot 25S13W26CDTL0390000) and 180 N 2nd (tax lot 25S13W26CDTL0400100), City of Coos Bay, Coos County, Oregon, having the following legal description (the “Property”):

Lot 3, Lot 6, and Lot 7, Block 11, Town of Marshfield, Coos County, Oregon

Terms and Conditions

Now, therefore, for valuable consideration, the parties agree as follows:

- 1. Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$700,000 (the “Purchase Price”).
- 2. Earnest Money.** Buyer shall deposit the sum of \$20,000 in escrow at Ticor Title, as earnest money. Such sum shall be nonrefundable to the Buyer, subject only to the Seller’s failure to fulfill Seller’s obligations under the terms of this Agreement.
- 3. Payment of Purchase Price.** The Purchase Price must be paid as follows:
 - 3.1** At closing, the earnest money will be credited to the Purchase Price.
 - 3.2** At closing, Buyer will pay the balance of the Purchase Price in cash.
- 4. Closing.** Closing must take place on a mutually agreed upon date, but in no event later than October 13, 2017 (the “Closing Date”), unless otherwise agreed by the parties. Closing shall take place at the offices of Ticor Title, 300 Anderson, Ave., Coos Bay, Oregon. The terms *closed*, *closing*, or *closing date* mean when the deed or contract is recorded and funds are available to Seller. Each party must pay one-half of the escrow fee and one-half of any transfer taxes.
- 5. Preliminary Title Report.** Within 20 days after full execution of this Agreement, Seller will furnish to Buyer a preliminary title report showing the condition of title to the Property, together with copies (or links to online copies if the report is furnished in digital form) of all exceptions listed therein (the “Title Report”). Buyer will have 15 days from receipt of the Title Report to review it and to notify Seller, in writing, of Buyer’s disapproval of any special exceptions shown in the Title Report. Those exceptions the Buyer does not object to are referred to below as the “Permitted Exceptions.” Zoning ordinances, building and use restrictions, property taxes that are not yet paid for the current tax year, and reservations in federal patents and state deeds are deemed Permitted Exceptions. If Buyer notifies Seller, in writing, of disapproval of any exceptions, Seller

will have 15 days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Seller Assurance Period"). If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within 10 days after expiration of the Seller Assurance Period, in which event the earnest money will be promptly refunded to Buyer and this Agreement will be of no further binding effect.

6. Conditions.

6.1 Buyer's obligation to purchase the Property is contingent on satisfaction of each of the following conditions:

6.1.1 Buyer's approval of its physical inspection of the Property, which may include, but will not be limited to, structural and pest inspections. Buyer will have until February 15, 2017, to complete its physical inspection of the Property. However, if Buyer wishes to conduct any invasive testing on any portion of the Property, or any sampling of soils or other elements of the Property for any purposes, advance consent from the Seller will first be sought, which will not be unreasonably withheld, and Buyer will repair any damage caused by the testing.

6.1.2 By the date of closing, the South Coast Development Council, Inc., an Oregon non-profit corporation ("SCDC"), to whom the Buyer intends to convey the Property, will have secured financing for the renovation of the Property, in an amount not less than \$3,000,000 (Three million dollars).

6.2 Buyer and SCDC and their agents may enter the Property to conduct inspections. Buyer agrees to indemnify and hold Seller harmless from all loss, damage, or liability arising out of Buyer's and SCDC, and their agents' access to the Property under this section. If Buyer is not satisfied, in its sole discretion, with the result of Buyer's inspections, Buyer may terminate this Agreement by written notice to Seller given at any time before the applicable date set forth above, in which event the earnest money must be promptly refunded to Buyer. If Buyer fails to give any such notices of termination within the applicable time period, this condition will be deemed to have been waived.

6.3 Buyer may conduct a risk assessment or inspection to determine the presence of hazardous materials on the property. Buyer may terminate this sale by delivering to Seller written notice of Buyer's disapproval of a risk assessment or inspection within 60 days of the date of this Agreement unless Buyer has waived the opportunity. If Buyer delivers to Seller a timely notice of disapproval, this Agreement will automatically terminate.

7. Possession and Existing Tenancies

7.1 Buyer will be entitled to possession of the Property from and after closing, subject to the existing leases and tenancies affecting the Property. Listed on attached Exhibit 1 are the names, addresses and phone numbers of all current lessees and tenants of the Property. Seller shall make available to Buyer or its agents for inspection the lease/rental agreements with Seller's current and any future lessee/tenant. Buyer and Buyer's agents may enter on the Property at reasonable times prior to closing, upon reasonable prior written notice to Seller and/or Seller's agent, and the Seller's lessee/tenant for the purpose of inspecting the Property. In no event will Buyer or Buyer's agents interfere with the rights of any lessee/tenant of all or part of the Property, nor interfere with the business activities of any such lessee/tenant.

7.2 Seller agrees that it will not enter into any new lease/rental agreement pertaining to the property, nor renew any existing lease/rental agreement, for a lease/rental period in excess of one year, without prior written consent of the Buyer.

8. Maintenance and Alterations

8.1 Seller will keep and maintain all buildings, other improvements, and landscape now existing or that will be placed on the Property prior to closing in at least as good condition and repair as of the date this Agreement was entered into, and will not permit any waste or removal of the improvements. Seller will not make any substantial capital improvements or alterations to the property without the prior written consent of Buyer. Any such capital improvements or alterations shall be at the sole expense of Seller, unless otherwise agreed in writing by the parties.

8.2 Any alterations and/or improvements constructed by or for Seller must be completed lien-free by reputable Oregon licensed contractors without defects in conformance, with plans, specifications, and drawings, and in conformance with standards in the industry and any applicable covenants, conditions, and restrictions encumbering the Property.

9. Marketable Title. On the Closing Date, unless agreed otherwise herein, Seller will convey marketable title to the Property to Buyer by statutory warranty deed, free and clear of all encumbrances, except for the Permitted Exceptions.

10. Title Insurance. Within 30 days after closing, Seller must furnish Buyer with an American Land Title Association owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

11. Taxes; Prorates. Real-property taxes for the current tax year, insurance premiums (if Buyer assumes the existing policy), and other usual items must be prorated as of the Closing Date.

12. Possession. Buyer will be entitled to possession immediately upon closing.

13. Property Included. All built-in appliances, floor coverings, window and door screens, storm doors and windows, irrigation, plumbing, ventilation, cooling and heating fixtures and equipment, water heaters, attached electric light fixtures, window coverings, awnings, attached television antenna, planted shrubs, plants, and trees, and all fixtures are part of the Property and must be left on the Property by Seller except.

14. Personal Property. The following personal property is included as part of the Property being sold to Buyer: keys for all lockable doors on the Property, any remote door openers, and any and all appliances.

15. Insurance. Seller will insure the Property through closing against the losses typically covered by a commercial fire insurance policy.

16. Seller's Representations. Seller represents and warrants to Buyer that to the best of Seller's knowledge, information, and belief:

- (1) Seller knows of no material structural defects with respect to the Property;
- (2) Seller has received no written notice of any liens or assessments to be levied against the Property;
- (3) Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property; and
- (4) Seller is not a *foreign person* as that term is defined in IRC section 1445(f)(3). On the Closing Date, Seller will execute and deliver to Buyer a certification of non-foreign status on a form required by the IRS.
- (5) No environmentally hazardous materials or wastes are contained on or under the Property, and the Property has not been identified by any governmental agency as a site on which environmentally hazardous materials or wastes have been or may have been located or deposited.
- (6) The Property is equipped with all smoke and carbon monoxide alarms required by law.

(7) Seller is aware of no material difference between the actual or apparent lines of possession or use of the Property and the legal boundaries of the Property.

(8) Seller is aware of no current or pending litigation or administrative action that may affect the Property.

All representations and warranties contained in this Agreement will survive closing and the conveyance of the Property to Buyer.

17. Binding Effect/Assignment Restricted. This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Buyer will not assign its rights under this Agreement without Seller's prior written consent, which may not be unreasonably withheld by Seller.

18. Remedies. TIME IS OF THE ESSENCE OF THIS AGREEMENT. If the conditions described in section 6 above are satisfied or waived by Buyer and the transaction does not thereafter close, through no fault of Seller, before the close of business on the Closing Date, Seller will have the right to retain all earnest money as liquidated damages, and this Agreement will be of no further effect, it being the intention of the parties that Buyer may forfeit the earnest money and be free of any further obligations under this Agreement. If Seller fails to deliver the deed described in section 9 above on the Closing Date or otherwise fails to consummate this transaction, through no fault of Buyer, all earnest money must be refunded to Buyer.

19. Attorney Fees. If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court or arbitrator and, in the event of appeal, as set by the appellate courts.

20. Arbitration. All disputes between Seller and Buyer that cannot otherwise be resolved by negotiation or mediation must be submitted to final and binding arbitration in accordance with Oregon law. If the parties cannot agree on an arbitrator, either party may submit the matter to the presiding judge of the county in which the Property is located for appointment of an arbitrator. Unless otherwise agreed by the parties, the rules of arbitration will be the same as those required for the arbitration of disputes in the county where the Property is located. BUYER AND SELLER UNDERSTAND THAT BY AGREEING TO FINAL AND BINDING ARBITRATION THEY ARE VOLUNTARILY WAIVING THE RIGHT TO HAVE THE MATTER TRIED BY A JUDGE OR JURY, AND THAT THE RIGHT TO APPEAL AN ARBITRATION DECISION IS LIMITED UNDER OREGON LAW.

21. Notices. All notices and communications in connection with this Agreement must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted will be deemed effective three days after the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

22. Time for Performance. When the last day for performance of an act by a party falls on a Saturday, Sunday, or legal holiday, the performance of the act shall be considered timely if it is performed on the next day that is not a Saturday, Sunday, or legal holiday.

23. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

24. Applicable Law. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon.

25. Acceptance. This Agreement will be null and void unless accepted by Seller, by Seller's execution of it, on or before _____, 20__.

26. Statutory Warning. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010, ORS 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301, AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SELLER:

by _____
Greg Flanders

Dated: February __, 2017

BUYER:

by _____
Stephanie Kramer, Urban Renewal
Agency of Coos Bay

Dated: February __, 2017