



## STAFF REPORT

**Date:** March 11, 2014  
**To:** City Council, as Board of the Successor Agency  
**From:** Bryan H. Montgomery, City Manager   
**SUBJECT:** Lease Agreement with Estate Sale Treasures, LLC for the Building and Property Located at 3330 Main Street in Oakley (APN 037-160-027)

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### Background and Analysis

The building and property located at 3330 Main Street was purchased some years back by the Oakley Redevelopment Agency and the property's disposition is subject to the rules and regulations of the State pursuant to the laws that dissolved redevelopment agencies. These laws do not allow for a long-term lease or sale of the property at this time and so the proposal from Estate Sale Treasures works well to get the building improved and occupied until the building is sold pursuant to State law (this could be as much as a year or so from now).

Estate Sale Treasures proposes to lease the entire building and pay for some initial improvements and all of the ongoing maintenance and utilities. The ground floor will be retail space and the upstairs offices and storage. The Estate Sale Treasures proposal is attached for more detail.

### Fiscal Impact

The principals of Estate Sale Treasures, LLC will perform a number of improvements to the building that will increase its value. Further, lease payments of \$1,500 per month will commence on May 1<sup>st</sup> and will increase to \$2,000 per month on September 1, 2014 and to \$2,500 per month on April 1, 2015, if the lease has not been terminated prior to these subsequent dates. These lease revenues will be used for the operations of the Successor Agency.

### Recommendation

Staff recommends the Board adopt the attached Resolution approving the month-to-month lease agreement with Estate Sale Treasures, LLC for the building and property located at 3330 Main Street.

### Attachments

1. Resolution
2. Proposed Lease Agreement
3. Proposal from Estate Sale Treasures, LLC

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL, AS THE BOARD OF THE  
SUCCESSOR AGENCY TO THE OAKLEY REDEVELOPMENT AGENCY  
AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT  
WITH ESTATE SALE TREASURES, LLC FOR THE PROPERTY LOCATED AT  
3330 MAIN STREET IN OAKLEY**

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**BE IT RESOLVED** by the City Council as the Board of the Successor Agency to the Oakley Redevelopment Agency of the City of Oakley that the City Manager is hereby authorized and directed to sign on behalf of the Successor Agency that certain Lease Agreement with Estate Sale Treasures, LLC, a true and accurate copy of which is attached hereto.

The foregoing resolution was adopted at a regular meeting of the Board of the Successor Agency to the Oakley Redevelopment Agency of the City of Oakley held on the 11<sup>th</sup> day of March, 2014, by Boardmember \_\_\_\_\_, who moved its adoption, which motion being duly seconded by Boardmember \_\_\_\_\_, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

**APPROVED:**

\_\_\_\_\_  
Randy Pope, Chair

**ATTEST:**

\_\_\_\_\_  
Libby Vreonis, Secretary

\_\_\_\_\_  
Date

**LEASE AGREEMENT**  
**3330 Main Street Oakley, California**

This Lease Agreement ("Lease"), by and between the Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency "Lessor") and Beth Jett and Amanda Betorina, individually and dba Estate Sale Treasures, LLC hereinafter designated as ("Lessee"), is made on the following terms and conditions:

1. **DESCRIPTION:** Lessor hereby leases unto Lessee, and Lessee hereby leases from Lessor, on the terms and conditions hereinafter set forth. Those certain premises hereinafter referred to as the "leased premises" and described as follows:

**3330 Main Street, Oakley, California, 94561**  
**(Contra Costa County Assessor's Parcel Number 037-160-027)**

2. **TERM.** The term of this Lease shall be month-to month, beginning on the 15th day of March 2014. Lessee acknowledges that any rent payment for the month of March is waived in order to provide Lessee with time to complete the tenant improvements (as outlined in the Lessee's proposal, with is attached as Exhibit A). Rent shall also be waived for April 2014 in consideration of the landscaping, power washing, cleaning, painting, flooring and other improvements referred to in Lessee's proposal which is attached as Exhibit A to this agreement. Lessor shall have the right to terminate this Lease prior to expiration of this term upon sixty (60) days written notice to Lessee, as provided for herein.

3. **RENT.** The rent for the leased premises shall be the sum of FIFTEEN HUNDRED DOLLARS AND NO/100 (\$1,500.00) per month, payable in advance, commencing on the **1st day of May 2014**, and payable on the 1st day of every month thereafter, until the lease is terminated. Effective September 1, 2014, if the lease has not been terminated prior, the lease payment shall be TWO-THOUSAND DOLLARS AND NO/100 (\$2,000.00) per month. Effective April 1, 2015, if the lease has not been terminated, the lease payment shall be TWO-THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$2,500.00) per month, and payable on the 1st day of every month thereafter, until the lease is terminated. As stated herein, Lessee is responsible for ALL costs of utilities, taxes, and maintenance of the building, parking lot and landscaping during occupancy.

Rent shall be mailed or hand-delivered to:

City of Oakley  
Attn: Finance Director  
3231 Main Street Oakley, CA 94561

4. **SECURITY AND CLEANING DEPOSITS:** Lessee shall provide Lessor with a security deposit in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS AND NO/100 (\$2,500) as security and a cleaning deposit of ONE THOUSAND DOLLARS AND NO/100 (\$1,000), both for the full and faithful performance by Lessee of all terms, conditions, and covenants of this Lease.

Upon termination of this Lease, Lessor may use any portion of the security and cleaning deposits as may be reasonably necessary to remedy Lessee's defaults of the provisions of this Lease, including, but not limited to, payment of unpaid rent due under paragraph 2 of this Lease; cleaning of the Premises, repair of damage, or for storage of personal property which has been abandoned by Lessee. Any remaining portion of the security and cleaning deposits after such deduction shall be mailed to Lessee at Lessee's last known address.

5. **DELINQUENT RENT AND LATE CHARGES:** If any rent is not paid to Lessor within ten (10) days after due date of the 1st of the month, a late charge of TWO-HUNDRED FIFTY DOLLARS AND NO/100 (\$250) shall be added to the payment and the total sum shall become immediately due and payable to Lessor. Failure to pay within twenty (20) days after the due date will incur an additional late charge of THREE-HUNDRED FIFTY DOLLARS AND NO/100 (\$350) which shall be added to the payment and the total sum shall become immediately due. Failure to pay rent and any late charges mentioned herein within thirty (30) days after the due date will immediately terminate this Lease.

In the event that Lessee shall become delinquent in paying Lessor any payment due pursuant to this Lease, Lessee shall pay to Lessor interest on said unpaid balance at a rate of one and one-half percent (1 1/2 %) per month, from the date said rent and late charges were due and payable until paid.

6. **USE:** The premises are leased to Lessee for the purpose of retail sales for Estate Sale Treasures, LLC in the ground floor and offices and storage on the second floor of the building and for no other purpose. Lessee shall not leave the premises unoccupied or vacant, but shall conduct and carry on only the type of business specifically set forth herein, keep in stock a line of merchandise reasonably designed to produce the maximum amount of gross sales and revenues, maintain an adequate sales force to serve all customers properly, and

operate such business in an efficient and diligent manner at all times during the term of this Lease. Said business shall be kept open on a schedule customary for business of like character, generally recognized holidays excepted.

7. **MAINTENANCE:** Lessee is responsible for the maintenance and be conducted in a clean, professional and business-like manner to include frequent and regular maintenance of all interior and exterior areas including parking, refuse dumpster and landscaping.

No overnight vehicle parking is authorized on the premises without prior written consent of the Lessor.

8. **UTILITIES, SERVICES AND OPERATING COST.** Any utilities, services and related maintenance cost shall be paid directly by Lessee at Lessee's sole cost and expense.

If individual heating or air conditioning units or any other equipment and fixtures are provided to Lessee, Lessee shall pay the full cost of operating, maintaining, replacing and repairing same during the term hereof.

9. **ALTERATIONS AND REPAIRS.** Lessee shall make no alterations of or additions to either the interior or exterior of the said premises without the written consent of Lessor. Any such additions to or alterations of the premises shall be made at the expense of the Lessee and any such alterations of or additions to the premises, including any lockup bolts or security grating and hardwares shall become at once a part of the realty and belong to Lessor. Lessee at Lessee's sole cost, is responsible for all repairs and maintenance of the lease premises and shall keep and maintain said premises and appurtenances and every part thereof, including but not limited to the store front, exterior walls, doors, roof, plumbing, sewers, plate glass and other glazing duct work' electrical wiring and lights, sign fixtures, canopies and sidewalks adjacent to the premises, floors, ceilings, fire sprinkler systems and the entire interior of the premises in good and sanitary order, condition and repair, making replacements as necessary. Lessee hereby waives all right to make repairs at the expense of Lessor as provided in Section 1942 of the Civil Code of the State of California, and all rights provided for by Section 1941 of said Civil Code. If, during the term of this Lease, in the judgment of Lessor, the Lessee shall fail to keep and maintain the premises in any respect required by this Paragraph, Lessor may do anything necessary to correct the problem by restoring the good and sanitary order and condition, or make the repair, provided that the Lessee shall have failed to cure such problem or make such repair within fifteen (15) days after receipt of notice from Lessor. Any

amounts expended by Lessor to correct such problem or make such repair shall be deemed to be additional rental and is payable as such on the next day upon which rent becomes due.

By entry hereunder, Lessee accepts the premises in its present order, condition and repair and agrees on the last day of said term or sooner termination of this Lease, to surrender unto Lessor said premises with the said appurtenances in the same condition as when received, reasonable use and wear thereof excepted. Lessee understands that Lessor makes no representations or warranties as to the physical or mechanical qualities of the premises. Any costs at the outset necessary to make the leased premises tenantable shall be borne by the Lessee.

10. **TRADE FIXTURES**. Subject to the provisions of this Agreement, Lessee from time to time at Lessee's expense may install in or on the leased premises such express equipment, furniture and property as it may consider advisable for the conduct of its business, provided that any such installation shall not cause any material damage to the improvements on the leased premises. Lessee shall remove all unattached, movable furniture, trade fixtures and store equipment installed on the leased premises by Lessee and the same shall be removed by Lessee at or before the expiration or termination of this Lease or any renewal term hereof, and if damage is caused by such removal, Lessee agrees to repair such damage at its own cost forthwith.

11. **FREE FROM LIENS**. Lessee shall keep the leased premises and the property in which the leased premises are situated free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Lessee.

12. **COMPLIANCE WITH GOVERNMENTAL REGULATIONS**. Lessee shall, at its sole cost and expense, comply with all of the requirements of all County, Municipal, State and Federal authorities now in force, or which may hereafter be in force pertaining to the leased premises, and shall faithfully observe in the use of the premises all County, Municipal, State and Federal laws, ordinances, and statutes now in force or illicit may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be party thereto or not, that Lessee has violated any such laws, ordinances, or statute in the use of the premises, shall be conducive of that fact as between Lessor and Lessee.

13. **ASSIGNMENT OR SUBLETTING**. Except for the "Everyday Treasures"

store that will sublease a portion of the premises, Lessee shall not assign this Lease nor any right hereunder, to sublet the premises, nor any part thereof, without the Lessor's prior written consent of the assignment or subletting after reviewing the proposed tenant's business background, creditworthiness and financial conditions which written consent shall not be unreasonably withheld by Lessor. Lessor's consent to any assignment shall be withheld in the event there shall be any change or modification of the use of the premises from that stipulated in Paragraph 4 above. Upon any assignment or subletting, the parties agree that the base rent stipulated in Paragraph 3 above shall be increased to the market rent determined by survey of the rent then being asked for similar vacant premises in the area, but in no event shall the new base rent be less than the base rent payable for the last full month immediately preceding the assignment or subletting. Lessor's consent to any one assignment or subletting, shall not constitute a waiver of any subsequent assignment or subletting requirements as set forth in this Lease. Any assignment or subletting without the Lessor's consent shall, at the option of the Lessor, be voidable and be deemed a breach of this Lease. In the event of any assignment or subletting it is understood that Lessee shall not be relieved of any liability or performance of any term of this Lease.

#### **14. TAXES AND ASSESSMENTS.**

**14.1 PERSONAL PROPERTY AND TRADE FIXTURES.** Lessee shall be liable for all taxes and assessments levied against personal property and trade fixtures or improvements placed by or for Lessee in, on or about the leased premises. If any such taxes or assessments on Lessee's personal property or trade fixtures or improvements are levied against the Lessor or Lessor's property and if Lessor pays the same, which Lessor shall have the right to do regardless of the validity of such levy, of if the assessed value of Lessor's property is increased by the inclusion therein of the value placed upon such personal property or improvements of Lessee and if Lessor pays the taxes and assessments based on such increased assessment, which Lessor shall have the right to do regardless of the validity thereof, Lessee, upon demand, shall, as the case may be, repay to Lessor the taxes and assessments so levied against Lessor, or the proportion of such taxes and assessments resulting from such increases in the assessment.

**14.2 PROPERTY TAXES AND ASSESSMENTS.** Lessee agrees to pay the total taxes and special assessments upon the whole of the land and building and parking lot, upon and with which, the leased premises are situated. A statement of the taxes and special assessments for each year shall be prepared by Lessor and a copy thereof furnished to Lessee, and Lessor's good faith

computation of Lessee's prorata share of said taxes and assessments for the year shall be final and binding on all parties. The taxes and assessments due from Lessee for the first and last years of the lease term shall be prorated so as to include only those portions of the taxable years which are part of the lease period. If property taxes are cancelled following Lessor's acquisition of the property, Lessee shall pay any possessory interest tax levied by Contra Costa County.

15. **ADVERTISEMENTS AND SIGNS.** Lessee shall not place or permit to be placed any sign, marquee, lettering decoration' advertising, light or awning on the outside of the leased premises or on the inside of the said premises if the same be visible from the outside of the leased premises, without the written consent of Lessor. Lessee agrees that all signs shall conform with dimensions and color schemes designated by Lessor. Lessee, upon request of Lessor, shall immediately remove any sign or decoration which Lessee has placed or permitted to be placed in, on or about the premises and which, in the opinion of Lessor, is objectionable or offensive, and if Lessee fails so to do, Lessor may enter upon the leased premises and remove the same. Lessee agrees not to use a phonograph, loud speaker or other sound equipment audible from the outside of the premises without the prior written consent of Lessor. Lessee shall comply with all sign requirements as set forth in the Oakley Municipal Code.

16. **LESSEE'S INSURANCE.** During the term of this Lease, Lessee at its own cost and expense, shall procure from reliable insurance companies satisfactory to Lessor and keep in full force and effect at all times during this Lease term, a public liability and property damage insurance policy in amounts of not less than the following: Bodily injury liability - \$1,000,000 each person, \$1,000,000 each occurrence; property damage liability - \$500,000 each occurrence. Said policy shall cover injuries to and/or death of all persons and loss of or damage to property (including loss of use) occasioned by or arising from or out of the act: or omissions of Lessee, its agents and/or employees and/or the condition of the premises. Such insurance shall expressly inure to the benefit of Lessor, its agents or employees, for liability arising or alleged to have arisen from such acts or omission on the leased premises or the operations of Lessee or anyone directly or indirectly employed by Lessee. Said insurance policy shall name both Lessor and Lessee as insureds, with a copy of said policy being furnished directly to Lessor.

Lessee is to obtain a written obligation on the part of the insurance carriers to notify Lessor in writing at least ten (10) days prior to any cancellation or expiration without renewal thereof, and Lessee agrees if it does not keep said insurance in full force and effect the Lessor may take out the necessary insurance

and pay the premium, and the repayment thereof shall be deemed to be a part of the rental and is payable by Lessee to Lessor as such on the next day upon which rent becomes due.

The Lessee shall, at its sole cost and expense, comply with any and all recommendations and requirements pertaining to the leased premises of any insurance organization or company in connection with the maintenance of fire and public liability insurance covering the leased premises and the shopping center.

17. **WASTE.** The Lessee shall not commit, or suffer to be committed, any waste upon the leased premises or any public or private nuisance.

18. **PROHIBITED USES.** Lessee shall not use the leased premises for, or carry on or permit upon said leased premises, any offensive, noisy or dangerous trade, business, manufacture or occupations or any nuisance or anything against the public policy. Lessee shall not conduct or permit any auction sale, sidewalk sale or parking lot sale to be held in or about the leased premises. Lessee shall not solicit business, distribute handbills, store its equipment or merchandise or erect any signs, planters or other barriers on any sidewalk, in the parking lot, or in any common area.

19. **ENTRY BY LESSOR.** Lessee shall permit the Lessor and its designees to enter into and upon the leased premises after reasonable notice is given to Lessee, who shall not unreasonably withhold such permission (a) to inspect the premises; (b) to make repairs, alterations or additions (with such materials as Lessor may deem necessary therefore) to the leased premises, the building of which the leased premises is a part, or any property owned or controlled by Lessor; (c) to post notices of non-liability for alterations, additions or repairs; (d) to place upon the property in which the said leased premises are located any usual or ordinary "For Sale" signs, and to show any prospective purchasers the leased premises; (e) to place upon said leased premises any usual or ordinary "To Let" or "For Lease" signs, at any time within ninety (90) days prior to the expiration of this Lease in which case Lessee shall allow prospective lessees or applicants to enter and examine said leased premises during the said last ninety (90) days; and (f) for any other lawful purposes. In all instances of emergency, entry by Lessor, its designees or its invitees, Lessee waives any claim to damages or any rebate of rent for any loss of occupation or quiet enjoyment of the leased premises, including loss of business, occasioned by such entry.

20. **INDEMNIFICATION OF LESSOR.** Lessee, as a material part of the

consideration to be rendered to Lessor, hereby waives all claims against Lessor for damages to goods, merchandise or property of Lessee in, upon or about said premises and for injuries to persons in or about said premises, from any cause arising at any time, and Lessee will hold Lessor exempt and harmless from any damage or injury to any person, or to the goods, merchandise or property of any person, occurring in, upon or about the leased premises, sidewalks or parking areas adjacent thereto, from any cause arising at any time during the term of this Lease or any extension hereof . Lessee agrees that if Lessor is involuntarily made a party defendant to any litigation concerning this Lease or the demised leased premises, for any reason other than because of any act or omission of Lessor, then Lessee shall hold Lessor harmless from all liability by reason thereof including reasonable attorney's fees incurred by Lessor in such litigation and all taxable court costs.

21. **INSOLVENCY.** The following shall constitute a breach of this Lease by Lessee; (a) the insolvency of the Lessee; (b) the commencement of any bankruptcy proceedings whether begun by or against the Lessee; (c) the appointment of a receiver to take possession of all or substantially all of the assets of Lessee; (d) an assignment by Lessee for the benefit of creditors.

22. **NOTICES.** Any notice, demand or communication under or in connection with this Lease may be served by either party upon the other by personal service, or by mailing the same by registered mail in the United States Post Office, postage thereon fully prepaid, and directed to Lessor at (City Manager, 3231 Main Street Oakley, California, 94561) and may likewise, be served on Lessee by personal service, or by mailing the same, addressed to Lessee at 858 Weibel Ct., Oakley, California, 94561 whether or not Lessee has departed from, abandoned or vacated said leased premises. Either Lessor or Lessee may change its address by notifying the other party in writing as to such new address as may be desired to be used and which same shall continue as the address until further written notice.

23. **TIME IS OF THE ESSENCE.** Time is hereby expressly declared to be of the essence of this Lease and of all the covenants, agreements, conditions and obligations herein contained.

24. **NON-WAIVER OF BREACH.** The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such terms, covenants or conditions or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease,

regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

25. **EFFECT OF EXERCISE OF PRIVILEGE BY LESSOR.** The exercise of any rights, privileges or options hereunder by Lessor shall not exclude Lessor from exercising any and all other rights, privileges, and options hereunder. Lessor's failure to exercise any rights, privileges or options shall not relieve Lessee from Lessee's part to be performed hereunder nor from any damage or other remedies for failure to perform or meet the obligations of this Lease.

26. **VACATING OR ABANDONMENT OF PREMISES.** Lessee shall not vacate or abandon the leased premises any time during the lease term. If Lessee abandons, vacates or surrenders said leased premises or becomes dispossessed by process of law or otherwise, any personal property belonging to the Lessee and left on the leased premises shall be deemed to be abandoned. At the option of the Lessor, such property, if any, as may be mortgaged to the Lessor.

27. **SURRENDER OF LEASE NOT MERGER.** The voluntary or other surrender of this Lease by the Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the Lessor, terminate all existing subleases or subtenancies.

28. **DESTRUCTION OF PREMISES.** In the event of total destruction of the building in which the said leased premises are situated during the said term, from fire or other catastrophe, this Lease shall terminate. In the event of a partial destruction from any such causes, the Lessor shall forthwith restore the premises provided such restoration can be made within thirty (30) days under the laws and regulations of federal, state, county and municipal authorities, and materials and labor are available for such repairs, but such partial destruction shall in no way annul or void this Lease, except that Lessee shall be entitled to a proportionate deduction of rent while such restoration is being made, such proportionate deduction to be based upon the extent to which the making of such restoration shall interfere with the business carried on by Lessee in said leased premises. If such restoration cannot be made in thirty (30) days, Lessor may, at its option, make same within a reasonable time, this Lease continuing in full force and effect and the rent to be proportionately abated as in this paragraph provided. In the event that the Lessor does not so elect to make such restoration which cannot be made in thirty (30) days or a reasonable time, or such restoration cannot be made under such laws and regulations, or materials and labor are not available for such restoration within such time, this Lease may be terminated at the option of either

party. In respect to any partial destruction which Lessor is obligated to restore or may elect to restore under the terms of this paragraph the provisions of Section 1932, Subdivision 2 and of Section 1933 Subdivision 4, of the Civil Code of the State of California, are waived by the Lessee. In the event that the leased premises may be destroyed to the extent of more the 33-1/3 (thirty three and one-third percent of the replacement cost) thereof the Lessor may elect to terminate this Lease. In any case that Lessor should elect or be obligated to restore or rebuild because of destruction as provided herein, Lessor's obligation shall be limited to the basic building, store front and interior work originally provided by Lessor at the inception of this Lease; Lessee shall fully repair or replace its own alterations and improvements, exterior signs, trade fixtures, equipment, display cases and other installations originally installed by Lessee at its expense.

29. **REMEDIES OF LESSOR OR DEFAULT.** This Lease is made upon the express condition that if default should be made in the payment of the rent above, reserved or any part thereof, or if Lessee fails or neglects to perform, meet or observe any of Lessee's obligations hereunder, or if Lessee shall abandon or vacate said leased premises, Lessor or the legal representative of Lessor, at any time thereafter, without notice or demand may lawfully declare said term ended, and re-enter the said demised premises, or any part thereof either with or without process of law, and expel, remove and put out Lessee or any person or persons occupying said leased premises and may remove all personal property therefrom, and store the same in a public warehouse at the cost of and on account of Lessee, using such force as may be necessary to again repossess and enjoy said leased premises as before this demise, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant or condition, and without liability to any person for damages sustained by reason of such removal. Lessor may likewise at Lessor's option, but at the cost of Lessee, and in addition to any other remedies which Lessor may have upon such default or failure or neglect and without notice to Lessee, petition the Superior Court of the State of California for and be entitled as a matter of right to the appointment of a receiver and said court may appoint such receiver and vest in him such powers and authority as may be necessary or proper to fully note all the rights herein granted or reserved to Lessor. Any such receiver may take possession of any personal property belonging to the Lessee and used in the conduct of the business then being carried on by the Lessee in the said leased premises, and may use the same in conducting such business on the leased premises, without compensation to the Lessee.

Should Lessor elect to re-enter, as herein provided, or should it take possession

pursuant to legal proceedings or pursuant to any notice provided for by law, it may, in addition to any other remedies Lessor may have upon such default, failure or neglect, either terminate this Lease or it may from time to time, without terminating this Lease, re-let the said leased premises, or any part thereof, for such term or terms and at such rental or rentals and upon such other terms and conditions as Lessor, in its sole discretion may deem advisable, with the right to make alterations and repairs to said leased premises. Rentals received by Lessor from such re-letting shall be applied: First to the payment of any indebtedness, other rent, due hereunder from Lessee to Lessor; second, to the payment of rent due and unpaid hereunder; third, to the payment of any cost of such re-letting, including commissions; fourth, to the payment of the cost of any alterations and repairs to the leased premises; and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder. Should such rentals received from such re-letting during any month be less than that agreed to be paid during the month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly.

No such re-entry or taking possession of said leased premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding, any such re-letting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach. Should Lessor at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Lessee all damages it may incur by reason of such breach, including the worth at the time of any award of damages of the excess, if any of the amount of rent reserved in this Lease for the balance of the term and charges equivalent to rent for the remainder of the stated terms and including the cost of recovering the leased premises over that which Lessee proves could reasonably have been avoided, pursuant to Section 1951.2 of the Civil Code of California. No notice of the exercise of any election given Lessor herein need be sent to Lessee.

30. **SUBORDINATION.** Lessee covenants that this Lease shall be at all times subject and subordinate to the liens of any mortgage or mortgages, deed of trust or deeds of trust now existing or which Lessor, or any subsequent owner of the demised premises shall make hereafter covering said premises and to any and all advances made or to be made thereunder, and to the interest thereon and to any and all renewals thereof. Lessee covenants to execute, acknowledge, and deliver upon request, all documents demanded by Lessor to subordinate this Lease to any

such indebtedness as herein provided.

31. **NO RELOCATION BENEFITS.** Lessee acknowledges that the term of this Lease is month-to-month and Lessor reserves the right to terminate this Lease for any reason with sixty (60) days notice to Lessee.

Lessor will not provide relocation assistance to the Lessee or any Subleasee in the event that the Lease is terminated. Lessor will not pay for any moving expenses, renovations, or provide any monetary compensation to the Lessee. Lessor will not reimburse Lessee for any losses caused by the relocation. Lessee further warrants and represents that he has no other right or claim to compensation arising out of or connected with the acquisition of the leased premises by the Lessor and agrees never to assert such a claim.

32. **CHANGE OF OWNERSHIP OF LESSOR.** Lessee warrants and represents to Lessor that Lessee is aware that the leased premises may at any time, under said lease term, be sold by the Successor Agency to the Oakley Redevelopment Agency and its Oversight Board. In such event, or in the event of a voluntary sale or transfer of ownership of the leased premises by Lessor to a third party, Lessee agrees to hold Lessor, its agents, employees and assigns harmless from any and all liability related to said events.

33. **BINDING ON SUCCESSORS.** The covenants and conditions herein contained shall, subject to the provisions as to assignment and subjecting, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto.

34. **DEFINED TERMS.** The words "Lessor" and "Lessee" as used herein shall include the plural as well as the singular. Words used in masculine gender include the feminine and neuter. If there be more than one Lessor or Lessee the obligations hereunder imposed upon Lessor or Lessee shall be joint and several. The marginal heading or titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

35. **COSTS OF SUIT.** In the event that it becomes necessary or advisable for either party hereto to file suit against the other party to enforce any rights hereunder, the successful party in such lawsuit shall be entitled to a reasonable attorney's fee, to be taxed as costs in such suit or to be fixed by the Court in any such suit.

36. **WAIVER OF SUBROGATION.** As long as their respective insurers so permit, Lessor and Lessee mutually waive for themselves and their respective

insurers, their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies, existing for the benefit of the respective parties, but solely to the extent of the amount of insurance proceeds received by the insured party. Each party shall obtain any available endorsements to evidence compliance with the above waiver.

**IN WITNESS WHEREOF**, the parties hereunto set their hands in duplicate, the day and year first hereinabove written.

**LESSOR**

**LESSEE**

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

Bryan H. Montgomery  
City Manager

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

Beth Jett  
*Individually and dba Estate Sale  
Treaures, LLC*

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

Amanda Betorina  
*Individually and dba Estate Sale  
Treaures, LLC*

**ATTEST:**

\_\_\_\_\_  
Libby Vreonis  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
William R. Galstan  
Special Counsel

# **City of Oakley Successor Agency Proposal**

**For Month-to-Month  
Rental of:  
3330 Main Street Building  
Oakley, CA 94561**

**February 20, 2014**

**Co-Sponsored by:**

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### **Executive Summary:**

We are proposing the rental of the entire building located at 3330 Main Street, across the street from City Hall for a month to month period of time until the City of Oakley/Successor Agency completes the sale of that building required by State law. The building is currently completely vacant and we believe allowing us to occupy the building until it is sold will positively impact the City of Oakley in the following ways:

1. Generate Rental Income for City of Oakley Successor Agency which is not currently being collected until the building is sold.
2. Generate Sales Tax Revenue for City of Oakley by putting two retail storefronts in ground floor of building.
3. We will put in tenant improvements and beautify the building and grounds prior to sale increasing the selling price of the building once it is eventually sold.
4. We will bring customers to Downtown Oakley which will bring business to other retailers and restaurants within the city limits.
5. We will work with the City of Oakley to ensure all businesses, beautification and tenant improvements are approved and in-accordance to all city ordinances.

### **Prospective Tenants:**

We plan on putting two retail stores into the ground floor locations and management offices and storage on the second floor. We are proposing the idea of branding the building as "Oakley's Treasure Chest" with all businesses carrying a name that includes the word "Treasure" in it. A more specific breakdown of each business is as follows:

#### **Retail Store #1: "Everyday Treasures"**

On the ground floor, one store would focus on low cost items needed by the entire family including clothing, shoes, housewares, and home décor all priced at \$20 or less. This store will have a large amount of children's clothing, shoes and toys along with miscellaneous housewares needed in almost every home in the area. Inventory will be largely be based on wholesale purchases or "overstock" from other retail stores and this location will not accept consignment or purchase any inventory over the counter.

### **Retail Store #2: "Treasures from the Attic"**

Also on the ground floor, the second store would focus on antiques, furniture, and other unique home décor items for families in the area. This store would be similar to the current "Make Me an Offer" store located at 3510 Main Street and would continue to brand Main Street in Oakley as a "destination" for antique hunters and thrift shoppers hopefully bringing in more out of town customers along with servicing the local community. Inventory would largely be provided through items purchased from storage unit auctions. No inventory will be purchased or consigned over the counter.

### **Management Office #1: "Estate Treasures"**

We would put an estate sale company on the second floor that is not open to the public. This would be a sales and management office that would be used to set appointments but the actual work would be done at the location of the estate thus the entryway to the staircase would be locked at all times and not accessible to the public.

### **Management Office #2: Inventory Staging & Storage**

We would keep staged replacement inventory for the two downstairs retail stores locked in the two small upstairs offices so the retailers could simply come upstairs for replacement inventory as needed. The windows would be drawn at all times so nobody could see inside and door to the staircase leading upstairs would be locked and only accessible by employees only.

### **Management Office #3: Inventory Staging & Storage**

We would keep staged replacement inventory for the two downstairs retail stores locked in the two small upstairs offices so the retailers could simply come upstairs for replacement inventory as needed. The windows would be drawn at all times so nobody could see inside and door to the staircase leading upstairs would be locked and only accessible by employees only.

### **Tenant Improvements and Beautification:**

We would put considerable time and effort into beautification and tenant improvements into the building to make sure it portrays a positive image on the City. This would include but not be limited to the following improvements:

1. **Plants & Flowers:** We would tear out the decaying astroturf in front of the building and repair and plant draught tolerant plants and flowers in four separate bare patches of dirt near the sidewalk and entrance to the parking lot. This would be done with plants that are perennials and specific varieties needing very minimal amounts of water and upkeep, per the City's specifications
2. **Power Washing & Cleaning:** The exterior of the building on the parking lot side is laden with cobwebs and is in serious need of power washing and cleaning.
3. **Paint:** The downstairs retail storefronts would both be repainted completely on the interior areas. Exterior trim paint work would also be done to help brighten up the area. All paint colors would be in accordance with city ordinances and any exterior paint would remain the same colors as the existing paint on the building.
4. **Signage:** The permanent sign in front of the building would be updated to reflect the current tenants in the building. Current Sign Holders over each retail store would be kept the same and new signs would be made to reflect each business. All signs will be done in accordance to existing city ordinances. With permission a building sign would be installed on the monuments already in place on either side of the entrance to the parking lot in the same locations the previous tenants had installed signage.
5. **Kitchen / Break Room Areas** – There are a number of places in the building where kitchen cabinets have doors that have been broken off and other repairs will be needed before occupancy can happen. We will replace and repair any necessary kitchen and break room areas to be safe and visually appealing to both customers and employees. Appliances like refrigerators, microwaves, washer/dryers and water coolers will be installed in appropriate areas already plumbed and wired for appliances.
6. **Bathrooms** – One of the retail stores downstairs will need a new toilet, sink and bathroom area installed. The location is already plumbed, however the previous tenant took out the toilet area and covered it with flooring. We will

repair and replace any toilet and/or bathroom facility needed to ensure the space is functional and in accordance with ADA codes to have a functional business in that space.

7. **Flooring:** The flooring in one of the downstairs retail units is partial laminate wood flooring and partial linoleum. This is uneven, unattractive and needs repaired prior to tenant occupation. We will replace or repair the flooring so it is consistent and safe throughout the unit.

### **Rent & Lease Considerations**

We believe the tenant improvement and cleaning costs will be substantial and will add considerable value to the building which we believe will benefit the City of Oakley in both the short and long term. We will be paying many of those expenses in the beginning prior to occupancy, and some continued expenses throughout the duration of our time in the building.

We are also aware of the considerable risk by investing in these tenant improvements in a building that has the potential of being sold at any point in the future. With that in mind, we are offering the following rent and lease structure in exchange for occupancy of the entire building for the tenants and businesses listed earlier in this proposal until the building is sold.

- 1.) Month to Month Lease with the understanding that at any point in time the building could be sold and we would be forced to either re-negotiate terms with the new building owner or move out.
- 2.) Understanding that all tenant improvements and cleaning costs would be our responsibility and that in the event of sale, we would not have any right to recoup our costs.
- 3.) Tiered rent program whereas the first month's rent is waived, but effective May 1st would be at a rate of \$1500 per month for the building paid to the City of Oakley. Starting September 1<sup>st</sup> the rental rate will be \$2000 per month for the building and effective March 1, 2015 the rental rate would be \$2500 per month for the building. The rental rates listed above takes into consideration the cost and efforts of tenant improvements and cleaning expenses incurred.

5.) Insurance requirements: Each business in the building will carry both renters and general liability insurance with a minimum of \$1,000,000 in coverage. Copies of these policies can be provided to the City of Oakley upon approval of this proposal. We are open and willing to provide any other reasonable insurance coverages that might be required by the City of Oakley.

4.) Rental and Cleaning Deposit: We would upon acceptance of the keys and signing of the lease provide a security deposit of (\$2500), and a \$1000 cleaning deposit.

5.) Single Leaseholder: We would sign one lease taking responsibility for the entire building with the understanding and consent of the City of Oakley to manage the subleasing of space with pre-approved tenants to share the cost of rent and maintenance of the building.

**Closing:**

We are in a position to sign a lease, pay a deposit, and start tenant improvements almost immediately after approval of this proposal is granted. We have the inventory already in our possession and pre-approval from all tenants listed in this proposal. We are not planning on offering any space to anyone outside of our own “family of companies”.

We are willing to work with and compromise on any naming or design objections the City of Oakley might have to ensure we are acting in a way complimentary to the vision of the downtown redevelopment and beautification project already in place.

**Thank you for your consideration of this proposal, we are committed to the continuous improvement of the city and are proud to have the opportunity to do our part to help.**