



DATE: December 8, 2020

CATEGORY: Consent

DEPT.: Public Works

TITLE: **Amendment of Savvy Cellar Wines, Inc., Lease**

RECOMMENDATION

1. Approve the transfer of the Savvy Cellar Wines, Inc., lease from Holly and John Orchard to David Koehler, Rick Menard, and James Yang.
2. Authorize the City Manager to execute an amendment to the Savvy Cellar Wines, Inc., lease to reflect new ownership of David Koehler, Rick Menard, and James Yang.
3. Authorize the City Manager, or designee, to approve assignments, sales, subleases, or transfers of the lease if there is no change in the permitted use and amend the lease terms to include this authority.

BACKGROUND

On June 23, 2009, the City Council authorized the City Manager to lease 1,100 square feet of space in Centennial Plaza Train Depot to Jennifer Ayre and Brent Harrison, doing business as Savvy Cellar Wines, Inc. (Savvy Cellar). The lease had a 10-year initial term, ending November 30, 2019, with one 5-year renewal option that has been exercised. Approximately four years are remaining under the term of the lease, which expires on November 30, 2024.

On September 15, 2015, the City Council authorized the City Manager to transfer the lease agreement to Holly and John Orchard (Orchards) as the new owners of Savvy Cellar.

On September 9, 2020, the Orchards notified the City of their desire to sell Savvy Cellar. They have identified a potential buyer for the business and entered into an "Agreement for Sale of Business by Stock Transfer," conditioned on City Council approving the transfer of the lease. If the transfer is approved, the buyer plans to rename the restaurant from Savvy Cellar to The Crossing.

ANALYSIS

Article 11.1 of the lease, Permitted Uses, states, in part, “TENANTS shall use and occupy the Premises only for the purpose of operating a wine bar for on-site consumption and light food service, retail sales outlet for off-site consumption and other uses including private events and wine education class for which the City has granted Prior Written Approval.” It is the intent of the potential buyers of Savvy Cellar to continue with the same retail format. A copy of the buyer’s business plan for reference is included as Attachment 1 to the Council report.

Article 19 of the lease, Procedures for Assignment, Sale, Subletting and Transfer, requires advanced City approval of any assignment of the lease and requires the following information be provided regarding the assignee:

1. Name and legal composition.
2. Proposed use and business plan.
3. A description of the proposed assignee’s applicable experience.
4. The proposed assignee’s current financial information and credit worthiness.
5. Any other relevant information the City determines useful or necessary in evaluating the suitability of the proposed assignee to perform pursuant to the terms of the lease.

After an in-depth review of financial, credit, and other supporting documentation for the proposed assignment, staff found Savvy Cellar to be profitable prior to the COVID-19 pandemic, and the buyers appear to be qualified and have sufficient financial capacity to successfully assume and manage the business’s operation. Furthermore, the buyers have indicated that their robust experience, vendor network, and large client base will enable them to be profitable even during the COVID-19 pandemic.

Staff recommends approving the transfer of the Savvy Cellar lease to David Koehler, Rick Menard, and James Yang as the new owners and operators and authorizing the City Manager to execute an amendment to the lease with the new owners.

Future Assignments, Sales, Subleases, or Transfers of the Lease

In preparation to bring this item to Council, staff reviewed the Council action in 2009 that authorized the original lease to Savvy Cellar to determine the extent of the City

Manager's authority to approve assignments, sales, subleases, or transfers. Although the original lease includes terms that indicate the City Manager has such authority, the Council in 2009 did not clearly specify the authority or the limits of the authority. The business has now changed ownership twice, keeping the same retail format and uses of the leased premises. Staff recommends that Council authorize the City Manager to approve any future assignments, sales, subleases, or transfers of the lease if there is no change in the permitted use after verification that the buyers appear to be qualified and have sufficient financial capacity to successfully assume and manage the operation. This will streamline the City's approval process.

FISCAL IMPACT

Savvy Cellar's current annual rent as of December 1, 2020 is \$36,287. There is no fiscal impact associated with the change of ownership or amending the lease.

ALTERNATIVES

1. Do not approve the transfer and direct staff to issue a Request for Proposals for a new tenant.
2. Do not authorize the City Manager, or designee, to approve assignments, sales, subleases, or transfers for no change in use and authorize the City Manager to amend the lease to reflect that all assignments, sales, subleases, or transfers require Council approval.
3. Provide other direction to staff.

PUBLIC NOTICING

Agenda posting and a copy of report was sent to Holly Orchard, David Koehler, Rick Menard, and James Yang.

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Attachment: 1. Proposed Business Plan

cc: RPPA