



## STAFF REPORT

**DATE:** May 26, 2020

**TO:** Bryan Montgomery, City Manager

*Approved and Forwarded to the City Council*

**FROM:** Dwayne Dalman, Economic Development Manager

**SUBJECT:** Resolution of the City Council of the City of Oakley authorizing the City Manager to execute an Agreement to Assign Lease, Assignment of Lease, and Second Amendment to Lease relating to the restaurant building located at 3070 Main Street in Oakley, California

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### **Background and Analysis**

At 3070 Main Street is a two-story commercial building located in Downtown Oakley on the corner of Main Street and Vintage Parkway, across from City Hall. The restaurant building was constructed in 2013 by the Oakley Redevelopment Agency and was operated as Carpaccio's Restaurant from 2013 through 2017. In 2017 until the present, the restaurant was operated by Buon Appetito.

Over the last year and a half of operations, Buon Appetito struggled to create sales to reach the profitability goals that they had originally established. In response, the original Buon Appetito lease was modified in November, 2019 to reduce the monthly rent payments to \$5,000 per month starting December 1, 2019. .

The lease modification included a provision that the existing operator would identify a potential new operator to assume the remaining two years of the lease. Buon Appetito was not able to identify a new operator prior to the COVID-19 pandemic; however, a local broker was able to identify Skipolini's, as an interested party. It should be noted that Skipolini's is willing to move forward at the site during a time when most restaurants are struggling to survive and many will not be able to be reopened. It is a further testament to the financial capability of Skipolini's that they are willing to spend a substantial amount of money during these times to renovate the building to the level that they want in order to achieve success.

### **Skipolini's**

The first Skipolini's restaurant was opened in 1974 by Bev and Skip Ipsen in Clayton. Since that time, the restaurant has continually expanded and currently has additional locations in Antioch, Concord, Folsom, Reno, Rocklin and Walnut Creek. The company is currently operated by Kent Ipsen, son of Bev and Skip Ipsen. Information

about the existing Skipolini's locations and their menus can be found on their website, [www.SkipolinisPizza.com](http://www.SkipolinisPizza.com).

### ***Proposed Building Changes***

Skipolini's wishes to make substantial changes to the interior and exterior of the building to more closely align with the brand look of their existing locations. In the interior of the building, they wish to change the flooring, carpets, paint, lighting and tables. In addition, they wish to change the configuration of the bar area and open up the kitchen wall to allow customers to observe the chefs in the kitchen.

On the exterior, they wish to create four outdoor patio areas that are consistent with the theme of their other locations. All of these areas are designed to enhance the dining experience by providing a place for outdoor dining, a place to wait for an inside table and a place to socialize for adults and adults with children. They will all be enhanced by amenities including outdoor lighting, planting, water features, music and activities like corn hole.

The patio areas include a new patio on the Main Street and Vintage Parkway side of the building. On the back side of the building facing the parking lot, they wish to create an expanded patio area that will utilize the existing Buon Appetito patio and expand it towards the Mr. Pickles space. Finally, they want to upgrade the existing upstairs patio into a Sky deck lounge area.

Skipolini's estimates that they will spend approximately \$600,000 to \$750,000 on these improvements over a construction period that is anticipated to be four months. They would like to begin construction in June, 2020 and be ready to open by September/October 2020.

### **Lease Assignment**

As Buon Appetito has decided that they will not be able to reopen their restaurant as a result of the COVID-19 closure, they would like to assign the remaining term of their lease to Skipolini's. As such, the City of Oakley will enter into a Lease Assignment Agreement with Buon Appetito in exchange for release of liability for unpaid rent, release of security deposit paid to the City and release of any known claims. In addition, Buon Appetito will enter into a Lease Assignment with Skipolini's, assigning the terms of the existing Lease and Lease Amendment to Skipolini's.

### **Lease Proposal**

The City of Oakley and Skipolini's wish to enter into a Second Amendment to the existing Lease Agreement to reflect the future changes as follows:

#### ***Lease Term***

The term of the existing lease shall be extended by thirteen years and two months, through May 31, 2035. In addition, Skipolini's will have the option to extend the lease term for three, five-year periods.

***Rent***

In consideration of the proposed capital improvements to the building that Skipolini's wishes to make, the rent for the first 28 months will be \$1.00 per month. After the initial 28 months, rent will be increased to \$5,000 per month, at a flat rate for the remaining term of the lease. During the initial 28 months, the City will pay the associated building CAM charges, County Possessory Use Tax and the Ironhouse Sanitary District assessments. At the end of the 28 months, the City will continue to pay the County Possessory Use Tax and the Ironhouse Sanitary District assessments, but Skipolini's will begin to pay the CAM charges pertaining to the building.

***Tenant Improvements***

Skipolini's will be making tenant improvements to the building for a period of time not to exceed 120 days. The City will waive all associated City permit fees. Skipolini's will also apply for a loan, not to exceed \$75,000, from the Downtown Revitalization Loan Program to help fund a portion of these improvements – specifically the painting of the building, new awnings and the outdoor improvements.

***Mr. Pickle's space***

As Skipolini's will be investing heavily into their space, they desire that the adjoining space remain at its highest and best use. As such, the City will obtain the consent of Skipolini's before any new tenant is brought into the Mr. Pickles space, if they were to leave in the future.

***Building Appraisal***

Due to the capital improvement investment in the property, Skipolini's would like the opportunity to buy the building at some point in the future. As such, the City will obtain an appraisal of the building within 90 days. The cost of the appraisal will be shared by the City and Skipolini's and will rely on the income approach to determine value. Starting June 1, 2025, and for the remainder of the term of the lease, Skipolini's will have the ability to purchase the building at the value obtained by the appraisal adjusted for inflation on an annual basis.

**Fiscal Impact**

The City will receive lease income from the property based on the terms presented above, as well as the anticipated increase in sales tax. In addition, it is believed that Skipolini's will act as a catalyst for the downtown by bringing in more customers and exposure to the downtown and other businesses.

**Recommendation**

Adopt a resolution authorizing the City Manager to execute an Agreement to Assign Lease, Assignment of Lease, and Second Amendment to Lease relating to the restaurant building located at 3070 Main Street in Oakley, California.

**Attachments**

1. Resolution
2. Assignment of Lease
3. Lease Assignment Agreement
4. Second Amendment to Lease Agreement