

Theobroma Lease Status



Tuesday, July 08, 2008

MEMORANDUM

To: Sawmill Cove Board of Directors

From: ██████████ Director

Subject: Theobroma Chocolate

Theobroma Chocolate's lease expired on 04/30/2008.

Things to consider for lease extension.

- “Section 1.3 Options to Renew” of the lease agreement states, “Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise options for one successive term of five (5) years upon the same terms and conditions as this Lease Agreement.”
 - Theobroma is currently 3 months in arrears on lease payments.
- Per lease agreement, Theobroma must make a written notice to exercise lease renewal option not more than 30 days from the end of immediately preceding term.
 - To my knowledge, we have not received a written request
 - Theobroma has not returned phone calls.

Calculation of new rental rate

- Cost of living adjustment.
 - CPI adjustment using CPI average rate between Anchorage and Seattle calls for a 3.05% increase.
 - Manufacturing space (2,512 SF) in Administration building will increase from \$1,606.75/month to \$1,655.76/ month (\$0.659/SF)
 - Retail space (1,244 SF) in Administration building will increase from \$928.32/ month to \$956.63/month (\$0.769/SF)
- Due to lack of current lease agreement, lease rate could be re-negotiated.

LEASE AGREEMENT

PREAMBLE

This lease agreement is made as of April 10, 2003 between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" or "City" or "Lessor") and Theobroma Chocolate Company, P.O. Box 2237, Sitka, Alaska 99835 an Alaska company ("Theobroma" or "Lessee"). This Lease Agreement consists of the Special Provisions, the General Provisions, and the attached Exhibits A, B, C, and D.

SPECIAL PROVISIONS

ARTICLE 1: TERM OF LEASE, AND TERMINATION OF LEASE

Section 1.1 Conveyance of Estate in Lease. Lessor, for and in consideration of the rents received and of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the Subject Property as shown on Exhibit A. The Subject Property shows an approximately 3,738 square foot portion of the former administration building at the Sawmill Cove Industrial Park. The term is five (5) years and begins on the date both parties execute the contract unless Section 1.2 applies.

Section 1.2 Term Start: From the date the parties execute this lease, the tenant will have a 90 day "window" to find and secure financing before the term actually begins. The term will start right away if the tenant secures funding from a lender before the 90-day window closes. A dated letter from the lender to tenant, indicating the loan has been made, will serve as evidence of term start.

During the 90-day window, the tenant may not access the leasehold for any reason other than for planning and testing purposes. Before the 90-day "window" closes, Theobroma may determine favorable financing is not available and, therefore may declare the lease null and void by sending a letter stating that to the City Administrator. If after 90 days the tenant has not so communicated in writing with the City, then the term of the lease will start and the contract will be valid.

This section is only effective if both parties execute the lease no later than seven (7) days after the Assembly approves the lease. Notwithstanding any other provisions of this lease, the tenant owes rent for the first month of this lease in the calendar month which includes the day in which the term starts.

Section 1.3 Options to Renew. Provided there does not then exist a continuing material default by Lessee under this Lease at the time of exercise of this right or at commencement of any extended term, Lessee shall have the right to exercise options for one successive term of five (5) years upon the same terms and conditions as this Lease Agreement (except Section 1.2) with the lease payments as described in Article II. Each of these options is effective only if (a) the Sawmill Cove Industrial Park Board of Directors has determined under Subsection 3.5(e) that Theobroma has adequately controlled its odors during the immediately preceding term of the lease; (b) Theobroma makes a written request to exercise such option not more than 30 days

from the end of the immediately preceding term; (c) Theobroma is not in default; and (d) Theobroma has complied with the requirements of section 2.3.

Section 1.4 Disposition of Improvements and Lessee's Personal Property Following Term of Lease Agreement. With the exception of such improvements described in the next sentence, Lessee shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited on the Subject Property at the termination of this Lease Agreement or any extension thereof unless Lessee makes a separate written agreement with Sitka to do otherwise. Subject to the provisions of the next sentence, Theobroma shall leave behind at no cost to Sitka improvements including: power vents, carpeting, building systems and their components such as plumbing, piping, and fixtures; building structural components; non-structural improvements such as walls and ceilings; devices not used for processing or manufacturing such as but not limited to electrical service entrance equipment, electrical distribution panels, electrical cables, feeders, branch circuit wiring, and appurtenances such as light fixtures, switches, and other devices; portable fire extinguishers, smoke detectors, and fire and life safety equipment attached or fastened in ways integral to the building in which Subject Property is located. Any improvements or personal property not removed after thirty (30) days have passed after termination of this Lease Agreement shall be deemed abandoned and at Lessor's option shall become the property of Lessor, and Theobroma shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. Any holes that may be left in walls, ceilings, or floors as a result of removal of improvements shall be repaired by Theobroma in a manner that meets all existing requirements of local, state, and federal law and matches the existing materials of Subject Property. Theobroma agrees to leave Subject Property in a neat, clean, and weather tight condition at the end of the term of the Lease Agreement.

Section 1.5 Covenants to Perform. This Lease Agreement is made upon the above and the following terms and conditions, each of which the party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each party agrees to provide the other party with documents or further assurances as may be required to carry out the expressed intention of the parties.

ARTICLE II RENT

Section 2.1 Calculation & Method of Payment of Rent During the Initial Five-Year Term of the Lease. The First Year of the Lease begins on the date for commencement of this Lease Agreement set out in Article 1. Each successive year of the lease begins on the corresponding anniversary of the lease. Notwithstanding any other provision of this Lease Agreement, on the term start date set out in Article 1, lessee shall pay the full rent for the 19th month and 36th month of the Lease. Subject to the provision in the previous sentence, Lessee shall pay the lease payments for each month in advance upon the first day of each and every month for which rent is due throughout the term of the Lease Agreement without the necessity of any billing by Lessor. The following table shows the amount of lease payments due each month during the initial 5-year term of the Lease Agreement.

Month	Rate/Sq. Ft./Mo	Space	Total/Month	Total Year
1 st thru 6 th	-0-	2,512 mfg	-0-	
1 st thru 6 th	-0-	1,244 retail	-0-	
7 th thru 12 th	.15 cents	2,512 mfg	\$376.80	\$2,260.80
7 th thru 12 th	.20 cents	1,244 retail	\$248.80	\$1,492.80

13 th thru 18 th	.45 cents	2,512 mfg	\$1,130.40	\$6,782.40
13 th thru 18 th	.50 cents	1,244 retail	\$622.00	\$3,732.00
19 th thru 24 th	.60 cents	2,512 mfg	\$1507.20	\$9,043.20
19 th thru 24 th	.70 cents	1,244 retail	\$870.80	\$5,224.80
25 th thru 36 th	.60 cents	2,512 mfg	\$1,507.00	\$18,084
25 th thru 36 th	.70 cents	1,244 retail	\$870.80	\$10,449.60
37 th thru 48 th	Rates	3,756	Cost Adjust	Cost/Living Adjust
49 th thru 60 th	Rates	3,756	Cost Adjust	Cost/Living Adjust

Section 2.2 Cost of Living Adjustment to Lease Rate: Beginning with the 37th month of the lease, the lease rate will be adjusted based on an average of (a) the percentage difference between the "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers" as published in the edition published the soonest after January 1, 2006 and the "All Items" figure for Anchorage, Alaska as published in the "Consumer Price Index for All Urban Consumers" published the soonest after January 1, 2005 and (b) the percentage difference between the "All Items" figure for Seattle, Washington as published in the "Consumer Price Index for All Urban Consumers" published the soonest after January 1, 2006 and the "All Items" figure for Seattle, Washington as published in the "Consumer Price Index for All Urban Consumers" published the soonest after January 1, 2005.

Notwithstanding any other provision of this Lease Agreement, no adjustment in the lease payment from one year to the next year in the Fourth Year through the Fifth Year shall exceed three and a half percent (3.5%). If the cost of living average is greater than 3.5%, then the remainder will be added to the following year. Notwithstanding any other provision of this Lease Agreement, no adjustment in the lease payment will occur based on cost of living for a year in which the adjustment described in the above table shows no increase in the cost of living or a decrease in the cost of living.

Section 2.3 Calculation and Method of Payment of Rent During Second Optional Five-Year Renewal of the Lease. If Lessee decides to exercise the option to renew for a second successive five-year term under Section 1.2, the Lessee must notify the City of their intent no less than six (6) months before the end of the first term of the lease. Sitka may commission a professional market appraisal of the lease property in its "as was" condition to determine the value of the Subject Property as it would stand in the Sixth Year if Theobroma had not made any improvements to the Subject Property. Subject to the provision of the next sentence, the rental rate for each month of the second successive five-year term (also known as the Sixth through Tenth Years) shall be equal to one-twelfth of ten percent (10%) of the appraised value as determined by the appraisal described in this section. Notwithstanding any other provision of this Lease Agreement, Theobroma's lease rate during the Sixth through Tenth Years shall not increase by more than ten percent (10%) per year over what the lease rate was during the Fifth Year if the appraisal described in this section shows that the lease rate for the Sixth through Tenth Years should increase over the lease rate for the Fifth Year.

ARTICLE III

RESTRICTIONS UPON USE OF SUBJECT PROPERTY

Section 3.1 Lessee's Obligations as to Construction, Maintenance, and Repair

- (a) At the sole cost and expense of Theobroma and in compliance with all legal requirements,

Theobroma chocolate

SML lease

CPI adjustment

Anchorage, AK

$$06' = 177.3$$

$$07' = 181.237$$

$$181.237 / 177.3 = 1.0222 \text{ or } 2.22\% \uparrow$$

Seattle, WA

$$06' = 207.6$$

$$07' = 215.656$$

$$215.656 / 207.6 = 1.0388 \text{ or } 3.88\% \uparrow$$

$$3.88 + 2.22 = 6.10\% \uparrow$$

New rates

Manu space (2,512 SF)

$$\text{New rate } 1.60675 / \text{month} \times 1.0305 = 1.65576 / \text{month}$$

Retail (1,244 SF)

$$\text{New rate } 928.32 \times 1.0305 = 956.63 / \text{month}$$

\$ 2,612.40

White
6/25/07



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Consumer Price Index - All Urban Consumers

Series Id: CUURA423SA0,CUUSA423SA0															
Not Seasonally Adjusted															
Area: Seattle-Tacoma-Bremerton, WA															
Item: All items															
Base Period: 1982-84=100															
Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1998		166.5		166.4		167.5		168.5		169.3		169.4	167.7	166.6	168.9
1999		170.6		172.2		172.7		173.4		174.7		174.4	172.8	171.6	174.0
2000		176.1		177.8		179.2		180.3		182.1		181.5	179.2	177.3	181.1
2001		184.0		184.2		186.3		186.8		187.9		186.1	185.7	184.4	186.9
2002		187.6		188.8		189.4		190.3		190.9		190.0	189.3	188.3	190.3
2003		191.3		192.3		191.7		194.4		193.7		191.0	192.3	191.6	193.1
2004		193.5		194.3		195.3		194.6		196.5		195.1	194.7	194.0	195.4
2005		197.6		201.3		199.8		199.9		203.3		200.9	200.2	199.2	201.3
2006		203.6		207.4		208.2		209.6		209.8		209.3	207.6	205.8	209.5
2007		211.704		215.767		215.510		215.978		218.427		218.966	215.656	213.810	217.502
2008		221.728		223.196											

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Consumer Price Index - All Urban Consumers

Series Id: CUURA427SA0, CUUSA427SA0

Not Seasonally Adjusted

Area: Anchorage, AK

Item: All items

Base Period: 1982-84=100

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
1997													144.8	144.1	145.4
1998													146.9	146.7	147.0
1999													148.4	148.6	148.3
2000													150.9	150.0	151.9
2001													155.2	154.4	156.0
2002													158.2	157.5	159.0
2003													162.5	161.1	163.9
2004													166.7	165.6	167.8
2005													171.8	169.6	174.1
→ 2006													177.3	176.7	177.9
→ 2007													181.237	179.394	183.080

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