

Wednesday, July 15, 2009

## MEMORANDUM

To: Sawmill Cove Industrial Park (SCIP) Board of Directors  
From: Garry White, Director  
Subject: Theobroma Chocolate

### **Background**

Theobroma Chocolate Company and the CBS entered into a 5 year lease agreement on 04/10/2003 until 04/30/2008. The agreement allowed for one - 5 year extension.

The Sawmill Cove Board met in July and August 2008 to consider a request from Theobroma to extend the lease for one year.

At the August 4, 2008 meeting the Board "moved to recommend to the Assembly that the lease with Theobroma Chocolate Company be extended for one year, from May 1, 2008 through April 30, 2009 with the requirement that Theobroma remain current on payments for the promissory note, utilities, and lease, and that notice of default shall be reduced from 45 days to 30 days."

On August 12, 2008, the Assembly approved the recommendation from the SCIP Board.

An amendment to the lease agreement was drawn up and presented to the lease holder. The lease holder never signed the lease amendment and still remains in lease hold over status.

Theobroma attended the May 28<sup>th</sup>, 2009 SCIP meeting to discuss the establishment of a new lease. The SCIP Board directed the SCIP Director to meet with Theobroma to discuss lease rent schedule and other lease issues.

The Director met with Ed Iwamoto, President of Theobroma on June 8<sup>th</sup>, 2009. Attached is a letter drafted from Mr. Iwamoto received 06/25/09 and a response from the Director dated July 9<sup>th</sup>, 2009.

### **Additional Information**

As of July 14, 2009, Theobroma owes the CBS \$288.28 balance on the March, 2009 rent, \$2,742.26 on April Rent, \$2,715.63 on May rent and \$2,662.39 on July rent. The CBS did receive two lease payments in June.

On the note receivable, Theobroma owes four months for April through July. The CBS did receive two payments in June. Monthly payment is \$1,031.38

Theobroma was given a notice of CPI lease increase, letter dated 06/20/09.

### **Recommendation**

1. Require Theobroma to bring all past due lease and note receivable payments current by 08/31/09.
2. Once all payments are brought current, establish a month to month lease with Theobroma with the following requirements:
  - a. Lease rental amount of \$1,713.71 per month for manufacturing space and \$990.11 per month for retail space.
  - b. Rental amount subject to CPI increases based off language in Section 2.2 of past lease.
  - c. Lease payment schedule as proposed by Mr. Iwamoto's within the letter received 06/25/09.
  - d. Theobroma is required to cure default within 15 days.
3. In the event Theobroma does not fulfill requirements 1 & 2 by 08/31/09, CBS start the eviction process.



329 Harbor Drive, Suite 212 \* Sitka, Alaska 99835 \* Phone: 907-747-2660

June 2, 2009

Ed Iwamoto, President  
Theobroma Chocolate Company  
PO Box 2237  
Sitka, Alaska 99835

RE: Theobroma Chocolate lease at the Sawmill Cove Industrial Park Annual CPI Rent Adjustment

Dear Mr. Iwamoto,

You are currently in holdover tenant status until a new lease agreement can be negotiated. Pursuant to Section 2.2 of your monthly lease with the City and Borough of Sitka is subject to a rent adjustment due July 10, 2009. The average, annual CPI adjustment for Seattle and Anchorage over the period was 4.31%. Section 2.2 of the lease caps CPI increases at 3.5%.

Therefore, beginning July 10, 2009 the new monthly lease rates regarding holdover tenant status are:

Manufacturing space (2,512 SF)	\$1,713.71 per month	~ \$ .68 / SF
Retail space (1,244 SF)	\$ 990.11 per month	~ \$ .796 / SF
<u>3756</u>	<u>2703.82</u>	<u>~ \$ .72 / SF</u>

Attached is the data used to make the computation.

Please contact me at 907-747-2660 if you need more information.

Sincerely,

Garry White  
Sawmill Cove Industrial Park Director

Cc: Sitka Borough Finance Director

6/25/09

Theobroma Chocolate Company  
PO Box 2237  
Sitka, Alaska 99835



Gary White  
SMIP

Hi Gary,

Here's some info on what I'd like for the new lease terms.

**Payment schedule**

**Monthly payments**

<b>January</b>	<b>Payment</b>
<b>February</b>	<b>No Payment</b>
<b>March</b>	<b>No Payment</b>
<b>April</b>	<b>No Payment</b>
<b>May</b>	<b>No Payment</b>
<b>June</b>	<b>Payment</b>
<b>July</b>	<b>Payment</b>
<b>August</b>	<b>Payment</b>
<b>September</b>	<b>Payment</b>
<b>October</b>	<b>No Payment</b>
<b>November</b>	<b>No Payment</b>
<b>December</b>	<b>Payment</b>

**Rates**

Request that Manufacturing space be at .50/sq ft  
Request that Retail space be at .70/sq ft

**Rate adjustments**

Request that there be no rate adjustment for duration of lease.

**Lease term**

Request that lease term be no less than 1 year, no more than 2 years.

—  
Thanks Gary,

I'll talk to you on or about the 30<sup>th</sup> when I get back to town. Out of town 21<sup>st</sup> through 29<sup>th</sup>.

Ed



329 Harbor Drive, Suite 212 \* Sitka, Alaska 99835 \* Phone: 907-747-2660

July 9th, 2009

Ed Iwamoto, President  
Theobroma Chocolate Company  
PO Box 2237  
Sitka, Alaska 99835

RE: Theobroma Chocolate lease at the Sawmill Cove Industrial Park

Dear Mr. Iwamoto,

You are currently in holdover tenant status until a new lease agreement can be negotiated. I have tried to reach you numerous times since our meeting June 8<sup>th</sup> to discuss establishing a new lease. The Sawmill Cove Industrial Park Board of Directors will meet July 20<sup>th</sup>, 2009 to establish a new lease for your operation at the park.

The following are responses from our meeting on June 8<sup>th</sup>, 2009.

1. Theobroma is currently being charged the standard, established utility rate structure of the City and Borough of Sitka (CBS).
2. Theobroma is currently being charge the standard, established property tax and lease hold area tax of the CBS.
3. The CBS finance department can accommodate your non-traditional lease payment schedule requested in your June, 2009 letter.
4. I have researched the lease rate structure currently being charged by the CBS and it appears to be appropriate.

Please contact me at 907-747-2660 for further discussion of a new proposed lease before the 07/20/09 Sawmill Cove Industrial Park Board meeting.

Sincerely,

Garry White  
Sawmill Cove Industrial Park Director

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

**Section 2.2 Cost of Living Adjustment to Lease Rate:** Beginning with the 37<sup>th</sup> 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,