

Monday, April 27, 2009

MEMORANDUM

To: Sawmill Cove Industrial Park Board of Directors
From: Garry White, Director *GW*
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 has refused to sign the amendment after multiple attempts.

The lease holder is currently operating in lease hold over status.

Additional Information

The current lease rates with the annual CPI adjustment as of July 10, 2008 are as follows:

Manufacturing space (2,512 SF)	\$1,655.76 per month or \$.66/SF
Retail space (1,244 SF)	\$956.63 per month or \$.77/SF
Total space (3,756 SF)	\$2,612.39 per month or \$.70/SF
	or
	\$31,348.68 annually

- All application documents identify this portion of Lot #15 as the site for the Tannery. It is unlikely that these applications can be modified to change the site selection without a possible loss of funding.
- The architect has been designing based on a building site on Lot #15.
- All other Lots discussed to date would require additional site preparation that would cost more money than STA has available for the project.

Mr. Harang suggested that Lot #17 should be considered as it is fairly close to utilities and looks to be at grade level with no or minimal fill required to build on. Lot #17 had not previously been considered.

After discussion the Board came to a consensus that the interests of SCIP would be better served with the STA Tannery located on Lot #17, however due to the complex application process that STA has already gone through, a portion of Lot #15 would be granted if this is the only way to secure funding for the project.

MOTION: M/S Harang/Fondell moved to recommend to the Assembly that a 10,000 square foot portion of the SW corner of Lot #15 of Sawmill Cove Industrial Park be selected for the STA Tannery, with the understanding that STA will make efforts to work with the various agencies to substitute a portion of Lot #17 for Lot #15, and that a standard lease will be developed following the terms previously agreed upon by the SCIP Board and STA.

2. Theobroma Lease

Ms. Hillhouse stated that Theobroma is current on all payments due to the City as of July 31st, 2008.

The Board emphasized that in consideration for extending Theobroma's lease for one year, Mr. Iwamoto needs to make sincere efforts to improve communication with the City regarding payments.

The Board considered modifying Theobroma's lease to require increased payments during the peak summer months and reduced payments during the slow winter months.

Ms. Hillhouse advised that the promissory note has a set monthly payment and that changes to the lease would require Assembly approval.

Mr. Dinley suggested that Theobroma simply pre-pay (make extra payments) during the peak business season and those payments will be credited to the account.

MOTION: M/S Fondell/ Harang moved to recommend to the Assembly that the lease with Theobroma Chocolate Company be extended for one year, from May 1, 2008 through April 31, 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.

ACTION: Motion PASSED unanimously (4/0) on a voice vote.

3. Administration Building Heating Source

Mr. Parrant advised the SCIP Board that the Alaska Energy Authority will soon be soliciting applications for \$50 million in grant funds. There are two grant categories. One is for pre-construction (deign phase) with a grant covering 80% and a 20% match requirement. The second is a construction phase (equipment purchase and installation) grant with a 50% match required.

Ms. Hillhouse stated that the Assembly should be informed whenever a grant is applied for as the match funding from the City would require Assembly approval.

MOTION by Stein to postpone to the next meeting, August 26.

Sherrord expressed concern with the lease rent. He doesn't see the lot number changing.

Mayor would like to see a rate structure for comparison and the Tribe to justify how this isn't going to work without this lease subsidy.

Motion to postpone PASSED on a 6-1 roll call vote with Ozment opposed.

Item M
Theobroma Chocolate Co.

MOTION by Stein to approve a one-year extension of Theobroma Chocolate Company's lease through April 30, 2009 with the requirement that Theobroma remain current on payments for the promissory note, utilities and lease, and that the notice of default shall be reduced from 45 days to 30 days as recommended in the Sawmill Cove Industrial Park Board of Directors Memorandum dated August 6, 2008.

Mr. Iwamoto still has concerns with the payment schedule during the months that income drops.

Motion PASSED on a 7-0 roll call vote.

Item N
SJCCC

MOTION by Stein to approve awarding Sheldon Jackson Child Care Center for a \$100,000 grant from the Steven's Economic development Fund under the Private Sector Revolving Loan category to go towards the purchase of the Sheldon Jackson Child Care Center facility located at 111 Johns Brady Drive.

Laura Kronsperger explained that they are trying to assume the loan and they need substantial local support to go after grants.

MOTION by Stein to postpone until 8/26 meeting so that the background, financials, etc. could be included.

Motion PASSED on a unanimous voice vote.

Item O
Utility Director Hire

MOTION by Stein to approve the hire offer for Christopher D. Brewton as Electrical Utility Director with a starting salary of \$105,000 and in accordance with the other provisions as noted in the attached July 29, 2008 offer letter by Municipal Administrator James E. Dinley and depicted below:

Provisions:

- \$105,000 to start
- \$110,000 following successful six-month probationary period,
- Vacation accrual 200 hours annually
- A one time moving allowance of \$5,000 (reimbursable expenses) as outlined in the Sitka Personnel Policies Handbook
- Assume the position between October 15 and November 15, 2008
- Offer subject to routine background checks

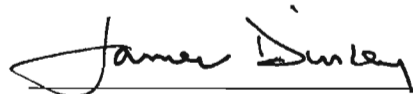
**AMENDMENT NO. 1
TO THE LEASE AGREEMENT
BETWEEN THE CITY AND BOROUGH OF SITKA
AND THEOBROMA CHOCOLATE COMPANY**

The City and Borough of Sitka ("Lessor"), 100 Lincoln Street, Sitka, Alaska 99835, and Theobroma Chocolate Company ("Lessee"), PO Box 718, Sitka, Alaska 99835, agree to amend and modify the Lease Agreement Between The City And Borough Of Sitka And Theobroma Chocolate Company ("Lease"), dated April 10, 2003, as follows in accordance with the Lease at Section 14.1:

1. The lease term at Section 1.1 of the Lease is extended approximately one year, until April 30, 2009, as authorized on August 12, 2008 by the City and Borough of Sitka Assembly, subject to the following requirements:
 - a. Lessee must remain current with all payments related to the Sawmill Cove property concerning the promissory note, utilities and Lease; and
 - b. Lessee is required to cure default within 30 days under Lease Section 14.1(b) and within 10 days of any late payment of rent at Section 14.1(a).

All other sections of the Lease that are not modified by this Amendment No. 1 remain in full force and effect.

CITY AND BOROUGH OF SITKA

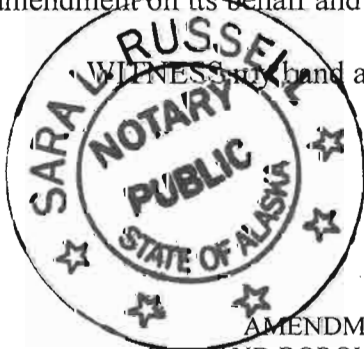

James Dinley, Administrator


STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

MUNICIPAL ACKNOWLEDGMENT

THIS CERTIFIES that on the 26 day of September, 2008, before me, a Notary Public in and for the State of Alaska, personally appeared JAMES DINLEY, known to me to be the Administrator of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, that he has been authorized to execute the foregoing lease amendment on its behalf and he signs freely and voluntarily.

WITNESS my hand and official seal the day and year in this certificate.




Notary Public for Alaska
My Commission expires: 4-15-2011

**THEOBROMA CHOCOLATE
COMPANY**

Edward Iwamoto, President

STATE OF ALASKA)
) **ss.**
FIRST JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2008, before me the undersigned, a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared Edward Iwamoto, known to be the person who executed the above and foregoing instrument, and acknowledged to me that he signs freely and voluntarily.

WITNESS my hand and official seal the day and year in this certificate.

Notary Public for Alaska
My Commission expires: _____