

COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 2983

Authorizing the execution of a lease with Ancora Coffee Roasters, Inc. for retail space within the Atrium at The Villager.

Presented September 16, 2010
Referred
Reported Back
Adopted September 16, 2010
Placed on File
Moved By Alice Fike
Seconded By Kevin O'Driscoll
Yeas 5 Nays 0 Absent 2
Rules Suspended

WHEREAS, the Community Development Authority of the City of Madison (the "CDA") is the owner of The Villager, located at 2200 South Park Street; and

WHEREAS, the CDA and Ancora Coffee Roasters, Inc. have negotiated terms and conditions of the lease of approximately 3,334 square feet of retail space within the Atrium at The Villager.

NOW THEREFORE BE IT RESOLVED that the Community Development Authority of the City of Madison (the "Landlord") hereby authorizes the execution of a lease (the "Lease") between the CDA and Ancora Coffee Roasters, Inc. (the "Tenant") for retail space within The Villager on the following terms and conditions:

- Premises: 2308 South Park Street, Madison, WI, containing approximately 3,334 square feet as shown on the attached Exhibit: The Ancora Coffee Cafe at The Villager.
Landlord: Community Development Authority of the City of Madison
Tenant: Ancora Coffee Roasters, Inc.
Tenant Address for Notices: 3701 Orin Road, Madison, WI 53704
Use: Coffee shop and restaurant which shall serve, at a minimum:

- Breakfast:
• Fresh baked muffins, scones, croissants, cinnamon rolls
• Quiche of the day
• Breakfast sandwiches (available meatless)
• Oatmeal with toast
• Fresh fruit (whole and cut)
• Fruit and yogurt parfaits (made with homemade yogurt)

- Lighter Fare:
• Panini sandwiches (available meatless)
• Selection of wraps and croissant sandwiches
• Selection of pasta and vegetable salads
• Fresh garden salads
• Homemade hummus and pita
• Fresh baked cookies, bars, brownies

- Daily Features to include:
• Homemade soup of the day
• Signature grilled sandwich of the day

The Tenant may use kitchen to reasonably prepare food for the Tenant's other

two locations, however, all items prepared in the kitchen premises must appear on the Tenant's Villager menu.

- Exclusive Use:** The Landlord shall not lease space in The Villager to a restaurant tenant who derives more than 10% of their gross sales from any of the following categories: coffee, tea, fresh bakery items, and deli sandwiches.
- Hours of Operation:** At a minimum, the Tenant's hours of operation shall be weekdays from 7:00am to 6:00pm, and Saturdays from 7:00am to 1:00pm. The Tenant shall not be required to be open later than the average Villager retail tenant is open. By way of example, if the majority of retail tenants close at 6:00pm, the Tenant shall not be obligated to stay open later than 6:00pm. This provision shall not apply to morning opening hours.
- Initial Term and Base Rental Rate:** Ten (10) years (the "Initial Term"). Initial term shall commence at the expiration of the Free Base Rent Period.
- Base Rental Rate for years 1 through 5 shall be \$14.50 per square foot per year.
- Base Rental Rate for years 6 through 10 shall be \$16.50 per square foot per year.
- Percentage Rent:**
- Years 1-5: In addition to the Base Rental Rate and Taxes/CAM/Insurance, as described below, the Tenant shall pay the Landlord a Percentage Rent in the amount of ten percent (10.00%) of the amount by which the Tenant's gross sales exceed the "Break Point" during any lease year. The Break Point for years 1 through 5 of the lease shall be \$400,000.00.
- Years 6-10: In addition to the Base Rental Rate and Taxes/CAM/Insurance, as described below, the Tenant shall pay the Landlord a Percentage Rent in the amount of ten percent (10.00%) of the amount by which the Tenant's gross sales exceed the "Break Point" during any lease year. The Break Point for years 6 through 10 of the lease shall be \$450,000.00.
- Target Delivery Date:** The Landlord to exercise all reasonable efforts to expedite the Tenant's opening for business.
- Free Base Rent Period:** Upon opening for business, the Tenant shall pay 10% of Gross Sales in lieu of base rent for the first one hundred and twenty (120) days. In addition, the Tenant will pay Utilities. The initial term of the Lease shall correspondingly to be extended by one hundred and twenty (120) days. The Tenant shall not pay base rent nor Taxes/CAM/Insurance charges during this period. The Tenant will pay utilities from date of taking possession.
- Mutual Right of Termination:** If gross sales during the fifth (5th) lease year are less than \$400,000, either party may terminate the Lease by giving six (6) months written notice.
- Lease Guarantee:** The Lease shall be guaranteed by the Tenant's parent company. Guarantee limited to two (2) years rent and Taxes/CAM/Insurance. Provided the Tenant has not been in default during the past 24 months of operation, the Lease Guarantee shall reduce from two years rent and Taxes/CAM/Insurance to one year of rent plus one year of Taxes/CAM/Insurance for the balance of the Lease term and option years.
- Taxes / CAM / Insurance:** The Tenant shall be responsible for common area maintenance ("CAM") charges, real estate taxes ("RET") and payment in lieu of taxes ("PILOT"), the total of these charges is estimated at \$5.32 per square foot per year (CAM - including insurance: \$4.71; PILOT: \$0.61), and shall be subject to annual review and

adjustment. The Landlord shall provide the Tenant with a breakdown of charges prior to lease signing. CAM shall be capped at five percent (5%) increases per year excluding utilities, PILOT, snow removal, and insurance. Administrative fee limited to 10% of CAM, excluding PILOT, insurance, and utilities.

Utilities: The Premises shall be separately metered for utilities and the Tenant shall be responsible to pay the cost of all separately metered utilities used inside the Premises. The Landlord shall pay for all meters.

Landlord's Work:

- Sanitary sewer lateral stubbed into the Premises.
- Separately metered water service stubbed into the Premises.
- Separately metered gas services stubbed into the Premises.
- Framed metal stud and perimeter walls within the Premises.
- Fire protection sprinkler system to standard grid within the Premises.
- Landlord to demise Premises with metal stud wall.

Tenant's Work:

- ALL WORK NOT PROVIDED BY THE LANDLORD
- Architectural and engineering fees for the Tenant's Work.
- State and local government plan review and approvals and building permit fees.
- Concrete floor within the Premises
- Open the Premises to the Atrium
- Provide ADA lift to Atrium
- Provide HVAC unit and distribution
- Separately metered electrical service with main electrical of 400 amps, 208Y/120V, 3 phase, 4 wire.
- All labor and materials to construct an Ancora Coffee shop/restaurant, including furniture, fixtures and equipment (collectively, "FF&E"), small wares, and kitchen equipment.
- The Landlord and the Tenant shall agree, prior to commencement of the Lease, upon the plans and specifications (including specifics of FF&E, small wares, and kitchen equipment) which shall be provided by the Tenant within thirty (30) days of written agreement to terms of the LOI.

Tenant Allowance: The Landlord shall provide the Tenant with a "Tenant Allowance" for the build out of the Premises, including FF&E. The Landlord and the Tenant shall agree upon construction plans, specifications and materials prior to commencement of build out of the Premises. All work, including all building permits and approvals, are the Tenant's responsibility. The Landlord shall have oversight and review of construction activities to insure quality control and compliance with prior approved plans and specifications. The Tenant shall bid all work and provide bid documentation to the Landlord.

Subject to the conditions of the LOI and the Lease, the Landlord shall provide the Tenant with a Tenant Allowance, in an amount not to exceed \$100 per square foot, based on the square footage of the Premises. The Tenant's Work shall not exceed such allowance and is paid as follows:

The Tenant Allowance shall be paid 1/3 upon completion of approximately 1/3 of the work, 1/3 upon completion of 2/3 of the work, and the balance paid upon the following conditions:

1. Verification that the Tenant's Work was completed per the Landlord's pre-approved plans.
2. Receipt by the Landlord of the Tenant's Certificate of Occupancy.
3. Receipt by the Landlord of the Tenant's verification of costs and a release and waiver of liens.
4. The Tenant having opened for business.

Tenant Allowance availability is subject to approval of the City of Madison 2011 budget and the inclusion of funds for such Tenant Allowance in said budget.

The Tenant shall provide the Landlord with written documentation that all of the Tenant Allowance was used for approved Premises build out costs and FF&E. If the Tenant self-contracts the Tenant improvement construction, the Tenant shall provide evidence that the Tenant's Work was done at rates similar to those charged by other contractors in the area.

The Landlord shall work with the Tenant's general contractor in funding Tenant Improvement Allowance in a manner consistent with General Contractor's construction draws and consistent with the above schedule. The Tenant's general contractor shall provide the Landlord with limited lien waivers, final lien waivers, and supplier lien waivers. Upon the Landlord's receipt of said lien waivers, the Landlord shall fund the Tenant Improvement Allowance as described above.

All FF&E and small wares paid for with Tenant Allowance funds shall remain the property of the Landlord. The Tenant agrees to maintain FF&E in a manner consistent with generally accepted restaurant industry standards.

Assignment Provisions: The Tenant shall have the right to sublet or assign all or part of the Premises with the Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any subtenant's use must be similar to that allowed under the lease. Any change of use must be approved in writing by the Landlord prior to approval of a sublease. The Landlord shall also have the right of recapture.

The Tenant shall not profit from any sublet or assignment. The Landlord shall have the right to consider the financial capability and creditworthiness of any sublessee or assignee of the Tenant.

Signage: The Tenant shall have signage consistent with The Villager sign standards. Signage shall be the Tenant's cost.

Parking ratio: The Tenant shall have non-exclusive access to parking as reasonably determined by the Landlord.

Security: The Landlord shall charge the Tenant for additional security resulting from the Tenant's use of common areas outside of normal business hours, which hours may be adjusted from time to time. Below is a schedule of the current property security hours.

Monday – Saturday	7:30am - 10:30pm
Sunday	5:00pm - 7:00pm

Lease: The Landlord and the Tenant shall use the Landlord's lease form.

BE IT FURTHER RESOLVED that the CDA Chair and Executive Director and Secretary are hereby authorized to execute, deliver and record the Lease and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution.