



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: July 9, 2019
FROM: Erika McConnell, Director RE: 242 & 243 Clear Sky Lodge

Requested Action: Transfer of ownership with security interest

Statutory and Regulatory Authority: AS 04.11.040(a): “A license issued under this title may not be transferred to another person except with the written consent of the board.”
AS 04.11.360(4): “An application requesting approval of a transfer of a license to another person under this title shall be denied if the transferor has not paid all debts or taxes arising from the conduct of the business licensed under this title unless
(A) the transferor gives security for the payment of the debts or taxes satisfactory to the creditor or taxing authority; or
(B) the transfer is under a promise given as collateral by the transferor to the transferee in the course of an earlier transfer of the license under which promise the transferor is obliged to transfer the license back to the transferee in the event of default in payment for property conveyed as part of the earlier transfer of the license...”

AS 04.11.670: “A license issued under this title is not subject to foreclosure, and may not be used as collateral to secure a debt. However, if a license is transferred to another person, the transferor may secure payment for real and personal property conveyed to the transferee upon the promise of the transferee to transfer the license back to the transferor upon default in payment.”

3 AAC 304.107(a): “If a former licensee seeks to compel the transfer of a license because of a promise under AS 04.11.670 given as collateral by the current licensee to the former licensee in the course of an earlier transfer of the license, followed by a default in payment in connection with property conveyed or a lease made in the course of the previous transfer, the board will deny the transfer if creditors are not satisfied under AS 04.11.360(4)(A) unless it clearly appears that the former licensee, at the time of the previous transfer, complied with the following notice requirements:

- (1) a leasehold conveyance or contract of sale of property made in the course of the previous license transfer was recorded in the manner provided for recordation of real estate conveyances, and the transferor, at the time of the previous transfer, made a UCC filing statement in which a security interest in the license was

claimed under AS 04.11.670 and AS 04.11.360(4)(B); the documents recorded under this paragraph must contain the following statement: "Under the terms of AS 04.11.670, AS 04.11.360(4)(B), and 3 AAC 304.107, the transferor/lessor retains a security interest in the liquor license that is the subject of this conveyance, and may, as a result, be able to obtain a retransfer of the license without satisfaction of other creditors."; and

- (2) all documents prepared in connection with the previous transfer of the liquor license, including all leases, contracts, and other relevant memoranda, were filed with the board at the time of the previous transfer; the documentation must include a statement of the book and page number showing where the lease or contract, and UCC filing statement, bearing the disclosure statement required in (1) of this subsection, are recorded; and
- (3) the notice of the previous transfer required by AS 04.11.310(a) was made in writing and published, as required under 3 AAC 304.125, once a week for three weeks in a newspaper of general circulation before the transfer, in addition to any other notice of the application that might have been required by the board at the time of the previous transfer; the published notice must contain the following statement: "Under the terms of AS 04.11.360(4)(B), AS 04.11.670, and 3 AAC 304.107, the transferor/lessor retains a security interest in the liquor license that is the subject of this conveyance, and may, as a result, be able to obtain a retransfer of the license without satisfaction of other creditors."

Staff Rec.: Approve the transfers with a security interest

Background: These are applications for transfer of ownership of liquor licenses 242, a beverage dispensary license, and 243, a package store license, both located in Clear, from Rabideu's Clear Sky Lodge, Inc., to Alaskan Lights, Inc. Staff has reviewed and determined that both the transfer applications and security interest notices and documents have been completed to meet the requirements laid out in 3 AAC 304.107(a). Signed recorded copies of all security interest documents are required to be submitted as part of the delegation, before the transfer can be effectuated.