



MEMORANDUM

TO: Alcoholic Beverage Control Board DATE: November 12, 2019

FROM: Erika McConnell, Director RE: 4380 and 4526 Gold Miners Lodge
Restaurant and Motel

Requested Action: License renewals; transfers of ownership and DBA change

Statutory Authority: AS 04.06.090(b): “The board shall review all applications for licenses made under this title and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under this title.”

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.”

Staff Rec.: Deny the renewals under AS 04.11.330(a)(5)

License #4380 is a restaurant or eating place license, and license #4526 is a beverage dispensary—tourism license, both issued to Gold Miners Lodge Restaurant and Motel LLC with a premises at 20333 W. Parks Highway, in Houston. Gold Miners Lodge Restaurant and Motel LLC is a limited liability company in good standing owned by Brian Gauthier 50% and Sandra Gauthier 50%.

On October 11, 2018, it came to AMCO’s attention that Gold Miners Lodge Restaurant and Motel LLC had leased its property and two liquor licenses to John and Inthira Zavacky on October 1, 2017. This lease states on page 1, “Lessee [John A. Zavacky and Inthira Zavacky] leases from Lessor [Gold Miners Lodge and Restaurant & Motel, LLC] the business, liquor licenses related to, and real property ... more particularly described as ... 20333 W. Parks Highway, Houston, Alaska.” An NOV was issued for license #4526 on October 16, 2018, which was provided to the board along with the licensee response at the February 2019 meeting. In her response, Sandra Gauthier claims “John & Inthira Zavacky have never used or been offered temporarily to use our liquor licenses and they have not yet even opened their new business.” The response did not say that there was a scrivener’s error in the lease as was claimed by Ms. Dalrymple at the September 2019 meeting. It is hard to understand how the licensee can claim that the Zavackys have never “been offered” the use of the liquor licenses when they have a signed lease stating that the licenses are leased to the Zavackys. (An identical NOV was issued for license #4380 on February 27, 2019.)

AS 04.11.450 states at (a), “A person other than a licensee may not have a direct or indirect financial interest in the business for which a license is issued,” and at (c), “A license may not be leased by a licensee to another person, partnership, limited liability organization, or corporation.”

AS 04.11.330(a)(5) states that the renewal of a license **shall be denied** if “the requirements of AS 04.11.420—04.11.450 relating to zoning, ownership of the license, and financing of the licensee have not been met.”

In addition to violating AS 04.11.450 by leasing the licenses, the licensee lost right of possession of the property on October 1, 2017, which is a requirement for a license.

The City of Houston has withdrawn its protests of the renewal of both licenses, and does not protest the transfer of the licenses.

The transfer applications show the beverage dispensary – tourism license and the restaurant or eating place license proposed to be located in adjacent rooms of the same facility. (See Tab 12, page 19, and Tab 13, page 19.) Note that the transfers are proposed with security interest retained by Gold Miners Lodge Restaurant and Motel LLC. The security interest documents are in a confidential file for the board’s review.

Attachments: Lease dated September 27, 2017
4526 NOV
4380 NOV

Tab 12: 4380 Renewal application for 2019/2020
4380 Transfer application

Tab 13: 4526 Renewal application for 2019/2020
4526 Transfer application

COMMERCIAL LEASE AND OPTION TO PURCHASE AGREEMENT

THIS COMMERCIAL LEASE AND OPTION TO PURCHASE AGREEMENT (the "Lease") is made and entered into and effective as of the 15th day of OCTOBER 2017, by and between John A. Zavacky and Inthira Zavacky, a(n) _____ (hereinafter "Lessee"), whose address is 1151 E. 76th Avenue, Anchorage, Alaska 99518, and **Gold Miners Lodge and Restaurant & Motel, LLC**, an Alaskan Limited Liability Corporation (hereinafter "Lessor"), whose address is 20333 W. Parks Highway, Houston, Alaska 99694.

RECITALS

WHEREAS, Lessor is the owner of the certain real property in Houston, Alaska, and has two liquor licenses associated with the property, and Lessee desires to operate a business on such real property;

WHEREAS, the parties have agreed to the terms and conditions of the lease;

WHEREAS Lessee also desires to purchase the property from Lessor in the event their financial circumstances allow; and

WHEREAS the parties have agreed to the terms and conditions of the lease and the possible purchase of the property by Lessee;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

- Demise; Description of Premises.** Lessee leases from Lessor the business, liquor licenses related to, and real property located in the Palmer Recording District, Third Judicial District, State of Alaska, which real property is more particularly described as follows:

Address: 20333 W. Parks Highway, Houston, Alaska.

Property Description: TOWNSHIP 18N RANGE 3W SECTION 18

LOT D3

This real property (hereinafter referred to as the "Premises") rights granted under this Lease are also subject to all exceptions, agreements, easements, rights-of-way, conditions, covenants, reservations, terms, conditions, and restrictions of record against the real property. Lessee further acknowledges that the lessor makes no representations or warranties regarding any structures or improvements currently on the Premises, which are leased in an "AS-IS, WHERE IS, WITH ALL FAULTS" basis.



2. **Use of Premises.** Subject to the terms and conditions of this Lease, Lessee shall use the Premises solely for the purpose of operating a restaurant, lounge, lodge and related purposes, and for no other use unless Lessor has expressly agreed in advance by email.
3. **Term.** The term of this Lease shall be for five (5) years, commencing on October 1, 2017 ("Term").
4. **Rental.**
 - a. Lessee agrees to pay Lessor a rental amount of One Thousand Nine Hundred Dollars (\$1,901.21) per month, in advance by the 25th of each month (for example, the payment for November 2017 is due by October 25, 2017), without demand.
 - b. Lessee also agrees to pay Lessor as additional rent, the Additional Rents identified in Section 30(b)(1)-(5), payable on the dates set forth therein.
 - c. Lessee also agrees to pay taxes, insurance and fees associated with the liquor license permits for the Term of the Lease, estimated to be in the amount of Four Hundred and Eighty Dollars (\$480.00) per month, payable in advance and without demand.
 - d. An escrow account with FNBA will be set up to manage such payments with all escrow fees to be paid by the Lessee.
 - e. If any payment is not received by the last day of each month for the next month's rent and fees, or for Additional Rents the due dates set forth for each Additional Rent payment, a 10% late fee for any amounts unpaid shall be paid by Lessee (for example, if the payment for November is not received by October 31, the late fee will be applied).
 - f. The first payment shall be paid on October 25, 2017 for November, 2017. No payment shall be owed for October.
5. **Utilities.** All costs for utilities and other activities necessary for the operation of the Premises, improvements thereon, and Lessee's activities thereon, including without limitation gas, heating oil, electric, water, sewer, garbage, internet and telephone, shall be provided by Lessee at Lessee's sole cost and expense.
6. **Acceptance of Premises.** Lessee has inspected the Premises and Lessee accepts the same "AS IS WITH ALL FAULTS." Lessor makes no specific warranties, expressed or implied, concerning the title, or condition of the Premises. Lessor shall have no liability or obligation with respect to the condition, maintenance or use of the Premises. This Commercial Lease and Option to Purchase Agreement does NOT include a purchase of the name, "Gold Miners Lodge Restaurant &



Motel,” nor the limited liability company “Gold Miners Lodge Restaurant & Motel, LLC.” Lessor retains both the name and LLC.

7. Indemnification.

a. **General.** Lessee shall save, protect, hold harmless, indemnify and defend Lessor, and Lessors officers, directors, employees, and shareholders, of, from and against any and all liability, damages, demands, penalties, fines, causes of action, losses, costs, or expenses, including attorney fees, arising from any act, omission, or negligence of Lessee or the officers, contractors, subcontractors, licensees, agents, servants, employees, guests, invitees, or visitors of Lessee in or about the Premises or improvements located thereon, or arising from any accident, injury or damages howsoever and by whomsoever caused, to any person or property, including but not limited to damage to the Premises itself, improvements thereon, or injury to or death of persons, occurring in or about the Premises or improvements located thereon, or in any manner arising out of Lessee's use and occupation of the Premises or improvements thereon, or as a result of the condition of the Premises or improvements thereon.

b. **Environmental.** Lessee shall abide by, and shall cause its employees, agents, any contractors or subcontractors it employs, to abide by, all applicable rules and regulations related to fire, safety, health and environmental protection. Without limiting the duty to indemnify as provided in (a) above, Lessee shall save, protect, defend, indemnify and hold harmless Lessor from and against any and all demands, claims, causes of action (whether in the nature-of-an-action for damages; indemnity, contribution, government cost recovery or otherwise), lawsuits, settlements, actions, damages, fines, penalties, judgments, costs and expenses (including without limitation costs of defense, settlement, and reasonable attorney's fees), charges, forfeitures, liens, liabilities or loses of any nature and kind whatsoever, which arise during or after the Term of this Lease from or in connection with the presence or suspected presence of Hazardous Substances in the soil, water, or otherwise on, above or in the Premises, or otherwise generating from the Premises, or operations or activities thereon (i) as a result of Lessee (or its employees, affiliates, parents, agents, contractors, subcontractors, guests, invitees, or assigns, and their respective employees, agents, contractors, or subcontractors) use and occupancy of the Premises; or (ii) from any alleged or actual violation of an Environmental Law by such persons on the Premises. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work. For purposes of this Lease, the term "Hazardous Substance" means any flammables, explosives, radioactive materials, crude or refined petroleum, pollutants, contaminants, or any hazardous, toxic, or dangerous waste, substance, or material, including asbestos, defined as such in (or for purposes of) the Comprehensive



Environmental Response, Compensation, and Liability Act (42 U.S.C.A.i Sec. 9601 .), any so-called "Superfund" or "Superlien" law, or any other Environmental law, including, but not limited to, Alaska Statutes Title 46, Chapters .03, .08 and .09, as now or at any time hereafter in effect For purposes of this Lease, the term "Environmental Law" means any Federal, state, or local laws, ordinances, codes, regulations, rules, orders, or decrees, relating to, or imposing liability or standards of conduct concerning the treatment, Storage, use or disposal of any Hazardous Substances.

c. All of the foregoing indemnification defense and hold harmless obligations in (a) and (b) above shall survive the expiration or early termination of this Lease.

8. **Condemnation.** If all of the Premises or such portion as may be required for the reasonable use of the Premises, are taken by eminent domain, this Lease shall automatically terminate as of the date Lessee is required to vacate the Premises, and all rent shall be paid which is due and owing through that date. In the case of a taking of less than that portion of the Premises required for the reasonable use of the Premises, then this Lease shall continue in full force and effect, and the rent shall be equitably reduced based upon the proportion of the square footage by which the Premises is reduced, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority. Lessor reserves all rights to just compensation and/or damage for any taking of the Premises, and Lessee hereby assigns to Lessor, and Lessee shall make no claim against Lessor, for damages arising out of the condemnation, provided, Lessee shall have the right to claim and, recover from the condemning authority, to the extent permitted by law, compensation for any loss to which Lessee may be put for the improvements, for Lessee's moving expenses or for the interruption of or damage to Lessee's business, to the extent such damages may be claimed and awarded separately from the damages and/or compensation awarded to Lessor.
9. **Use, Occupancy and Care of the Leased Premises.** At all times during the Term hereof, Lessee shall, at Lessee's sole cost and expense:
- a. Keep the Premises and improvements constructed thereon clean, safe and orderly;
 - b. Conduct activities upon and generally maintain the Premises and improvements in such a manner and with such care that injury to persons and damage to property does not result therefrom;



c. Not use or permit any part of the Premises or improvements to be used for any unlawful or unauthorized purpose nor perform, permit or suffer any act or omission upon or about the Premises or improvements which would result in a nuisance or a violation of any applicable laws, ordinances or regulations;

d. Comply with city, state, federal and other governmental laws, statutes, ordinances, rules, orders, and regulations of whatever type and nature, including but not limited to, zoning ordinances, health, fire, safety and environmental laws and regulations which in any manner affect the leased Premises, improvements, or activities thereon;

e. Not cause or permit any waste, damage or injury to the Premises or improvements; and

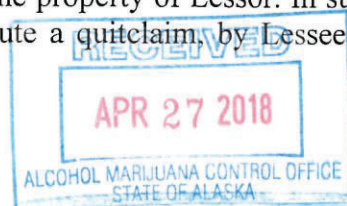
f. Not vacate or abandon the Premises at any time during the Term hereof; and

g. Storage and maintenance of vehicles on the Premises is limited to business use vehicles only and such vehicles must be licensed, registered, insured and operational. Any vehicle being actively worked on by Lessee will be kept out of view of any business access or roadway.

h. Lessee will maintain all applicable permits and licenses active and paid including, but not limited to, DEC, AMCO, State of Alaska, Mat-Su Borough, and any city license or permit.

10. **Maintenance and Repair.** Lessee covenants throughout the term hereof, at Lessee's sole cost and expense, to properly keep the Premises and improvements in good maintenance, repair order and condition. Lessee acknowledges that Lessor has no responsibility to maintain Premises or improvements during the Term hereof. Lessee is also responsible for snow plowing. Any onsite dumpster and surrounding area must be kept in a sanitary and tidy condition by Lessee. Lessee is responsible for replacement of all interior and exterior lights as necessary.

11. **Fixtures and Improvements.** Lessee shall pay all costs associated with locating, constructing, and maintaining all improvements and fixtures on the Premises. Any such improvement or fixtures is subject to prior approval by Lessor. Upon termination or expiration of this Lease, Lessee shall remove all improvements and fixtures from the Premises and restore the Premises to the condition that existed at the beginning of the Term of this Lease, provided that, Lessor and Lessee may otherwise mutually agree in writing that all improvements and fixtures erected on or attached to the Premises by Lessee shall become the property of Lessor. In such event, the parties agree that this Lease shall constitute a quitclaim, by Lessee to



Lessor, of all Lessee's right, title, and interest in such improvements and fixtures upon such termination or expiration. Lessee further agrees, at the request of Lessor, to execute such other or further documents necessary to transfer Lessee's interest in the improvements or fixtures should Lessor retain the improvements and fixtures.

Any sign installed by Lessee must be submitted to Lessor for prior approval and must meet any local regulatory requirements.

12. **Surrender of Premises.** Lessee on the last day of the Term, or upon earlier termination of this Lease, shall peaceably and quietly leave and surrender the Premises in as good condition as on commencement of the Term, ordinary wear and tear accepted.
13. **Access.** Lessor, Lessor's agents, employees, officers, and designees shall have the right to enter the Premises at all reasonable times to inspect the same, to post "Notices of Non-Responsibility," and to preserve and protect the Premises.
14. **Liens.** Lessee shall keep the Premises and any part thereof free from liens for labor or materials ordered or supplied upon the express or implied request of Lessee. Should any such lien be recorded or should a lien be recorded by Lessee, Lessee shall forthwith and within thirty (30) days of recording of said lien cause the same to be cancelled and discharged of record at Lessee's sole cost and expense.
15. **Taxes and Assessments.** Lessee shall be responsible for and deposit in the escrow account set up for this purpose, when due, any and all general, special, real property, sales, personal property, and possessory interest taxes and assessments, if any, levied against the Premises and/or the improvements thereon. At this time, the payment is anticipated to be \$480.00 per month.
16. **Holding Over.** If Lessee shall remain in possession of said Premises after the termination of this Lease or after the expiration of said Term without a proper extension or renewal of this Lease, Lessee shall be deemed to occupy the Premises as a Lessee from month-to-month at a monthly rate of one and one-half times the rental amount paid during the last month of the term.
17. **Insurance.** Lessee shall deposit when due, in the escrow account set up for such purpose, all amounts required to pay property insurance in an amount covering replacement value. Said insurance policy shall provide for 30 days' advance written notice to Lessor prior to cancellation. Lessee shall separately provide for general liability, naming Lessor as an additional insured, and worker's compensation



insurance to the extent required by law. Lessee acknowledges and agrees that Lessor is not providing and is not responsible for providing any additional insurance coverages, and Lessee waives any and all rights with respect to the same against Lessor.

18. **Notices.** Any and all notices required or permitted under this Lease, unless otherwise specified in writing by the party whose address is changed, shall be as follows:

Lessor:

GOLD MINERS LODGE RESTAURANT & MOTEL, LLC
PO Box 940353
Houston, Alaska 99694

Lessee:

John A. and Inthira Zavacky
1151 E. 76th Avenue
Anchorage, Alaska 99518

19. **Default.**

- a. The occurrence of one or more of the following events shall constitute a default and breach of this Lease by Lessee:
- i. Violation or breach or failure to keep or perform any covenant, agreement, term or condition of this Lease which shall continue or not be remedied within five (5) days (or if no default in payment of rent is involved within thirty (30) days) after notice thereof is given by Lessor to Lessee specifying the matter or matters claimed to be in default.
 - ii. Filing by the Lessee in any court pursuant to any statute, either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization or for the appointment of a receiver or trustee of all or a portion of the Lessee's property, or an assignment by the Lessee for the benefit of creditors.



- iii. The taking possession of the property of Lessee by any governmental office or agency pursuant to statutory authority for the dissolution or liquidation of the Lessee.
- iv. An abandonment or vacation (7 consecutive days of non-use) of the Premises by Lessee;
- v. The use of the Premises for any purpose other than those specified in Section 2.
- vi. The transfer of title to the improvements located upon the Premises by foreclosure, sale, operation of law, gift or otherwise.

b. Upon the occurrence of a default as defined in "a." above, Lessor may at Lessor's option, declare Lessee's rights terminated and may re-enter the Premises and improvements, using such force as is necessary, and without further notice, remove all persons and property from the Premises and repossess Lessor of Lessor's former estate. In such case, Lessor shall be deemed to have an immediate right to possession of the Premises and improvements (if Lessor so desires) and Lessee shall peacefully surrender the same. No judicial action shall be necessary to affect such termination.

c. Such re-entry and termination notwithstanding, the liability of Lessee for payment of all amounts required to be paid by Lessee under this Lease, including payment of the full rental provided herein for what would otherwise have constituted the balance of the Term of this Lease shall not be extinguished and Lessee shall make good to Lessor all expenses and damages suffered by Lessor as a result of the default, repossession and reletting, including without limitation, legal expenses, renovation expense, alteration expense, and any rental deficiency resulting from the inability to relet the Premises or reletting at a lesser rate.

Lessor may, but shall not be obligated to, relet the Premises or any part thereof in the name of the lessor, or otherwise, for such term (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such conditions as Lessor may determine appropriate, and may collect and receive the rent therefrom; Lessor shall not be responsible or liable for any failure to relet the Premises, or any part thereof, or for any failure to collect rent due upon any such reletting.



d. In the event of default, as defined in subparagraph “a”, Lessor shall have such further and additional rights as are provided by law or equity.

20. **Cure of Default by Lessor.** Lessor may, at the expense of Lessee, cure any default by Lessee hereunder, but shall not be required to do so. Lessee shall reimburse Lessor for all amounts expended in connection therewith, including attorney's fees and other incident expenses. Such amounts, together with interest at the maximum lawful rate of interest, shall be deemed additional rent payable within thirty (30) days of notification that such amount is due.
21. **Attorneys' Fees, Costs and Expenses.** In the event either party brings or commences legal proceedings to enforce any of the terms of this Lease, the prevailing party in such action shall receive from the other, in every action commenced, a reasonable sum for attorneys' fees and costs to be fixed by the court in the same action.
22. **Rights and Remedies.** No right or remedy herein conferred upon or reserved to a party hereunder is intended to be exclusive of any other right or remedy, and such and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereunder existing at law or in equity or by statute.
23. **Assignment and Subletting.** Except as provided below, Lessee shall not sublet, mortgage, pledge or assign its rights under this Lease without the prior written consent of Lessor, which consent may be withheld in Lessor's sole and absolute discretion, and any purported sublease, mortgage, pledge or assignment without such consent shall be null and void and of no force or effect. Lessee may assign his/her rights hereunder to an entity owned one-hundred percent (100%) by Lessee, without Lessor approval, provided that a personal guaranty is executed to insure performance under this Lease.
24. **Waiver and Forbearance.** No waiver by a party hereto of any breach by the other party of any of its obligations, agreements or covenants hereunder shall be deemed to be a waiver of any subsequent breach of the same or any other covenant, agreement or obligation. Nor shall any forbearance by a party to seek a remedy for any breach of the other party be deemed a waiver by the party of its rights or remedies with respect to such breach.



25. **Successors in Interest.** This Lease shall be binding upon and inure to the benefit of the respective heirs, successors and permitted sublessees or assigns of the parties hereto.
26. **Applicable Law.** This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Alaska.
27. **No Partnership, Joint Venture, Etc.** Nothing in this Lease shall be intended or deemed to create a partnership, joint venture, association, or other similar relationship between the parties hereto.
28. **No Third-Party Beneficiaries.** This Lease does not create, and shall not be construed as creating, rights enforceable by any person not a party to this Lease.
29. **Severability.** If any provision of this Lease or any application thereof shall be held invalid, illegal or unenforceable, the remainder of this Lease or any other application of such provision shall not be affected thereby.
30. **Option to Purchase.**
- a. **Grant of Option to Purchase Premises.** During the Term, Lessee shall have an option to purchase the Premises (the "Option"). The purchase price (the "Option Purchase Price") shall be Two Hundred Seventy Five Thousand Dollars (\$275,000.00). The Purchase Price shall be payable by cash or wire transfer on the Purchase Option Closing Date. The terms of the purchase shall be as set forth herein or, if mutually agreed to and executed by the Parties, in a separate Purchase and Sale Agreement. Further, Lessee acknowledges and agrees that it will undertake its due diligence and title review prior to the exercise of the Option to Purchase.
- b. **Election to Exercise Option.** Provided the any payments due as set forth in Section 4 and this Section 30(b)(i)(1) through (5) have been timely received by Lessor, Lessee may exercise the Option by providing written notice to the Lessor of Lessee's intention to purchase the Premises in accordance with the terms and conditions of this Section 30 (the "Purchase Option Election Date"). Such written notice must be transmitted by Lessee by commercial overnight delivery service or in person, and received by the Lessor, at any time prior to October 1, 2022. The Option shall immediately terminate upon the early termination or the expiration of this Lease. Furthermore, Lessee shall have no right to exercise the Option during any period in which an event of default has occurred and is continuing under this Lease. As part of the election to exercise



option and payment terms, the following payment dates and discount terms apply:

- i. Lessee agrees to pay to Lessor the following additional rental amounts on the dates stated in (1) through (5) below (“Additional Rents”). Each payment amount will be considered additional rent unless the Purchase Option is elected by Lessee and actually closes as set forth in this agreement. In the event the Purchase Option is elected and closes, any amounts identified in (1) through (5) below that have actually been paid to Lessor will be considered in calculating a discounted Purchase Price at the time of Closing as detailed in 30(b)(ii):
 1. Five thousand dollars (\$5,000.00) upon execution of this agreement;
 2. Fifteen thousand dollars (\$15,000.00) not later than October 1, 2017;
 3. Ten thousand dollars (\$10,000.00) on or before December 15, 2017;
 4. Ten thousand dollars (\$10,000.00) on or before March 15, 2018;
 5. Fifteen thousand dollars (\$15,000.00) by October 1, 2019.
- ii. On the date that the Option is exercised by Lessee, a discount on the Purchase Price will be calculated based on the Additional Rents actually paid, and a portion of the \$1,901.21 rental payment as shown on the attached Exhibit A. For example, if Lessee elects to exercise the Option on November 25, 2019, and all payments have been timely received from Lessee by Lessor, the Purchase Price will be discounted to \$202,979.58. **Prior to the exercise and closing of the Option to purchase, Lessee shall not accrue equity or an interest in the Premises or assets.**
- iii. Any escrow to be held by First National Bank Alaska.
- iv. The parties agree that the Closing of the Purchase Option shall not occur until after the first deed of trust on the property has been paid in full, which may occur simultaneous with the option Closing.
- v. The parties agree that they will cooperate to transfer the Liquor Licenses as part of the Closing, with Lessee to pay all costs associated with said transfer.

c. Closing of Option. The closing of the sale shall occur at Mat-Su Title Company on a date and time (the “Purchase Option Closing Date”), and at such place, as the parties may mutually agree, provided, that, in no event shall the



Purchase Option Closing Date be later than October 6, 2022, or the next business day, unless mutually agreed by the parties. During the period between the Purchase Option Election Date and the Purchase Option Closing Date, all terms and conditions of this Lease, including, but not limited to, Lessee's various payment obligations, shall continue in full force and effect. Furthermore, if for any reason the sale does not close, the terms and conditions of this Lease shall continue in full force and effect (subject to Lessor's rights upon the occurrence of an event of default, and any expiration of this Lease).

d. Conveyance of Title. Conveyance of title to the Premises at the closing of the Purchase Option shall be by statutory warranty deed, in a form satisfactory to Lessee, free of all liens, mortgages and encumbrances except those otherwise agreed to by Lessee as part of its title review. At the closing of the sale, this Lease shall terminate, except that any provisions which are designated as surviving termination, including all indemnity provisions, and this Section, shall survive such termination and not merge into the deed to be delivered pursuant hereto.

e. Conveyance of Items Listed on Inventory List. Attached to this Lease is a copy of an Inventory List of items associated with the property described herein. At the time of closing, these items will be transferred to Lessee by Lessor by Bill of Sale in the condition in which they have been maintained by Lessee. Lessee has inspected the Inventory List items and Lessee accepts the same "AS IS WITH ALL FAULTS." Lessor makes no specific warranties, expressed or implied, concerning the condition of the Items. Lessor shall have no liability or obligation with respect to the condition, maintenance or use of the Items.

f. Closing Costs. Lessee shall be responsible for all costs associated with their chosen financing option. Lessor shall pay for the standard title commitment for the real property. All other closing costs associated with Mat-Su Title Insurance Company will be divided 50/50 between the Parties.

g. Sale of Premises. In the event the Option is not exercised by October 1, 2022, the Lessors may show the Premises for the purpose of sale at reasonable times with notice to Lessee.

31. Miscellaneous Provisions.

a. This Lease constitutes all of the agreements and conditions made between the parties and may not be modified orally or in any manner other than by an agreement in writing signed by both parties or their respective successors in interest.



- b. Each term and such provision of this Lease shall be construed to be both a covenant and a condition of this Lease.
- c. Time is of the essence in each term and provision of this Lease.
- d. This Lease may be executed in any number of counterparts, including by facsimile signature, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the undersigned have caused this Commercial Lease Agreement to be executed effective as of the date and year herein above first written.

Lessee:

John A. Zavacky

John A. Zavacky 9-27-17

Inthira Zavacky

Inthira Zavacky

Lessor:

Gold Miners Lodge Restaurant & Motel, LLC

By: *Brian Gauthier* 9-27-17

Brian Gauthier, Manager/Member

By: *Sandra Gauthier* 9/27/17

Sandra Gauthier, Manager/Member



[Signature]
 DP. 9/14/20

Notice of Violation

(3AAC 304.525)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 10-16-18 License #/Type: #4526 / Beverage Dispensary Touris
Licensee: Gold Miners Lodge Restaurant & Motel Address: 20333 W. Parks Hwy, Houston, AK
DBA: Gold Miners Lodge Restaurant & Motel AMCO Case #: AB18-1263

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

On 10-11-18, AMCO Investigators learned that Gold Miners Lodge and Restaurant & Motel had leased their property and liquor license to John & Inthira Zavacky on 10-1-17.

Your attention is referred to AS 04.11.450: Prohibited financial interest, AS 04.11.580: Surrender or destruction of license, AS 04.16.150: Licensee Responsible for violations, AS 04.21.030: Responsibility of licensees, agents, and employees, AS 04.11.400: Populations limitations, 3 AAC 304.105: Application generally, 3 AAC 304.325: Licensee issued to encourage tourism

You are directed to respond in writing to this Notice of Violation within 10 days of receipt to explain what action you have taken to prevent a re-occurrence of this violation. FAILURE TO RESPOND TO THIS NOTICE OF VIOLATION WITHIN 10 DAYS WILL RESULT IN YOUR APPEARANCE, EITHER IN PERSON OR TELEPHONICALLY, BEFORE THE ABC BOARD AT THEIR NEXT REGULARLY SCHEDULED BOARD MEETING.

***Please send your response to the address below and include your alcohol license number in your response.**

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Alcohol & Marijuana Control Office
ATTN: Enforcement
550 W. 7th Ave, Suite 1600
Anchorage, Alaska 99501
amco.enforcement@alaska.gov

Issuing Investigator: J. Hamilton

Received by:

SIGNATURE:

SIGNATURE:

Delivered VIA: Mail

Date:

From: [Hoelscher, James C \(CED\)](#)
To: [Davies, Jason M \(CED\)](#); [Hamilton, Joe \(CED\)](#)
Subject: FW: Gold Miners Lodge Restaurant and Motel, LLC, AMCO Case #: AB18-1263
Date: Monday, December 10, 2018 7:35:59 AM
Attachments: [image001.png](#)
[image003.png](#)

FYI

From: Sandra Gauthier [mailto:goldminerslodgealaska@gmail.com]
Sent: Sunday, December 9, 2018 7:32 PM
To: Hoelscher, James C (CED) <james.hoelscher@alaska.gov>
Subject: RE: Gold Miners Lodge Restaurant and Motel, LLC, AMCO Case #: AB18-1263

Licensee: Gold Miners Lodge Restaurant and Motel, LLC

License #/Type: #4526/Beverage Dispensary-Tourism

AMCO Case #: AB18-1263

Mr. Hoelscher,

Per my telephone call on 12/5/18 you had asked me to put in writing what we had discussed per our conversation and forward it to you.

On October 1, 2017 Gold Miners Lodge Restaurant and Motel LLC entered into a lease with option to buy agreement with John & Inthira Zavacky. You had asked if we had a "Manager's Agreement" with the Zavacky's. Mr. & Mrs. Zavacky do not have a financial business interest in Goldminers Lodge Restaurant and Motel but only the property and will be starting their own business under a different business name and License or LLC. Mr. & Mrs. Zavacky have been performing a major renovation of the restaurant and motel buildings. In our original agreement with Mr. & Mrs. Zavacky we were not intending to apply for a waiver. They originally planned to be able to open in 2018 after applying to transfer the liquor licenses into their new business name prior to opening a new restaurant/bar & motel. It has taken them much longer on the renovation and they have not opened yet! Since speaking with Mr. & Mrs. Zavacky the first week in November 2018 they agreed the waiver option would be necessary according to the handbook and assured us that they would turn in their necessary paperwork and applications to transfer and renew the liquor licenses into their new business name before the deadline date of December 31, 2018.

Prior to moving out of Alaska on October 1, 2017 Brian and I were communicating with Sarah Oates via telephone and email in the month of September 2017. I had come into the AMCO Anchorage Office at least 4 times prior to leaving because we were not having our calls returned. I repeatedly communicated with Sarah at the office regarding the process of the transferring of the liquor licenses and before leaving we turned in our necessary paperwork with her.

Two months later on December 22, 2017, I received an email from Jacqlene Drulis. The letter dated December 22, 2017 stated "At this time, your application is considered incomplete for the following

reason: AB-01 Transfer License Application - We have not received the remainder of the Transfer Application Forms." Jacqlene Drulis had returned our transfer license paperwork that we had turned in prior to leaving Alaska. I called Jacqlene Drulis and talked with her to get accurate instructions on how to proceed. She suggested that we send our completed paperwork to Mr. & Mrs. Zavacky so that when they turned in their applications they would have everything AMCO needed. On 1/30/18 I sent them our necessary completed portion of paperwork for the transfer applications.

On November 5, 2018, I began to inquire via an email to AMCO regarding the waiver application process. I received a response email from Carrie Craig on November 6, 2018. I sent another email to Carrie on November 13, 2018 asking her a few more questions regarding the transfer and renewal applications, and asked her if she would email us when John Zavacky turned in his applications as it is sometimes hard to get ahold of him. I also asked if she would please let me know if someone else was taking care of his application if she would let me know their name and email address since the deadline was drawing near. I received a response email from Carrie November 13, 2018. I sent another email to Carrie on November 14, 2018 asking her a question regarding the Notary Public. I did not get a response email from Carrie so I called AMCO and she was the one who answered the phone so I was able to get my answer with that phone call.

I mailed the waivers for License #4526 Beverage Dispensary - Tourism and License # 4380 - Restaurant or Eating Place to AMCO and the City of Houston on November 14, 2018 via certified mail with return receipt. The signed return receipts received by AMCO and the City of Houston states the waivers were received on November 19, 2018 and the checks were cashed on November 20, 2018 per my bank account.

I believe this latest misunderstanding stems from a phone call I made on October 11, 2018, I called AMCO asking to talk to with Jacqlene Drulis and talked to a Mr. Campbell as he asked if he help. I explained some details regarding our lease with option to buy agreement and asked if Mr. & Mrs. Zavacky's transfer application was turned in. He checked and said that "no transfer application had been turned in." I also told him that Mr. Zavacky was in the process of a major renovation. I had some questions regarding applying for a waiver for the first time. He explained the fees and to also send a copy of the waivers to the Local governing body the City of Houston AK.

Soon after that phone call on October 11, 2018 on November 29, 2018, we received an email from Jason Davies to our goldminerslodgealaska@gmail.com showing a Notice of Violation for failure to communicate. That next evening Brian called to find out what the Notice of Violation was pertaining to and talked to John Hamilton. The next day we received another email from Jason Davies again on November 30, 2018 stating he had talked with Mr. Hamilton and found his original letter was never received in the mail because it was sent to our physical address and not our mailing address and apparently was not sent as certified mail. That is what prompted my call to you on December 5, 2018.

We have continually been trying to comply with all AMCO requirements and as you can see with all the above communication, I have been in contact with AMCO before and after we moved from Alaska in 2017 extensively. With regards to the violations listed in the Notice of Violation letter sent via email we believe there was a misunderstanding. John & Inthira Zavacky have never used or been

offered temporarily to use our liquor licenses and they have not yet even opened their new business. Mr. Zavacky has been trying to complete a major renovation of the restaurant and motel and have assured us they will not open until all required applications are granted by and through the AMCO authorization.

Sandra Gauthier
Managing Member
Gold Miners Lodge Restaurant and Motel, LLC
907-355-9132

Sent from [Mail](#) for Windows 10

From: [Hoelscher, James C \(CED\)](#)
Sent: Wednesday, December 5, 2018 2:28 PM
To: goldminerslodgealaska@gmail.com
Subject: Contact Information

James Hoelscher
Special Investigator II
Enforcement Supervisor
Alcohol & Marijuana Control Office

550 W. 7th Ave, Suite 1600
Anchorage, Ak 99501
Office (907)269-0353
Cell (907) 891-9660
James.hoelscher@alaska.gov

Notice of Violation

(3AAC 304.525)

This form, all information provided and responses are public documents per Alaska Public Records ACT AS 40.25

Date: 2/27/19

License #/Type: Restaurant / Eating Place - #4380

Licensee: Gold Miners Lodge Restaurant and Motel

Address: 20333 W. Parks Hwy, Houston, AK

DBA: Gold Miners Lodge Restaurant and Motel

AMCO Case #: AB19-0351

This is a notice to you as licensee that an alleged violation has occurred. If the Alcoholic Beverage Control Board decides to act against your license, under the provisions of AS 44.62.330 - AS 44.62.630 (Administrative Procedures Act) you will receive an Accusation and Notice of your right to an Administrative Hearing.

Note: This is not an accusation or a criminal complaint.

On 10-11-18, AMCO Investigators learned that Gold Miners Lodge Restaurant and Motel had leased their property and liquor license to John & Inthira Zavacky on 10-1-17.

Your attention is referred to AS04.11.450: Prohibited financial interest, AS04.11.580: Surrender of destruction of license, AS04.16.150: Licensee responsible for violations, AS04.21.030: Responsibility of licensees, agents, and employees and 3AAC 304.105: Application generally

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Alcohol & Marijuana Control Office

ATTN: Enforcement

550 W. 7th Ave, Suite 1600

Anchorage, Alaska 99501

amco.enforcement@alaska.gov

Issuing Investigator: J. Hamilton

Received by:

SIGNATURE:

J.R. Hamilton

SIGNATURE:

Delivered VIA: Mail

Date: