



## MEMORANDUM

TO: Alcoholic Beverage Control Board      DATE: November 12, 2019  
FROM: Erika McConnell, Director      RE: 5563 Homer Spit Oyster Bar

This restaurant or eating place – public convenience license was approved by the board and issued to Suvi Bayly in mid-2017. The licensee submitted an AB-14 Licensed Premises Diagram Change shortly afterwards to include an outdoor deck as part of the licensed premises. After receiving an inquiry about using the deck for an event using a different caterer, we reviewed the lease for the Homer Spit Oyster Bar.

The lease between Kachemak Shellfish Mariculture Association (KSMA) and Suvi Bayly, submitted with the original license application and valid through the end of 2018, stated that the KSMA was leasing “the 1<sup>st</sup> Floor Office space” at 3851 Homer Spit Road, but allowed “courtesy use of ¼ of the outdoor deck space.” The lease described the deck space but then stated, “For the 2018 summer season, (June-August) the lessee may define the needed exclusive use of the deck space at an additional \$.50 per sqft. This is at the option of the lessee, not obligatory.”

Staff contacted the licensee to request an updated lease showing right or title to, or interest in the deck. The licensee submitted a new lease, signed at the beginning of 2019 and expiring in January of 2020, that leases “the 1<sup>st</sup> Floor space currently fitted out as a restaurant/oyster bar, the storage space directly behind said space, and the 2<sup>nd</sup> Floor Restroom.” The lease goes on to say, “Also included in this lease is access to the outside deck space.” The licensee was informed that this was not sufficient to show right or title to or interest in the deck. She submitted a lease amendment to correct the issue, but it was not signed by the landlord, KSMA.

A licensee needs to control the area where alcoholic beverages are served and consumed for the purposes of enforcing AS 04.16.025 (Illegal presence on premises involving alcoholic beverages), AS 04.16.040 (Access of drunken persons to licensed premises), AS 04.16.047 (Access of persons with restriction on purchasing alcohol), and AS 04.16.049 (Access of persons under the age of 21 to licensed premises). In this situation, it does not appear that the licensee has right or title to, or interest in the deck.

I request that under AS 04.06.090(c), the board reduce the area designated as licensed premises to remove the deck, finding that the reduction is necessary to ensure control over the sale and consumption of alcoholic beverages on the premises.

**Attachment:** Lease for licensed premises  
Licensed premises diagram

# COMMERCIAL LEASE AGREEMENT

## 1. Parties

This COMMERCIAL LEASE AGREEMENT is made this 29 day of January, 2019, by and between Kachemak Shellfish Mariculture Association, hereafter referred to as "KSMA" and Suvi Bayly, hereafter referred to as "LESSEE".

## 2. Description of Leased Premises

KSMA hereby leases to LESSEE; the 1st Floor space currently fitted out as a restaurant/oyster bar, the storage space directly behind said space, and the 2nd Floor Restroom, all at the following address: 3051 Homer Spit Road, Homer, Alaska 99603.

Also included in this lease is access to the outside deck space.

## 3. Use of the Premises

The premises will be used for a commercial business: an oyster bar. LESSEE may not use the premises for any other purpose without the express written consent of KSMA. LESSEE may not use the premises for any illegal purpose. LESSEE agrees to conform to all local, state and federal laws concerning the operation of its business and the use and occupation of the premises. LESSEE agrees to provide written notification to KSMA should it become aware of any non-compliance to any of the aforementioned laws. No smoking is permitted in or around the building. No pets, unless permitted by law, are permitted in the building.

## 4. Term

The premises will be leased for the following term: 1st of February, 2019 and terminates on the 31st of January, 2020. The LESSEE will not have the option to renew this specific contract for an additional term, after the termination date stated herein. In the event LESSEE remains in the premises without a new lease being signed, LESSEE shall pay \$1,200 per month of occupation. KSMA reserves the right to remove LESSEE equipment and goods from the premises after the termination of lease and have it placed in storage, all at the expense of the LESSEE. It is the intention of KSMA to negotiate a new long-term lease with the LESSEE at the rate listed in "5. Rent" below. The intention of KSMA does not imply a guarantee that LESSEE and KSMA will enter into a new lease agreement.

## 5. Rent

Rent payments are due on or before the 1st day of each month. LESSEE shall pay KSMA a monthly payment as per the table below. Payment is inclusive of sales tax. As sales

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tax is subject to change, LESSEE agrees that any said changes will adjust total monthly payment up or down. Payment shall be made to KSMA's Agent and shall be hand delivered or properly mailed to KSMA, 206 E. Pioneer Ave, Suite 2, Homer, Alaska 99603.

Rent Table

January 2020	\$500 (560.75 + 39.25 sales tax)
February 2019	\$600 (560.75 + 39.25 sales tax)
March 2019	\$600 (560.75 + 39.25 sales tax)
April 2019	\$600 (560.75 + 39.25 sales tax)
May 2019	\$1,800 (1760.75 + 39.25 sales tax)
June 2019	\$1,800 (1760.75 + 39.25 sales tax)
July 2019	\$2,500 (2,460.75 + 39.25 sales tax)
August 2019	\$2,500 (2,460.75 + 39.25 sales tax)
September 2019	\$1,500 (1,560.75 + 39.25 sales tax)
October 2019	\$600 (560.75 + 39.25 sales tax)
November 2019	\$600 (560.75 + 39.25 sales tax)
December 2019	\$600 (560.75 + 39.25 sales tax)

6. Late Charges and Other Fees

Rent paid after the 5th day of each month is considered delinquent. A late charge of \$50.00, plus \$1.00 per day will be assessed until rent is paid in full. Except where LESSEE's bank accepts responsibility, LESSEE will be charged a \$25.00 fee for handling of dishonored rental checks. Any rent that may have been due prior to signing this lease, will become due on the next month's payment date.

In the event the LESSEE is locked out of the building due to LESSEE's (or employees thereof) actions, and the LESSEE (or employee thereof) requests the assistance of KSMA during non-business hours, a lock-out fee of \$35.00 will be charged.

7. Utilities

KSMA will continue to hold the major utilities in their name; water/sewer, electric and natural gas.

LESSEE agrees to accept the billing from KSMA for the pro-rated usage for each utility during the time of tenancy. Utility payments are due within 30 days of receipt of invoice and subject to late charges and other fees as noted in Section 6 above. Should



LESSEE billed amounts vary significantly from the expected amounts of \$700 p.a. for water, \$600 p.a. for electric and/or \$200 p.a. for natural gas, KSMA will provide to LESSEE copies of original KSMA utility invoices for the billed time period in question for said utility to show fair KSMA billing practice. KSMA does not and will not collect from LESSEE utility amounts in excess of estimated actual usage.

LESSEE is independently responsible for their own garbage care/removal. Please refer to section 12 of this agreement for further explanation of LESSEE's obligations.

#### 8. Parking Lot, Building and Equipment

Building maintenance shall be the responsibility of the KSMA, unless such maintenance is caused by the misuse, neglect or carelessness of the LESSEE. This includes parking lot snow plowing/care.

#### 9. Sublet

LESSEE shall not assign lease or sublet the premises.

#### 10. KSMA Disclosure

LESSEE understands that during the tenancy any and all damage related to the LESSEE actions on site, or the actions of any of its family, employees, customers, agent, guests or invitees, will be the financial obligation of the LESSEE unless KSMA otherwise indicates to the LESSEE in writing. LESSEE is obligated for damages as set forth in section 13 of this agreement.

#### 11. Acceptance and Repairs

KSMA shall make, as and when needed, at its own expense, all repairs to the premises and/or building, provided such repairs are not made necessary by the misuse or neglect of the LESSEE, its family, employees, customers, agents, guests or invitees. LESSEE is responsible for and hereby agrees to pay for any damage done by wind, rain or snow caused by leaving windows or doors open, and to plumbing fixtures, and appliances caused by improper use, accidents or carelessness.

KSMA shall attempt to have all building maintenance related issues resolved as soon as possible based on KSMA prioritization. Safety has utmost priority.

LESSEE shall not arrange building repairs on its own and attempt to bind KSMA financially to said repairs. Should LESSEE, on its own accord and in contradiction to this lease, bypass KSMA and arrange repairs to the building or premises, LESSEE shall be solely responsible for any said maintenance related service calls to include cost and potential negative impact to building made by maintenance activity whether ultimately deemed necessary or not by KSMA. LESSEE shall submit in writing to KSMA any known defect. Should defect be deemed by LESSEE (or employees thereof) to be dangerous in nature, i.e. with the potential to cause bodily harm, LESSEE shall also make personal notification (verbal, text,



phone call, etc.) at earliest available opportunity.

LESSEE shall be responsible for maintenance of all equipment utilized within Lessee leased spaces. LESSEE shall have all equipment serviced, if required, to ensure safe operation.

LESSEE agrees that no permanently affixed tables, chairs, benches or any patio or otherwise furniture will be attached to the surrounding deck without written authorization from KSMA. In addition, as noted earlier, there will be no smoking permitted on the deck. Any damage caused by this action or any action that is not conducive with the well-being of the property, will be at cost to the LESSEE.

## 12. LESSEE Obligations

LESSEE is responsible for the following:

- A. LESSEE has fully performed all obligations under this lease agreement, as well as any other obligations imposed by law;
- B. LESSEE occupies the premises for the entire term;
- C. LESSEE is current on all rent, late charges and other fees owed KSMA at the time of lease termination (unless billing, not to include rent, from KSMA has not yet been provided); and
- D. LESSEE has cleaned leased space to a professional standard;
- E. Keep the premises clean and safe on a daily basis, to include nightly vacuuming of stairs and hallway portions leading to LESSEE's leased spaces (to include restroom);
- F. To comply with all local, state and federal laws and to refrain from using the premises in any fashion inconsistent with said laws;
- G. To refrain from keeping any inoperable motor vehicle or any part thereof, on the premises or any adjacent street or alley;
- H. To properly dispose of rubbish, garbage and waste in a clean and sanitary manner at reasonable and regular intervals and to assume all costs of extermination and fumigation for infestation caused by LESSEE's actions;
- I. To properly use and operate all electrical & gas, fixtures and appliances;
- J. To refrain from engaging in any activity or allowing any activity on the premises which could result in a civil liability to KSMA;
- K. To keep the premises free from any liens and encumbrances resulting from LESSEE's actions;



- L. To adhere to the City of Homer ordinances in regard to their signage and policy and placement;
- M. To acknowledge the upstairs restroom is for employees and paying customers only & to take general care for the cleanliness of said area. LESSEE is responsible for any supplies in regard to utilization and cleaning of said facility. KSMA does not provide public restrooms. LESSEE shall place key in a location and manner that helps enforce this.
- N. To ensure that during evening hours access to the upstairs is monitored in a reasonable fashion. KSMA may provide additional support to LESSEE to facilitate said obligation, i.e. camera, physical barrier, etc. LESSEE to instruct patrons of the "one person per use of restroom at a time" policy unless the person is in need of assistance due to age, disability or medical condition. KSMA recognizes that monitoring during busy times is not an absolute.
- O. To acknowledge that KSMA and Kachemak Shellfish Growers Co-op (KSGC) are two separate and distinct entities and that actions by KSGC, its employees and/or agents, even if employed by both entities, have no mitigating impact on the LESSEE's obligations under this agreement.

### 13. Damage to the Premises

LESSEE is responsible for any damage to the premises caused by its conduct, or the conduct of its family, customers, agents, employees, guests and invitees.

### 14. Indemnification and Hold Harmless Clause

LESSEE agrees to release KSMA, its property manager, agents, employees and representatives, and to indemnify and hold such persons and entities harmless, from any claims for damages or injury to LESSEE, its family, customers, agents, employees, guests and invitees by reason of any condition of the premises within the control and responsibility of LESSEE, or arising from LESSEE's activities conducted upon the premises. Should LESSEE believe a condition on the premises is potentially harmful or in need of repair by KSMA, LESSEE will promptly give KSMA written notice of such condition or defect believed to be potentially harmful and/or in need of repair.

### 15. Insurance

LESSEE further agrees to carry bodily injury, property damage and personal injury general liability insurance with limits of not less than \$500,000. The liability insurance shall be maintained and paid for by LESSEE throughout the lease term. KSMA shall be identified as an additional insured on all such policies. Proof of insurance shall be provided to KSMA at the commencement of the lease term and/or upon renewal of an expiring policy.

Should KSMA's fire insurance on the leased premises increase as a result of LESSEE's



occupation, LESSEE will reimburse KSMA the amount of such increase.

#### 16. Events Constituting Default

LESSEE's right to occupy the premises will, at KSMA's discretion and option, cease should LESSEE, its family, guests, agents, employees, or invitees, as appropriate, engage in the following conduct:

- A. Any conduct which constitutes as default under Alaska law;
- B. Fail to pay rent on time;
- C. Fail to comply with any term of this lease;
- D. Make an assignment for the benefit of creditors, or otherwise indicate an inability to pay debts;
- E. Commit waste on the premises, beyond normal wear and tear, and fail to repair such waste as directed by KSMA;
- F. Make any untrue statements in the application of this lease;
- G. Engage in any illegal activity on the premises; or
- H. Fail to pay other invoices, submitted to LESSEE based on conditions of this lease, on time.

In the event of such default, KSMA may declare the lease terminated and immediately retake possession of the premises. In addition, LESSEE shall be required to vacate the premises upon expiration of this lease.

#### 17. Access

KSMA, its property manager, agents and employees have the right to enter the premises for the following purposes:

- A. Any purpose permitted by law;
- B. To inspect the premises;
- C. To show the property for rent or sale, including the right to place rental or "for sale" signs on the premises;
- D. To make necessary repairs, additions or alterations; or
- E. To control emergency situations and to protect the property.

Absent exigent circumstances, KSMA may enter the premises only upon 24 hours advance notice to LESSEE.

18. Venue and Attorney Fees

Any court action involving this lease shall be filed in the Third Judicial District at Homer, Alaska. In the event of any litigation between the parties arising under or in conjuncture with this agreement, the prevailing party will be entitled to its actual, reasonable costs and attorney's fees. In the event of a dispute, the parties agree to use a third-party mediator prior to litigation, except in the case of a federal court action.

19. Keys

LESSEE shall receive 6 keys upon lease signing; 2 front door keys, 2 unit keys and 2 upstairs restroom keys. Any additional keys can be issued and recorded by the KSMA building manager. The LESSEE will pay the per key cutting charge to obtain any additional keys. Upon termination of the agreement all issued keys must be returned to KSMA no later than the day following the date of termination. Any key(s) not returned on time will result in a \$25.00 per key charge.

20. Destruction or Condemnation of Premises

In the event the premises is destroyed or made unusable by fire or natural causes, or is the subject of a condemnation proceeding by any government authority, this lease agreement will terminate.

21. Entire Agreement:

This document constitutes the entire agreement between KSMA and LESSEE and supercedes all preceding or contemporaneous verbal agreements, promises or understandings. Any additions or modifications to this agreement must be in writing and signed by KSMA and LESSEE.

22. Controlling Law

This agreement shall be interpreted according to the laws of the State of Alaska.

23. Notices

To the extent written notices are required under this agreement, they shall be mailed to the following address:

KSMA: (KSMA) Kachemak Shellfish Mariculture Assoc ation  
206 E. Pioneer Ave, Suite 2  
Homer, AK 99603

LESSEE: Suvi Bayly





PO Box 195  
Girdwood, AK 99587  
AND  
PayPros  
Zach Scholl  
310 K Street, Suite 200  
Anchorage, AK 99501

All other forms of written communication will take place in a mutually agreed upon manner. It is the intent of KSMA to have all relevant communication regarding LESSEE's occupation of the premises documented. Any concerns, requests, complaints, etc. from either party not falling directly under the scope of this agreement will need to take place in a date/time traceable format. This may include text messages, e-mail and/or mailed letters.

24. Appendix A

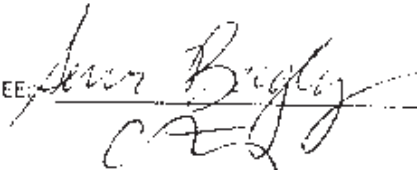
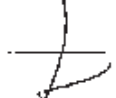
KSMA and LESSEE agree that document titled Appendix A To Residential lease Agreement "LESSEE CHECK-OUT RESPONSIBILITIES" signed on 3/14/2017 by both LESSEE and KSMA (KSMA in document) is to form a part of this new lease agreement upon signing. For clarity, it is page 7 of the previous agreement. It is attached to the end of this lease.

25. Acknowledgement by LESSEE

LESSEE acknowledges every term of this agreement has been read and understood and ample opportunity to seek the advice of an attorney has been provided.

THIS IS A LEGALLY BINDING DOCUMENT. READ IT CAREFULLY PRIOR TO SIGNING.  
CONSULT AN ATTORNEY IF YOU HAVE ANY QUESTIONS.

This agreement is signed by the parties on the date next to their respective signatures. Every page of this document, including the appendix must be initialed by both signers.

LESSEE:   
KSMA:   
President

Date: 01/29/2019

Date: 05 FEB 2019



COMMERCIAL LEASE AGREEMENT

APPENDIX A TO RESIDENTIAL LEASE AGREEMENT  
LESSEE CHECK-OUT RESPONSIBILITIES

**PLEASE READ CAREFULLY:**

Upon advising us of your intent to vacate the premises, you will need to clean the rental unit according to the list provided herein. The property manager or assistant will complete a walk-through inspection. Cleaning and repairs necessary on the Lessee's behalf will be scheduled with an appropriate vendor and such charges will be deducted from the security deposit. There is a \$25.00 per vendor transaction fee for all services coordinated by the property manager on the Lessee's behalf. Lessee will be charged \$25.00 for requested re-inspections.

By law, you are required to give a 30-day written notice of our intent to vacate. The Alaska Landlord Tenant Law states your notice must be given to the Landlord "at least 30 days before the rental due date specified as the termination date in the notice."

**WHAT WE EXPECT TO BE CLEANED:**

- o Wash down all walls and trim
- o Clean all outlet covers and switch plates
- o Clean all floors (wax if necessary)
- o Clean all light fixtures and replace burnt bulbs
- o Clean vent fans
- o Clean all sinks/basins/faucets
- o Clean all counter tops
- o Clean inside/outside/underneath refrigerator
- o Clean oven and oven racks and underneath oven
- o Clean stove top, stove pans and under stove top/pans (replace if necessary)
- o Clean inside/outside dishwasher
- o Clean tops of all appliances
- o Clean blinds/curtains/valances if present
- o Empty and wipe out all cupboards and closets
- o Vacuum the tops of all cupboards
- o Clean all windowsills and inside windows
- o Clean all doors, including inside/outside windows
- o Fill all nail holes to professional standards with wall putty

I HAVE READ THE ABOVE INFORMATION AND UNDERSTAND IT.

Lessee: *[Signature]*

Date: 3/14/2017

KMSA: *[Signature]*  
Manager

Date: 3/14/17

Lessee Initials *[Signature]*

*[Signature]* 5 FEB 2019  
KMSA Initials *[Signature]*

