

# STATE OF ALASKA

2569.38.008  
JUL 26 2000

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4<sup>TH</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907)269-5100  
FAX: (907)276-3697

July 6, 2000

BY HAND DELIVERY

Suzanne Cherot  
1127 W. 7<sup>th</sup> Avenue  
Anchorage, AK 99501-3399

Re: Lucy Oaks Property - Tract B, Oaks Subdivision

Dear Ms. Cherot:

Enclosed is an executed Agreement and Release regarding the transaction with Mr. Swain. The language of the document is the same as the draft attached to my e-mail of June 22, 2000. You may deliver this document to Ms. Oaks if she assents to the terms listed below. Once you have signatures from all parties, please send a copy back to me.

The Agreement and Release is delivered based on the following understanding:

1. Under separate cover, you will receive a bill for DEC's response costs through 1999 for the Oaks property. The total amount claimed is \$76,374.04. Additional expenditures will be billed as they are incurred. Mrs. Oaks or her technical advisor should review the bills. Any questions should be raised with Kay Rawlings in my office.
2. If the recently-collected sample confirms that the contamination is heating oil, DEC will shortly record a lien against the subject property under AS 46.08.075 (if heating oil is not found in the sample, a lien may not be recorded and item 3 below will not apply).

3. So long as Mrs. Oaks pays at least \$200.00 each month against her obligation to DEC, DEC will forbear from foreclosing its lien until June, 2004. Payments should be received by the 15th of each month, starting September 15, 2000. The payments should be by check made out to "State of Alaska" and mailed to Kay Rawlings, Litigation Assistant, State of Alaska, Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501.

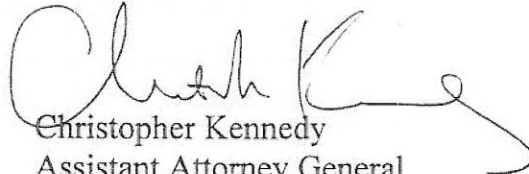
4. The obligation to DEC will accrue interest at the statutory rate unless Mrs. Oaks request and DEC or this office, in their discretion, grant a waiver or partial waiver of interest.

We wish Mr. Swain and Mrs. Oaks good luck in their business, and look forward to working with them to bring the contamination problem to a satisfactory resolution.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Christopher Kennedy  
Assistant Attorney General

Enclosure

AGREEMENT AND RELEASE REGARDING LIABILITY OF LESSEE

This Agreement and Release is entered into on the last date entered below by the State of Alaska ("State"), Lucy Oaks of Anchorage, Alaska personally and in her capacity as Personal Representative of the Estate of Edgar K. Oaks, Jr. ("Oaks"), and Michael S. Swain, Sr. of King Salmon, Alaska ("Swain").

R E C I T A L S

Oaks is the owner of certain real property known as Eddie's Fireplace Inn located near Eskimo Creek in King Salmon, Alaska, described as Tract B, OAKS SUBDIVISION, according to the official plat thereof, filed under plat number 80-4, official books and records of the Kvichak Recording District, Third Judicial District, State of Alaska (the "Property").

The State is investigating known and potential environmental contamination on the Property. The State contends that the contamination is apparently connected with the operation and removal of a fuel storage tank while the Property was owned and operated by the late Mr. Eddie Oaks.

W A R R A N T I E S

Oaks warrants as follows, and the State relies on these warranties in entering into this agreement and release:

1. Oaks desires to lease the Property to Swain under the terms of a proposed lease, the terms of which are set forth in Exhibit A attached hereto.

2. Swain has indicated that he will not lease the Property from Oaks unless the State releases Swain from liability related to existing environmental contamination on the Property; and

3. Swain had no management responsibility for the Property before or at the time that any fuel storage tanks was removed.

R E L E A S E

The State hereby grants Swain, Swain's successors and assigns as lessee of the Property (other than Oaks and her successors and assigns), and Swain's agents and employees, a full release from any and all civil claims, known or unknown, whether at law or equity, that the State has or may have against Swain as a result of (1) the presence, continued presence, migration, or

leaching of Environmental Contamination that entered the Property before the date of this agreement and release; (2) damage caused by Environmental Contamination that entered the Property before the date of this agreement and release; or (3) costs incurred by any party in responding to Environmental Contamination that entered the Property before the date of this agreement and release. However, the preceding sentence shall not apply (a) to any environmental contamination created by Swain or Swain's agents or employees or (b) should Swain become a fee owner of the Property, to Swain in his capacity as a fee owner of the Property.

"Environmental Contamination" is defined as:

(1) the contamination of the soil, air, or water (whether surface water or ground water) of the Property by hazardous substances or hazardous wastes;

(2) the contamination of the soil, air, or water (whether surface water or ground water) of any piece of realty adjoining the Property due to a release of hazardous substances or hazardous wastes upon the Property; or

(3) the presence of hazardous substances or hazardous wastes that were stored upon the Property before the date of this agreement but were unknown to Swain on the date of this agreement, provided Swain reports and manages any such stored materials, upon their discovery, in conformance with applicable law.

"Hazardous substance" has the meaning given in AS 46.03.826.

The State represents that the State has the authority to grant the Release, and the Release is binding upon and enforceable against the State.

This Release shall be binding upon and inure to the benefit of the successors and assigns of the parties except as limited above.

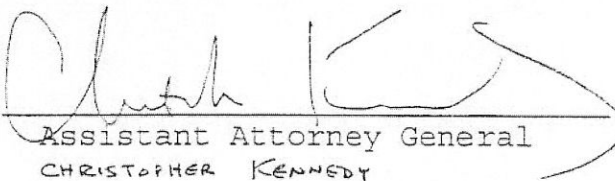
#### A C C E S S

Oaks and Swain agree to continue to provide the State and its contractors access to the Property at reasonable times and with reasonable notice to assess and clean up Environmental Contamination on the Property. Oaks and Swain acknowledge that necessary assessment and cleanup activities may include, without limitation, the drilling of wells and soil borings, the removal of contaminated soil and overburden, and the placement of fill or treatment works. The State and Swain agree to work together in good faith to minimize the impact of any such activities on Swain's business.

This Release shall be construed under the laws of the State of Alaska.

IN WITNESS WHEREOF, the parties have executed this Agreement and Release on the day and year last entered below.

STATE OF ALASKA

By:   
Assistant Attorney General  
CHRISTOPHER KENNEDY

\_\_\_\_\_  
Lucy B. Oaks

\_\_\_\_\_  
Lucy B. Oaks in her capacity as  
Personal Representative of the Estate  
of Edgar K. Oaks, Jr.

\_\_\_\_\_  
Michael S. Swain, Sr.

# STATE OF ALASKA

FRANK MURKOWSKI,  
GOVERNOR

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4<sup>TH</sup> AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907)269-5100  
FAX: (907)276-3697

September 15, 2005

By Hand Delivery

Law Office of Jay D. Durych

Jay D. Durych  
4141 B Street, Suite 404  
Anchorage, AK 99503

NOV 02 2005

RECEIVED

Re: Lucy Oaks Property - Tract B, Oaks Subdivision, King Salmon

Dear Mr. Durych:

This letter describes the agreement between the State of Alaska and Mrs. Lucy Oaks regarding her property in King Salmon, Alaska known as "Eddie's Fireplace Inn." You and I have been discussing the terms of this agreement since April 7, 2004, and correspondence you have forwarded to me shows that Mrs. Oaks and her daughter have been aware of those discussions and have been supplying information to you to assist in their completion. I understand you have talked to Mrs. Oaks in the last week and brought her up to date on the proposed solution, which is more favorable to her than any proposed in the past, and that she has approved this solution as fair and manageable for her, based on her \$5000 monthly rental income from the property. Your and your client's countersignatures on this letter will confirm the parties' understanding. Because we need to put this matter to rest, I ask that you please return the countersigned letter no later than September 29, 2005.

The terms of the understanding are as follows:

1. Mrs. Oaks has received bills for the Department of Environmental Conservation's (DEC's) response costs for the work performed on the Oaks property. The total amount claimed to date, exclusive of interest and deducting payments made, is \$442,391.79. Additional expenditures will be billed as they are incurred. Mrs. Oaks or her technical advisor should review the bills. Any questions should be raised with Kay Rawlings in my office. Mrs. Oaks may question the appropriateness or reasonableness of amounts billed.

2. DEC will record an updated lien against the subject property under AS 46.08.075.

3. So long as Mrs. Oaks pays \$400.00 each month against her obligation to DEC, DEC will forbear from foreclosing its lien up to and including October 15, 2011. Payments should be received by the 15th of each month, starting October 15, 2005.

4. In consideration of the forbearance in paragraph 3, the parties agree to toll the running of any statutes of limitation applicable to the state's claims as of April 7, 2004 and continuing through October 15, 2011 (the "effective period"). Mrs. Oaks agrees for herself and for her heirs, successors, and assigns not to assert any statute of limitations, laches, or other time-related defense based on the passage of time during the effective period.

5. All payments must be received by the 15<sup>th</sup> of each month. The payments should be by check, made out to "State of Alaska" and mailed to Kay Rawlings, Litigation Assistant, State of Alaska, Attorney General's Office, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501. In keeping with her past practice, Mrs. Oaks is welcome to make double payments every other month, as long as her payments are timely.

6. The obligation to DEC accrues interest at the statutory rate.

7. This promise of forbearance is not transferable. Therefore, Mrs. Oaks or her representative will need to contact my office if a change in ownership of the property occurs or is contemplated. In addition, we should confer in advance of the expiration of the promise in 2011.

Jay D. Durych  
Counsel for Lucy B. Oaks

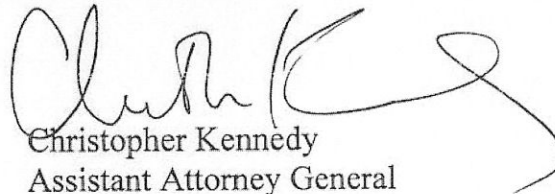
September 15, 2005  
Page 3

We look forward to continue working with Mrs. Oaks to bring the contamination problem to a satisfactory resolution.

Sincerely,

DAVID W. MÁRQUEZ  
ATTORNEY GENERAL

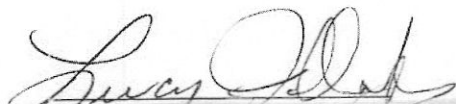
By:



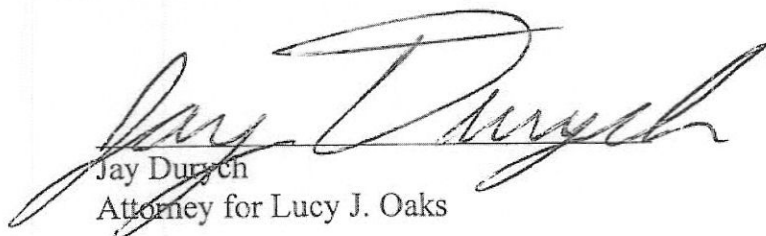
Christopher Kennedy  
Assistant Attorney General

cc: Rich Sundet, ADEC  
Kay Rawlings, DOL  
Larry Dietrick, ADEC

Reviewed and agreed to:



Lucy J. Oaks



Jay Durych  
Attorney for Lucy J. Oaks



QUITCLAIM DEED

THE GRANTOR, Small Business Administration, for and in consideration of the sum of Two Hundred Seventy Thousand dollars (\$270,000.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, conveys and quitclaims to Lucy J. Oaks all interest which it has, if any, in and to the following described real estate, situated in the State of Alaska, Third Judicial District, Kvichak Recording District:

That portion of Lot Two (2), of United States Special Survey No. 3177, Kvichak Recording District, Third Judicial District, State of Alaska, lying Easterly and Southerly of Eskimo Creek and Northerly of the following described line:

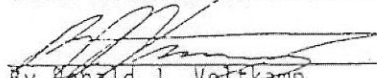
Beginning at the most Northerly corner of that property described in Book 10 at Page 412, Deed Records, Kvichak Recording District, thence Southeasterly 20 feet, more or less, to the Northeasterly corner of said property to a point South 76 degrees 23'15" West, 227.76 feet from corner No. 5, U.S. Special Survey No. 3177; Thence North 76 degrees 23'15" East, 227.76 to a point on the Easterly line of said U.S. Survey and the terminus of said line.

TRACT "A" of Paper Survey of State Owned Land Panhandle Portion of PLO 309, carried as file No. 34-29, in the Office of the State of Alaska, Department of Natural Resources, Division of Lands, Anchorage, Alaska, in the Kvichak Recording District, Third Judicial District, State of Alaska.

TRACT "B" of Paper Survey of State Owned Land Panhandle Portion of PLO 309, carried as file No. 34-29, in the office of the State of Alaska, Department of Natural Resources, Division of Lands, Anchorage, Alaska, in the Kvichak Recording District, State of Alaska.

Dated this 15<sup>th</sup> day of February, 1989.

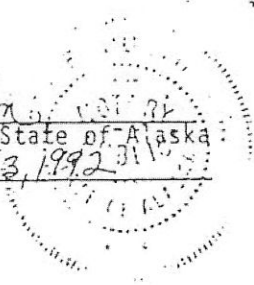
SMALL BUSINESS ADMINISTRATION

  
By Ronald J. Veitkamp  
Supervisory Loan Specialist  
Portfolio Management Division

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 15<sup>th</sup> day of February, 1989, before me the undersigned Notary Public, personally came Ronald J. Veitkamp, known to me to be the individual who executed the within instrument and acknowledged said instrument to be executed pursuant to authority vested in him as Supervisory Loan Officer, Portfolio Management Division, Anchorage District Office, Small Business Administration, for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

*Mary E. Huntington*  
Notary Public in and for the State of Alaska  
My Commission Expires: Feb 3, 1992  


RETURN TO: SMALL BUSINESS ADMINISTRATION  
222 W. CHITWANE #87  
ANCHORAGE, AK 99513-7559

Attn: Mary Huntingdon  
Loan #XGP2015273001ANC

*Lucy J. Oaks .  
L.J. Oaks  
3630 Carleton Square  
Anchorage, AK 99517*

*89-101*

RECORDED - FILED 13-cc  
KVICHUK REC. DIST.  
DATE 3-7- 19 89  
TIME 11:20 A.M.  
Submitted by SBA  
Address \_\_\_\_\_

AGREEMENT AND RELEASE REGARDING LIABILITY OF LESSEE

This Agreement and Release is entered into on the last date entered below by the State of Alaska ("State"), Lucy Oaks of Anchorage, Alaska personally and in her capacity as Personal Representative of the Estate of Edgar K. Oaks, Jr. ("Oaks"), and Michael S. Swain, Sr. of King Salmon, Alaska ("Swain").

R E C I T A L S

Oaks is the owner of certain real property known as Eddie's Fireplace Inn located near Eskimo Creek in King Salmon, Alaska, described as Tract B, OAKS SUBDIVISION, according to the official plat thereof, filed under plat number 80-4, official books and records of the Kvichak Recording District, Third Judicial District, State of Alaska (the "Property").

The State is investigating known and potential environmental contamination on the Property. The State contends that the contamination is apparently connected with the operation and removal of a fuel storage tank while the Property was owned and operated by the late Mr. Eddie Oaks.

W A R R A N T I E S

Oaks warrants as follows, and the State relies on these warranties in entering into this agreement and release:

1. Oaks desires to lease the Property to Swain under the terms of a proposed lease, the terms of which are set forth in Exhibit A attached hereto.

2. Swain has indicated that he will not lease the Property from Oaks unless the State releases Swain from liability related to existing environmental contamination on the Property; and

3. Swain had no management responsibility for the Property before or at the time that any fuel storage tanks was removed.

R E L E A S E

The State hereby grants Swain, Swain's successors and assigns as lessee of the Property (other than Oaks and her successors and assigns), and Swain's agents and employees, a full release from any and all civil claims, known or unknown, whether at law or equity, that the State has or may have against Swain as a result of (1) the presence, continued presence, migration, or

leaching of Environmental Contamination that entered the Property before the date of this agreement and release; (2) damage caused by Environmental Contamination that entered the Property before the date of this agreement and release; or (3) costs incurred by any party in responding to Environmental Contamination that entered the Property before the date of this agreement and release. However, the preceding sentence shall not apply (a) to any environmental contamination created by Swain or Swain's agents or employees or (b) should Swain become a fee owner of the Property, to Swain in his capacity as a fee owner of the Property.

"Environmental Contamination" is defined as:

(1) the contamination of the soil, air, or water (whether surface water or ground water) of the Property by hazardous substances or hazardous wastes;

(2) the contamination of the soil, air, or water (whether surface water or ground water) of any piece of realty adjoining the Property due to a release of hazardous substances or hazardous wastes upon the Property; or

(3) the presence of hazardous substances or hazardous wastes that were stored upon the Property before the date of this agreement but were unknown to Swain on the date of this agreement, provided Swain reports and manages any such stored materials, upon their discovery, in conformance with applicable law.

"Hazardous substance" has the meaning given in AS 46.03.826.

The State represents that the State has the authority to grant the Release, and the Release is binding upon and enforceable against the State.

This Release shall be binding upon and inure to the benefit of the successors and assigns of the parties except as limited above.

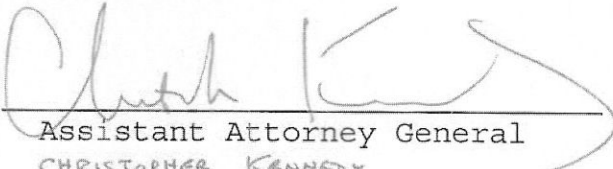
#### A C C E S S

Oaks and Swain agree to continue to provide the State and its contractors access to the Property at reasonable times and with reasonable notice to assess and clean up Environmental Contamination on the Property. Oaks and Swain acknowledge that necessary assessment and cleanup activities may include, without limitation, the drilling of wells and soil borings, the removal of contaminated soil and overburden, and the placement of fill or treatment works. The State and Swain agree to work together in good faith to minimize the impact of any such activities on Swain's business.

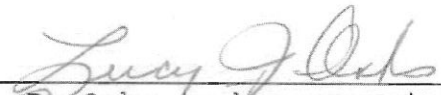
This Release shall be construed under the laws of the State of Alaska.


IN WITNESS WHEREOF, the parties have executed this Agreement and Release on the day and year last entered below.

STATE OF ALASKA

By:   
Assistant Attorney General  
CHRISTOPHER KENNEDY

  
Lucy B. Oaks

  
Lucy B. Oaks in her capacity as  
Personal Representative of the Estate  
of Edgar K. Oaks, Jr.

  
Michael S. Swain, Sr.

Exhibit

A

Page 1 of 10

**LEASE OF REAL AND PERSONAL PROPERTY**

THIS LEASE is entered into this \_\_\_\_\_ day of June, 2000, by and between LUCY OAKS, personally (as to the real property) "LESSOR" or "LANDLORD"), whose address for purposes hereof is 3549 Cottonwood Street, Anchorage, Alaska 99508, and MICHAEL S. SWAIN, SR. DBA BAY AMUSEMENT EFI (hereafter referred to as "LESSEE" or "TENANT") whose address for purposes hereof is Post Office Box 189, King Salmon, Alaska 99613.

**WITNESSETH:****1. REAL AND PERSONAL PROPERTY SUBJECT TO LEASE.**

LESSOR, for and in consideration of the rent, covenants and conditions hereinafter specified to be paid, performed and observed (respectively) by the LESSEE, hereby leases to the LESSEE, who hereby agrees to take:

- a. All personal property associated with the business known as **EDDIE'S FIREPLACE INN**, located on the **Naknek-King Salmon Road in King Salmon, Alaska**, including all furniture, fixtures, equipment, and other personal property situated on said premises; and
- b. The real property, buildings, improvements, and fixtures formerly known as **EDDIE'S FIREPLACE INN**, located on the **Naknek-King Salmon Road in King Salmon, Alaska**, which real property is more particularly described as **TRACT "B", OAKS SUBDIVISION**, according to the official plat thereof, filed under plat number **80-4**, official books and records of the **Kvichak Recording District, Third Judicial District, State of Alaska**.

**2. RENT.**

The LESSEE shall pay the LESSOR rent in the amount of **\$4,700.00** per month for the months of **September through May** of each year (inclusive), and shall pay the LESSOR rent in the amount of **\$5,700.00** per month for the months of **June through August** of each year (inclusive) for the term of this Lease. The rent due on the first of each month and, if not paid by the 15th day of any month, a late charge of four percent (4%) of that month's rents shall be charged and shall be due when the rent is paid. Rent shall be in default if not paid by the 30th day of the month.

**3. SECURITY DEPOSIT.**

The LESSEE agrees to tender to the LESSOR at the time of execution of this Lease a security deposit in the amount of **\$5,000.00**. Said deposit shall be held by the LESSOR until such time as either (a) the LESSEE purchases the subject property; or (b) the Lease is terminated, either due to a default by the LESSEE or due to natural expiration of the lease. In the event that the LESSEE purchases the subject property, the security deposit be applied in payment of the purchase price due the LESSOR/SELLER. In the event that the lease is terminated without purchase of the property by the LESSEE, the security deposit shall be applied to offset any damages sustained by the LESSOR, with any balance refunded to the LESSEE.

#### 4. INITIAL LEASE TERM.

The term of this Lease shall commence on the date that the State of Alaska Department of Revenue, Alcoholic Beverage Control Board ("ABC Board") transfers the liquor license associated with **EDDIE'S FIREPLACE INN** to the LESSEE, and shall continue thereafter for a term of five (5) years.

#### 5. OPTION TO RENEW LEASE.

Provided that the LESSEE is not then in default hereunder, the LESSEE shall have the option to renew this Lease for up to two (2) additional five (5) year terms. Said renewals shall be subject to the same terms as stated in this Lease; provided, however, that the rent shall be adjusted for inflation at the beginning of each five-year term; and provided further that the limits of all insurance policies required hereunder shall likewise be adjusted for inflation at the beginning of each five year term.

#### 6. PROCEDURES FOR EXERCISING OPTION TO RENEW.

The LESSEE shall give written notice of his intent to exercise his option to renew the lease for another five year term at least ninety (90) days prior to the expiration of the then-current lease term. The parties shall then negotiate and agree on any increases in the rent and insurance coverages as discussed in Paragraph 5, above. Should the parties be unable to agree on any particulars by the sixtieth day prior to the expiration of the current lease term, they shall each select an arbitrator, who shall then confer and attempt to reach an agreement. Should the arbitrators fail to reach an agreement by the thirtieth day prior to expiration of the current lease term, they shall jointly appoint a third arbitrator, whose decision shall be final. Should the two initial arbitrators be unable to agree as to selection of the third arbitrator, they shall request appointment of a third arbitrator by the nearest office of the American Arbitration Association to break the impasse. The decision of said third/appointed arbitrator shall again be final.

#### 7. PURCHASE OF BEVERAGE DISPENSARY LICENSE AND LIQUOR INVENTORY IN RELATED TRANSACTION.

The parties acknowledge that the LESSEE will be purchasing the Beverage Dispensary License and the food and liquor inventory associated with **EDDIE'S FIREPLACE INN** from the LESSOR *per capacity Personal Representative of the Estate of Edgar K. Oaks., Jr.* deceased in separate but related sale transaction and that, should that sale fail to close, this lease shall be void and of no force or effect.

#### 8. ASSIGNMENT AND SUBLETTING.

No assignment or subletting of this lease shall be valid absent the prior written consent of the LESSOR. Such consent shall not, however, be unreasonably withheld. Any sublease or assignment shall be in writing and duly executed by the LESSOR, the LESSEE, and the ASSIGNEE or SUB-LESSEE.

#### 9. ENCUMBRANCES.

The premises are leased subject to all conditions, covenants, deeds of trust, easements, encumbrances, mortgages, restrictions, reservations, and security interests of record or appearing on the plat of the "Land"; all mortgages, deeds of trust, and other security devices now or hereafter existing; all governmental regulations, ordinances and statutes in effect now or in the future; and all other encumbrances of record. The LESSEE specifically acknowledges that (a) there is currently a problem with the legal description used in the vesting deed from the United States Small Business Administration ("SBA") to **LUCY OAKS** which will ultimately require the LESSOR to seek and obtain a Corrective Quitclaim Deed from the SBA; and that (b) this Lease is being made subject to an existing Deed of Trust and an existing Security Agreement given by

the LESSOR in favor of the SBA, and the LESSOR is required by those documents to obtain the SBA's written consent prior to any conveyance of the property. Should the SBA fail to consent to this Lease, this Lease shall be considered void ab initio and of no further force and effect.

#### 10. INDEMNIFICATION OF LESSOR BY LESSEE FOR NON-ENVIRONMENTAL LIABILITIES.

a. The LESSEE shall save, protect, hold harmless, indemnify and defend LESSOR of, from and against any and all liability, damages, costs or expenses, including attorney's fees, arising from the breach by the LESSEE of any obligation set forth herein arising from any act, omission or negligence of LESSEE or the officers, contractors, licensees, agents, servants, employees, guests, invitees or visitors of LESSEE in or about the premises, or arising from any accident, injury or damage, however and by whomsoever caused, to any person or property, occurring in or about the premises.

b. The LESSOR shall not be liable for any loss or damage to person or property sustained by LESSEE or other person which may be caused by the building or the premises, or any appurtenances thereto, being out of repair, including but not limited to incidents, circumstances, or events relating to the carpeting, or by the bursting or leakage of any water, gas, sewer or steam pipe, or by any act or neglect of any other LESSEE or occupant of the building.

c. Indemnity for environmental contamination problems affecting the property as of the date of the inception of this Lease are excepted from the scope of this indemnity (see Paragraph 14, below).

#### 11. INDEMNIFICATION OF LESSEE BY LESSOR FOR EXISTING ENVIRONMENTAL LIABILITIES.

The LESSOR agrees to indemnify and defend the LESSEE and hold the LESSEE harmless from any liability for any environmental contamination affecting the property as of the date of inception of this Lease. The parties acknowledge that environmental contamination has been discovered on the subject property as detailed in the report prepared by HartCrowser for the State of Alaska Department of Environmental Conservation dated June 26, 1999.

#### 12. CARE OF THE LEASED PREMISES.

At all times during the term hereof, LESSEE shall: (a) keep the premises clean, safe and orderly; (b) provide all equipment needed for the operation of the premises (other than that leased herein); (c) conduct activities upon and generally maintain the entire premises in such a manner and with such care that injury to persons and damage to property does not result; (d) not use the premises in such manner that will increase the rate of fire and extended coverage insurance or which will cause cancellation of the insurance or will make coverage unavailable; (e) not damage the premises or the building; (f) not use any plumbing, electrical, mechanical systems or any of the furniture, fixtures or equipment in the building except for their intended purposes; (g) not use or permit any part of the premises to be used for any unlawful or unauthorized purpose; (h) comply with all Municipal, State, Federal and other governmental laws, statutes, ordinances, rules and regulations or whatever type and nature including, but not limited to, zoning ordinances, health, fire, liquor law, safety and environmental regulations; (i) not cause or permit any waste, damage or injury to the premises; (j) keep the premises as now or hereafter constituted with all improvements made thereto; or (k) take or permit no action



or inaction which would result in any further contamination of the property by any hazardous materials as the same are defined in any state or federal statute or regulation.

### 13. REPAIRS AND MAINTENANCE.

All repairs and maintenance whatsoever (including, without limitation, those affecting the structure, roof, walls, floor, heating, mechanical, electrical, and plumbing systems) shall be the sole and exclusive responsibility of the LESSEE, provided however, that the LESSOR agrees to credit toward the purchase price (should the LESSEE exercise the Option to Purchase granted hereunder) all repairs and improvements made by the LESSEE during the term of this Lease which have been previously authorized by the Lessor in writing, including but not limited to the LESSEE's replacement of the building's furnace. Should the LESSEE fail to exercise the Option to Purchase, any and all repairs and improvements shall become the property of the Lessor, and no reimbursement of LESSEE shall be required. The LESSEE shall also maintain, at LESSEE's sole expense, the interior of the leased premises, including, without limitation, trade fixtures, the furniture, the windows and doors, the cabinets, the lights, then parking lot, the lawn, and all equipment used in the operation of the business.

### 14. PREMISES LEASED "AS-IS" AND WITH ALL FAULTS.

The LESSEE acknowledges that he has been acting as Manager of EDDIE'S FIREPLACE INN for over one year and is familiar with the facility and the fact that the building is in poor condition. Because the LESSEE has had adequate time to familiarize himself with all of the faults of the premises, the parties agree that, (other than as expressly stated otherwise elsewhere in this lease), the LESSEE is leasing the subject real and personal property AS-IS AND WITH ALL FAULTS and that THE LESSOR HEREBY DISCLAIMS, AND THE LESSEE HEREBY WAIVES, ALL WARRANTIES REGARDING THE CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY, ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND ANY IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE.

### 15. UTILITIES AND TAXES.

The LESSEE agrees to reimburse the LESSOR for any city or borough real property and business personal property taxes associated with the leased premises within forty-five (45) days of the LESSOR's tender of proof of payment of any request for reimbursement of same. All utilities associated with the building and the operation of the business shall be paid by the LESSEE; no utilities will be paid by the LESSOR.

### 16. RELATED TRANSACTION DOCUMENTS.

This LEASE is one of a series of agreements which have been or which are being entered into between the parties and which include, without limitation, the following transactional documents: (a) Purchase and Sale Agreement dated March 1, 2000; and (b) Bill of Sale for Liquor License and Liquor Inventory. A default under the terms and provisions of any one of the foregoing transactional documents shall constitute a default hereunder.

### 17. AGREEMENT TO MAINTAIN WORKER'S COMPENSATION, LIABILITY, AND FIRE (CASUALTY).

The LESSEE shall, during the term of this Lease and any renewals thereof, keep and maintain, in full force and effect, the following policies of insurance:

- a. A policy of workers' compensation insurance providing at least the minimum amount of coverage required by Alaska law.
- b. A policy of commercial general liability insurance providing liquor liability coverage. Said policy shall have limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, and shall name the LESSOR as an additional named insured.
- c. A policy of fire/general casualty insurance insuring the leased premises and its contents for full replacement value and naming the LESSOR as the loss payee.

#### 18. ADDITIONAL PROVISIONS REGARDING INSURANCE.

The liability policy shall name the LESSOR and LESSEE as "co-insureds". The LESSEE shall promptly comply with any request made by any insurer with regard to the condition of the premises or the condition or use of all equipment, fixtures and other personal property used on or about the leased premises by making such repairs, additions, corrections, changes in use or modifications to the same at the LESSEE'S expense so as to keep the premises and the personal property in conformance with the requirements of any insurer so as not to increase the risk of loss or the cost of any insurance coverage. All policies shall contain a clause that the insurer will not cancel or change the insurance without first giving the LESSOR thirty (30) days prior written notice. All insurance shall be placed with an insurance company qualified to do business in the State of Alaska. A copy of the policies or certificates of insurance shall be delivered to LESSOR upon execution of this Lease and thereafter when said policies are renewed or new policies issued.

#### 19. REPLACEMENT OF FURNITURE, FIXTURES AND EQUIPMENT BY LESSEE.

a. The LESSEE acknowledges that the furniture, fixtures and equipment leased hereunder are or may be subject to a prior security interest in favor of the SBA. ~~Which security interest may attach to replacement items purchased by the LESSEE~~ <sup>AKB</sup> Until such time as the SBA loan has been paid in full. The parties agree that the LESSEE may replace items of personal property leased hereunder with new items, and that, as between the parties hereto, the replacement items will be the property of the LESSEE.

b. The LESSEE agrees to provide the LESSOR with written notice of any item of personal property having a replacement value of over \$1,000.00 which the tenant proposes to replace. The LESSEE agrees to cooperate with the LESSOR and follow the LESSOR'S reasonable instructions with regard to the storage, sale, or disposal of the old (replaced) items in order to observe SBA requirements and to prevent or minimize any breach of the LESSOR'S obligations to the SBA.

#### 20. ALTERATIONS.

LESSEE shall not make any alterations, additions, changes or improvements to the premises without the prior written consent of the LESSOR in excess of \$25,000.00.

a. No change, alteration, improvement or renovation shall at any time be made which shall impair the structural soundness or diminish the value of the demised premises.

b. No change, alteration, improvement or renovation shall be undertaken until LESSEE shall have procured and paid for all required municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction.

c. All work done in connection with any change, alteration, improvement or renovation shall be done in a good and workmanlike manner and in compliance with the building and zoning laws, and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof. LESSEE shall procure certificates of occupancy and other certificates as required by law.

d. At all times when any change, alteration, improvement or renovation is in progress, ether shall be maintained, at LESSEE'S expense, worker's compensation insurance in accordance with law covering all persons employed in connection with the change or alteration, and general liability insurance for the mutual benefit of LESSEE and LESSOR, expressly covering the additional hazards due to the change or alteration.

e. Should the LESSEE fail to exercise his Option to Purchase at the expiration of this lease and any renewals thereof, the LESSEE shall have neither the right nor the obligation to remove any such additions, renovations or alterations, which shall accede to any become the property of the LESSOR without any obligation on the part of the LESSOR to compensate the LESSEE therefore.

f. Said alterations and improvements, such as carpet, light fixtures, stud walls, doors and all other fixtures will, at the expiration or earlier termination of this Lease, become the property of the LESSOR except where LESSOR has otherwise agreed in writing. The LESSEE shall be entitled to remove items of personal property at the expiration or termination of this Lease to the extent that the same are purchased by the LESSEE, and are not fixtures. At the expiration or termination of this Lease and prior to the removal of any items of personal property, the LESSOR and the LESSEE shall prepare a list of items which may be removed and the repairs which will be made at the LESSEE'S sole expenses as may be caused by such removal.

## 21. LIENS.

LESSEE shall keep the land, building, and the personal property free from liens for goods, services, labor or materials ordered or supplied upon the express or implied request of the LESSEE. Should any such lien be recorded by reason of a claim against LESSEE or acts or omissions of LESSEE, LESSEE shall forthwith, and within ten (10) days of learning of such recording, cause the same to be canceled and discharged of record. Alternatively, LESSEE shall provide LESSOR with written proof of the existence of an appropriate surety bond in accordance with AS 34:35.072 written by a corporate surety qualified to do business in the State of Alaska, in an amount equal to not less than one hundred and fifty percent (150%) of the amount of the claim of lien. Such surety bond shall be in favor of LESSOR and the lien claimant. LESSEE shall take all steps necessary to have such lien released or judgment resulting therefrom satisfied at LESSEE'S own expense.

## 22. DEFAULT.

The occurrence of one or more of the following events shall constitute a default and breach of this Lease by LESSEE:

- a. Vacation or abandonment of the premises by LESSEE.
- b. Filing by or against the LESSEE in any court pursuant to any statute a petition for bankruptcy (whether for liquidation or for reorganization), or for the appointment of a receiver or trustee of all or a portion of the LESSEE property, or an assignment by the LESSEE for the benefit of creditors.
- c. Violation, breach or failure to keep or perform any covenant, agreement, term or condition of this Lease or of the Purchase and Sale Agreement associated herewith, which default continues or is not remedied as provided below:
- i. If no default in payment of rent is involved, the default must be cured within twenty (20) days after written notice thereof is given by LESSOR to LESSEE specifying the matter or matters claimed to be in default.
  - ii. If default is in the payment of rent, the default must be cured within ten (10) days of the first day of the month and the late charge must be paid at the same time. No written notice of default to the LESSEE is necessary if the default be in the rent payment because the LESSEE is conclusively presumed to know when rent is due.
- d. Upon occurrence of a default, as defined herein, LESSOR shall have all rights and remedies allowable at law or equity. LESSOR may, at its option, declare LESSEE'S rights under this LEASE immediately terminated, re-enter the premises, remove all persons and property from the premises and repossess the premises.
- e. No judicial action shall be necessary to effect any repossession or termination.
- f. At any time after repossession or termination, LESSOR shall use due diligence to relet the premises, for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions as LESSOR may determine appropriate, and may collect and receive the rent therefor. If the LESSOR, despite using due diligence, cannot re-lease the premises or if the rent from any re-leasing of the premises is less than the rent provided for in this Lease, the LESSEE shall be liable for the deficiency.
- g. Any 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 the LESSOR the expenses and damages suffered by LESSOR as a result of the termination, including, without limitation, brokerage commission, legal expenses, and repair and renovation expense, advertising expense and any rental deficiency resulting from re-letting the premises at a lesser rate.

### 23. 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 amount expended in connection therewith, included

attorney's fees and other incidental expenses. Such amounts, together with interest at twelve percent (12%) per annum, shall be deemed additional rent payable when the installment of rent next following such expenditures is due.

#### 24. SURRENDER OF PREMISES.

LESSEE, on the last day of the term, or on the last day of a renewal or extension 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 and damage that LESSOR has been fully compensated for by insurance proceeds excepted.

#### 25. 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 for the purpose of calculation of the rental obligation only, shall be deemed to occupy the premises as a LESSEE from month to month at a rate two (2) times the minimum rent herein reserved. Only if negotiations are underway, shall rent remain the same until negotiations are complete.

#### 26. BUSINESS EXPENSES.

The LESSEE shall pay any and all expenses associated with the operation of the business including without limitation, employee salaries, worker's compensation insurance as required by law for all employees, and all taxes and contributions associated therewith, inventory purchases, and all utilities and other charges as provided in this Lease, and shall establish such deposits with utility suppliers as may be required as a condition of service.

#### 27. GOVERNMENTAL FEES, TAXES, ASSESSMENTS AND OTHER EXPENSES.

All governmental fees due the City, Borough, the State of Alaska, the federal government, or any agencies thereof on account of any inspection made upon said leased premises as a result of the operations of the LESSEE shall be paid, during the term of this lease and any extensions or renewals thereof, when and as due, by the LESSEE. The LESSOR may require that the LESSEE pay any taxes or other assessments directly to LESSOR for subsequent tender by LESSOR to the taxing authority.

#### 28. LESSOR AND LESSEE NOT PARTNERS.

Neither this Lease nor any of the other transactional documents are intended, nor shall the same ever be construed, so as to create a partnership by and between the LESSOR and the LESSEE, nor so as to make them joint ventures, nor so as to make either party in any way responsible for the debts and/or losses of the other party.

#### 29. CONDITIONS PRECEDENT TO LEASE.

The parties's obligations under this lease are subject to the following contingencies or conditions precedent.

- a. ABC Board approval of the transfer of the **EDDIE'S FIREPLACE INN** liquor license to the purchaser, (which approval necessarily requires payment of all trade creditor liens and release of the Omholt judgment lien);

c. Agreement by the United States Small Business Administration that the lease of the real property associates with **EDDIE'S FIREPLACE INN**, and the lease or sale of the personal property associated with **EDDIE'S FIREPLACE INN**, will not be deemed to constitute a default under the deed of trust and security agreement given by the LESSOR in favor of the SBA;

d. The issuance of letter or agreement from the State of Alaska Attorney General's Office or DEC stating that the State will hold the LESSEE harmless from any environmental cleanup liability associated with the leased premises; and

e. The closing of the parties' pending Purchase and Sale Agreement and the transfer of good title to (at minimum) the beverage dispensary license and liquor inventory.

f. The parties understand that the State of Alaska Department of Environmental Conservation requires that this lease be signed and submitted to it for review before a "hold-harmless" or "no action" letter will be issued by the State / DEC. It is the intent of the parties, however, that this lease not become effective and enforceable until each of the foregoing conditions precedent have occurred.

### 30. OPTION TO PURCHASE.

a. So long as the LESSEE is not in default under this Lease, the LESSEE shall have the right to purchase all of the real and personal property associated with **EDDIE'S FIREPLACE INN** from the LESSOR for \$450,000.00 cash. This option to purchase shall become effective upon the closing of the Purchase and Sale Agreement associated herewith and the execution of this Lease, and shall thereafter continue in effect until the expiration of the initial lease term and (if exercised) the expiration of the two renewal terms authorized in Paragraph 5. The LESSEE'S Option to Purchase shall expire and shall be of no further force of effect if not exercised within the period described above.

b. In the event that the total (1) any environmental remediation costs for which the LESSOR may be held responsible, plus (2) the amounts necessary to pay off existing encumbrances, shall exceed the purchase price specified in the Option to Purchase contained in the preceding paragraph, then the LESSOR shall be excused, at the LESSOR'S option, from performing under the Option to Purchase.

31. **CREDITS TO LESSEE / PURCHASER UPON EXERCISE OF OPTION TO PURCHASE.** Should the LESSEE exercise the Option to Purchase granted above, the LESSOR agrees to credit toward the \$450,000.00 purchase price the following;

a. All rents paid by the LESSEE to the LESSOR in excess of \$4,000.00 per month, provided that the LESSEE was not in default in the month(s) in question, provided further that no credit shall be available for those months following the month in which the State of Alaska Department of Environmental Conservation (or successor agency) issues a "no action letter" stating that the State will take no further action to impose liability on any party to this agreement for remediation of the environmental contamination problems discovered on the leased premises;

b. The actual cost of all tenant improvements documented by the LESSEE and approved in advance by the LESSOR; and

c. Any security or other deposits posted by LESSEE and not otherwise utilized by LESSOR.

IN WITNESS WHEREOF, the parties have executed this Lease on the dates set forth below.

LESSOR:

DATED this 6-6 day of June, 2000 at Anchorage, Alaska.

By: Lucy Oaks  
Lucy Oaks, Individually (as to the real property and personal property)

LESSEE:

DATED this 6<sup>th</sup> day of June, 2000 at King Salmon, Alaska.

By: Michael S. Swain  
Michael S. Swain, ~~SR.~~ DBA BAY AMUSEMENTS EFI  
SR.  
MS