



MEMORANDUM

Resolution 25-040, A Resolution of the City Council of Homer, Alaska, Approving a Sub-Lease between Happy Face, LLC and Spittoon, LLC, Occupying 1,166 Square Feet in the Building located on the Property identified as T7S R13W Section 1 Seward Meridian HM0890034, Homer Spit Amended Lot 32 and Authorizing the City Manager to Negotiate and Execute the Appropriate Documents. City Manager/Port Director.

Item Type: Back-Up Memorandum
Prepared For: Mayor Lord and Homer City Council
Date: April 17, 2025
From: Mark Bowman, Port Property Associate
Through: Melissa Jacobsen, City Manager

Happy Face LLC has a lease with the City for the property located at 4400 Homer Spit Road, also identified as Homer Spit Amended Lot 32.

Happy Face LLC and Spittoon LLC have requested that the City consent a sublease allowing Spittoon LLC to operate a restaurant in the building owned by Happy Face LLC. The space in the building will not include a kitchen, rather the food will be produced in a DEC-Approved kitchen offsite and transported to the site for sale.

Both Tenants and Subtenants understand that there is a proposed \$500.00 annual fee payable to the City of Homer, Port and Harbor as part of the Sublease. If that fee is approved by Council at a later date, the Fiscal Note for this sublease will be \$500 of annual revenue to 400-0600-4650. Otherwise there is no Fiscal Note.

An application, along with the required supporting documentation, was submitted and reviewed by the City Staff in Planning, Port & Harbor, and Public Works. The application is complete and staff recommend approving this lease application.

Recommendation:

Approve Resolution 25-040

Attachments:

Spittoon Sublease Checklist
Spittoon LC Sublease Application
Executed Lease Agreement between Spittoon LLC & Happy Face LLC
Spittoon Business License
KPB Sales Tax Certificate
Resolution 25-027



City of Homer

www.cityofhomer-ak.gov

Port and Harbor

4311 Freight Dock Road

Homer, AK 99603

port@cityofhomer-ak.gov

(p) 907-235-3160

(f) 907-235-3152

Sublease Application - Staff Review Checklist

Applicant (Primary Lease Holder) Information	
Lessee Name:	Happy Face LLC
Sublessee Information	
Business Name:	Spittoon LLC
Primary Contact:	Steve Nolan (509)845-0051 tlnolanak@gmail.com
Sublease Information	
Comments regarding description of the subleased premises: Spittoon LLC will be operating a restaurant, Red Table BBQ, with space inside and some outdoor seating for restaurant customers. Food preparation will be in the Happy Face LLC leased lot under a separate sublease.	
Authorized use is consistent with the authorized purpose in the primary lease: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comments:	
The applicant's experience in the proposed business or venture is adequate: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comments: Spittoon LLC has thirty five years of local restaurant ownership experience including the Homestead Restaurant, Fat Olives, Cosmic Kitchen and others.	
Is information supporting the financial capability adequate? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comments:	
Sublease contains an agreement to the terms and conditions of the primary lease. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comment: Sublease section forty (40) contains these terms.	
Sublease includes a requirement that sublessee agrees to maintain insurance for sublessee's leasehold in the manner and form required under the primary lease and names the City of Homer as an additional insured. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Comment: Sublease section forty (40).	
The following documents (mark with Y, N or NA) have been provided: Business licenses (Y), KPB Tax Compliance Certification (pending), Articles of Incorporation (), DEC (NA), Permits (List) Certificate of Authority to Collect Borough Sales Tax, Other City, KPB and State required documents (List):	
Port and Harbor Staff Comments: Spittoon is well established and experienced and will provide a helpful service to visitors on the Homer Spit.	
City Planning Comments: After consultation with Ed Gross, City Planning, Associate Planner, information regarding signage and contact information for City Planning was provided to Happy Face LLC to share with their tenants.	
Community Development Comments: No Comments.	
City Manager Comments: No objection.	
Recommended Action to City Council - Recommend approval <input type="checkbox"/> N/A	

City Manager Signature: Melissa Jacobsen **Print Name:** Melissa Jacobsen **Date:** April 18, 2025



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Sublease Application

Applicant (Primary Lease Holder) Information

Lessee Name: HAPPY FACE, LLC

Mailing Address: P.O. BOX 3147, HOMER, AK 99603

Phone Number(s): 907-235-8783

Email Address(es): swapa@swpilots.net or support@swpilots.net

Sublessee Information

Business Name: SPITTOON, LLC Primary Contact: STEVE NOLAN

Mailing Address: P.O. BOX 297

Phone number(s): 509-845-0051

Email Address(es): tnolanak@gmail.com

Sublease Information

Description of the subleased premises:

Sq ft: 1166 Description: 4400 HOMER SPIT ROAD, UNIT 1, HOMER, AK 99603

Authorized use: (Must be consistent with authorized purpose in the primary lease.)
RESTAURANT

What is the applicant's experience in the proposed business or venture?
35 YEAR OWNERSHIP IN LOCAL RESTAURANTS (THE HOMESTEAD RESTAURANT, FRITZ CREEK GENERAL STORE, CAFÉ CUPS, FAT OLIVES, COSMIC KITCHEN)

What property improvements are planned as part of this sublease? (At least 30 days prior to construction, plans must be submitted to the Landlord for approval, and often an as-built is required once the work is complete. See your lease for additional requirements and details.)
N/A

Information supporting the financial capability or backing including a credit history, prior lease history, and assets that will be used to support the proposed business: (Attach supporting documents.)
PLEASE CONTACT ERIK NIEBUHR AT FIRST NATIONAL BANK ALASKA, HOMER BRANCH
907-235-5800



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Sublease includes a statement that the sublease is subject to all of the terms and conditions of the primary lease.

Initial: SN Sublease Section #: 40 (Attach sublease.)

Sublease includes a requirement that sublessee agrees to maintain insurance for sublessee's leasehold in the manner and form required under the primary lease and names the City of Homer as an additional insured.

Initial: SN Sublease Section #: 40

Business licenses, Permits, Articles of Incorporation, KPB Tax Compliance Certification and other documents providing evidence of compliance with City, Kenai Peninsula Borough and State of Alaska laws.

Initial: SN (Attach supporting documents.)

Additional Notes:

Sublease Application Signature Page

Primary Lease Holder Signature:

I hereby attest that, to the best of my knowledge, the information contained in this document is accurate, complete, and true.

Signature: Steve Nolan

Date: 4/17/2025

Print Name: STEVE NOLAN

Title: OWNER

LEASE AGREEMENT

This Lease Agreement (hereinafter referred to as “Lease”) is made and entered into by and between **Happy Face LLC**, (hereinafter referred to as “Lessor”), and **Spittoon LLC** (hereinafter referred to as “Lessee”).

1. **LEASED PREMISES.** Lessor, for and in consideration of the rent, covenants and conditions set forth in this Lease to be kept, performed and observed by Lessee, leases to Lessee, and Lessee hereby leases from Lessor Unit #1 of the following described real property situated in the Homer Recording District, Third Judicial District, State of Alaska, located at 4400 Homer Spit Road, Unit LH02, Homer, Alaska, 99603, and more particularly described as follows:

**Unit #1 (consisting of 1,166 square feet) and described herein T 7S R 13W
Sec 1 Seward Meridian HM 0890034 LSEHLD
Lot Thirty-two (32) Homer Spit AMD, according to the official
Plat thereof, books of records of the Homer Recording District, Third
Judicial District, State of Alaska.**

(Hereinafter referred to as “Leased Premises”).

2. **COMMON AREAS.** If the premises are part of a building occupied by other tenants, Lessee agrees to conform to Lessor’s rules and regulations pertaining to the parts of the building that are in common use by tenants.

3. **TERM.** The Term of this Lease shall be **five (5) years commencing on the 1st day of May, 2025, or when leased premises are completed, and ending on the 30th day of April, 2030.** The monthly rent shall increase annually, beginning on the 1st day of May 2026, by CPI 12-month percent change for prior calendar year as established by the U.S. Bureau of Labor Statistics (BLS) and published for Urban Alaska on the BLS website.

4. **EARLY OCCUPANCY.** Lessee shall be provided the option to occupy the Leased Premises prior to the Term. If approved by Lessor, Lessee's early occupancy of the Leased Premises shall be subject to all of the provisions of this Lease. Early occupancy of the Leased Premises shall not advance the expiration date of this Lease. Prior to early occupancy and before Lessee or any contractors and/or sub-contractors hired by Lessee can commence approved work, Lessee shall provide Lessor with expected start date, scope of work, list of contractors, and necessary proof of insurances as required by this Lease. Lessor agrees there shall be no rent or utility payments due for this early occupancy period.

5. **OPTION TO RENEW LEASE.** Provided Lessee is not in default under the Lease, either at the time of exercise of its rights hereunder or on the first day of the applicable Option Term, and Lessee is in occupancy of the Leased Premises then, Lessee shall have the option to renew this Lease for one (1) additional Term of five (5) years (“Option Term”) at the fair market rental value of the Leased Premises as reasonably determined by Lessor in its sole discretion at the commencement date of Option Term. Lessee shall notify Lessor in writing, in accordance with notice provisions contained herein, one hundred and eighty (180) days in advance of the scheduled expiration of this Lease if Lessee wishes to exercise this Option Term. All other terms and conditions of this Lease not specifically addressed herein shall remain unchanged.

6. **RENT.** Lessee covenants and agrees to pay to Lessor as monthly rent, the sum of **Three thousand ninety six dollars 00/100 (\$3,096.00) plus local sales tax, currently 7.85% charged on the first five hundred dollars (\$39.25), for a total of Three thousand one hundred and thirty five dollars 25/100 (\$3,135.25) payable in advance on the 1st day of each and every month.** A late charge in the amount of **One hundred fifty and 00/100 Dollars (\$150.00)** shall be assessed against any rental payment not paid within ten (10) days of its due date. Should there presently be in effect or should there be enacted during the term of this Lease Agreement any law, statute, or ordinance levying any tax upon rents, Lessee shall pay such tax or shall reimburse Lessor on demand for any such taxes paid by Lessor. Such taxes shall not include income taxes. A security deposit of **Three thousand ninety six dollars 00/100 (\$3,096.00)** remains in trust, held by the Lessor for any default of the Lessee.

7. **PURPOSE.** The leased premises are to be used for the following purposes only: operating a trade business. The leased premises shall be used for no other purpose without prior written consent of Lessor in each instance first obtained.

8. **LESSEE'S OBLIGATIONS.** Lessee shall: (1) keep the premises in a clean and sanitary condition; (2) properly dispose of all rubbish, garbage and waste in a clean and sanitary manner at all reasonable and regular intervals; (3) properly use and operate the electrical heating, plumbing and other fixtures and appliances; (4) not intentionally or negligently destroy, deface, damage, impair or remove a part of the leased premises, or any property of Lessor, nor permit any employee, agent, family member, invitee, licensee or other person acting under its control to do the same; (5) not permit a nuisance or common waste; (6) except for the roof, exterior walls and foundation, which are the responsibility of the Lessor, Lessee shall make such repairs as necessary to maintain the premises in as good condition as they now are, reasonable use and wear and damage by fire and other casualty excepted; and (7) Lessee shall maintain and be solely responsible for the cost of liability and fire/hazard insurance on the rented premises and for Lessee's personal and business property. No animals will be allowed.

9. **NO SMOKING.** No smoking will be allowed inside the lease space or in the common areas. A designated smoking area may be designated on the exterior of the premises. Lessee will be responsible for cleanup of cigarette trash.

10. **ADDITIONAL LESSOR'S OBLIGATIONS.** Lessor shall: (1) immediately notify Lessee, as provided herein, of any changes as to the person or address of Lessor; and (2) maintain all structural components in good repair.

11. **LESSEE'S OBLIGATIONS TO DEFEND, INDEMNIFY, SAVE AND HOLD LESSOR HARMLESS; LESSOR'S OBLIGATION.**

(a) Except for claims attributable to Lessor's willful misconduct, Lessee hereby agrees to and shall indemnify Lessor and save and hold harmless Lessor from, and pay the costs to defend Lessor against, suits, actions, claims, damages, liability (including strict liability), costs, and expenses (including attorney's fees) in connection with loss of fire, bodily or personal injury or death or property damage arising from or out of any occurrence in, upon, at, or from the Leased Premises, or the occupancy or use by Lessee of the Leased Premises, or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees,

concessionaires or customers. In the event that Lessor shall be made a party to any litigation commenced by or against Lessee, Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses and attorney's fees incurred in resisting or defending such litigation or proceeding.

(b) Lessee shall store its property on and shall occupy the Leased Premises at its own risk, and releases Lessor to the fullest extent permitted by law and equity from all claims of every kind resulting in loss of life, personal or bodily injury or death or property damage, except to the extent that Lessor has engaged in willful misconduct.

(c) Lessor shall not be responsible or liable at any time for any loss or damage to Lessee's equipment, fixtures or other personal property to Lessee, except to the extent attributable to Lessor's willful misconduct.

(d) Lessee shall give prompt notice to Lessor in case of fire or accidents in the Leased Premises.

12. **CONDITION OF PROPERTY.** Lessee hereby accepts the existing condition, at the time of the commencement of the term hereof, of the leased premises, together with all improvements thereon. No representation, statement, or warranty, expressed or implied, has been made by or on behalf of Lessor as to said condition or as to the use that may be made of said property. Lessee acknowledges that the leased premises may not be suitable for its intended purposes. In no event shall Lessor be held liable for any defect in said property or for any limitation on its use. Lessee understands that the personal property being conveyed is in an "As-Is" condition.

13. **USE OF PREMISES.**

(a) Lessee shall comply with all applicable laws, ordinances and regulations of duly-constituted public authorities now or hereafter enacted which in any manner affect the leased premises, whether or not any such laws, ordinances or regulations which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Lessee further agrees it will not permit any unlawful occupation, business or trade to be conducted on the leased premises or any use to be made thereof contrary to any law, ordinance or regulation.

(b) Lessee shall use the leased premises in such a manner, both with regard to noise and other nuisances, as will not interfere with, annoy or disturb individuals and businesses in the areas surrounding the leased premises or Lessor in the management of the lease premises.

(c) Lessee shall not keep within the leased premises any article of dangerous, inflammable or explosive character which would increase the damage of fire upon the leased premises or which would be deemed "hazardous" or "extra-hazardous" by any responsible insurance standards.

14. **SIGNS.** All signs or symbols placed by Lessee in the windows, doors, and outside signpost of the premises, shall be subject to Lessor's prior written approval. Costs of any sign or symbols will be the responsibility of the Lessee. Temporary signage is acceptable without prior Lessor approval but only during business hours and provided it does not interfere with public right-of-way. A 3' by 5' area on the side of the building facing Homer Spit Road may be made available for a sign placed by Lessee, with prior approval from Lessor.

At the termination of the Lease, Lessee will remove all signs placed by it upon the premises and will repair any damage caused by such removal. All signs must comply with sign ordinances and be placed in accordance with required permits.

15. **UTILITIES.** Water, sewer, refuse pick-up, snow plowing and sanding of the parking lot are included in the rent set forth above. All other items including electricity for the Leased Premises, heating, telephone and internet service, janitorial services, snow removal and sanding of the front porch as required, license fees and other governmental charges levied on the operation of Lessee's business on the premises shall be paid directly by, or be the responsibility of, the Lessee.

16. **PARKING.** Number of parking spaces allocated is to be determined. Parking spaces will be clearly marked once designated by Lessor. Parking spaces to be allotted in proportion to the total square footage of the building and square footage leased by Lessee.

17. **TAXES.** Lessor shall pay all real property taxes and assessments against the Property and local Sales Tax.

18. **COVENANT OF QUIET ENJOYMENT.** Upon payment of the rent provided for herein and upon performance of all the terms, conditions and covenants of this Lease, Lessee shall, at all times during the Term of this Lease and during any renewal Term or holdover of this Lease, peaceably and quietly enjoy the Leased Premises without any disturbance from the Lessor or from any other person claiming through the Lessor.

19. **ALTERATIONS AND ADDITIONS.** Lessee shall make no alterations or additions to the Leased Premises without the prior written consent of the Lessor. If consent for alterations is given, these alterations shall be the responsibility and expense of the Lessee.

*Lessee shall be required to carry the necessary insurance(s) for any contractors and/or subcontractors hired by Lessee and must receive prior approval from Landlord before any work commences.

*Initials: SN

Nothing herein contained shall be deemed to require Lessee to pay or discharge any liens or mortgages of any character whatsoever which may heretofore or hereafter be placed upon the Leased Premises by the affirmative act of Lessor.

20. **LESSOR'S RIGHT OF ENTRY AND INSPECTION.** Lessee shall, at any time during the Term, renewed Term, or holdover of this Lease, permit inspection of the Leased Premises during reasonable hours by Lessor, Lessor's agents or representatives, and by or on behalf of prospective purchasers or lessees. Lessor shall have full and unrestricted access to all utility installations servicing the Leased Premises.

21. **PROHIBITION OF LIENS.** Lessee shall not do or suffer anything to be done which causes the Leased Premises to be encumbered by liens of any nature. If any lien is recorded against said property purporting to be for labor and materials furnished or to be furnished to Lessee, Lessee shall discharge the same of record within ten (10) days after the date of filing. Failure of the Lessee to discharge any lien shall entitle the Lessor to damages including

costs and full attorney's fees occurred in defense and removal of such lien.

22. **NOTICE OF NONRESPONSIBILITY.** Notice is hereby given that Lessor shall not be liable for any labor or materials furnished or to be furnished to Lessee upon credit, and that no lien of any nature or type shall be attached to or affect the estate of Lessor in or to the Leased Premises. At least twenty (20) working days before commencing any work that is or may be the subject of a lien for work done or materials furnished to the Leased Premises, Lessee shall notify Lessor of such work in writing to allow Lessor, if desired, to post and record notices of nonresponsibility and to take any other steps Lessor deems appropriate to protect its interest. Except as hereinabove provided, the provisions in this section do not eliminate the requirement for written consent of Lessor, as contemplated in Section 19 Alterations and Additions, of this Lease.

23. **ASSIGNMENTS AND SUBLETTING.** Lessee shall not assign or sublease their whole or any part interest in the leasehold, or assign this Lease without the consent of Lessor, which consent will not be unreasonably withheld.

24. **SURRENDER OF PREMISES.** At the termination of this lease, Lessee shall deliver possession of the premises and any improvements to Lessor, including all keys and methods of access, and vacate the premises and improvements in good and clean condition and repair, reasonable wear and tear excepted. Lessee shall have the right to remove trade fixtures, but to the extent the removal of such fixtures causes damage to the property such as holes in walls, roofs, disconnected plumbing. These items will be repaired in good, workmanlike fashion at Lessee's expense prior to the date of termination.

25. **EMINENT DOMAIN.** If the whole or any part of the leased premises shall be taken for any public or quasi-public use under any statute, by right of eminent domain or by private purchase in lieu thereof by a public body vested with the power of eminent domain, then, when possession shall be taken thereunder of the Leased Premises or a declaration of taking issued, this Lease shall terminate. In the event of the condemnation or taking of the Leased Premises, Lessee shall not be entitled to, and expressly waives all claims to, any condemnation award for any taking, whether whole or partial, except Lessee shall have the right to claim from the condemnor, but not from the Lessor, such compensation as may be recoverable by Lessee in its own right for damage to Lessee's fixtures and improvements installed by Lessee at its expense.

26. **DEFAULT OF LEASE.** Each of the following, but not limited thereto, shall be deemed a default by Lessee and a breach of this Lease:

- (a) Failure of Lessee to perform any of the requirements, covenants, conditions, or provisions of this Lease.
- (b) Failure by Lessee to make any payment of rent, adjustments, charges, or any other payment required to be made by Lessee under this Lease when due.
- (c) Failure by Lessee to vacate or abandon the Leased Premises by Lessee.

27. **REMEDIES OF LESSOR.** In the event of any default by Lessee, Lessor shall

have the following rights and remedies, which are cumulative and not exclusive, in addition to any rights and remedies that may be provided to Lessor by statute or otherwise:

(a) Re-enter the Leased Premises and take possession thereof. Lessor shall have a lien for security for the rent, adjustments, charges or other payment required to be made by Lessee under this Lease, on all of Lessee's goods, chattels, fixtures, furniture, tools, equipment, and other personal property which may be placed on the Leased Premises by Lessee, and which remains there at the time Lessor repossesses the Leased Premises.

(b) Re-lease the Leased Premises, in whole or in part, for a period equal to, or greater or lessor than, the remainder of the Term of this lease, for any sum which may be deemed reasonable at the Lessor's sole discretion.

(c) Declare the Term ended.

(d) Recover from Lessee such damages as are attributable to Lessee's default or breach from the date of such default or breach.

(e) Apply all or part of Lessee's security deposit to cure the default or satisfy any damages

(f) In the event of any default or breach, Lessor shall give Lessee ten (10) days written notice to cure said default or breach, during which time Lessor may not exercise the remedies set out herein. Lessor may exercise such remedies if the default is not cured within the ten (10) days after receipt of said notice.

Lessee shall pay Lessor all Lessor's fees incurred in enforcing this Lease, including but not limited to Lessor's reasonable attorneys' fees and costs. This duty to pay Lessor's costs shall apply whether or not suit is brought by Lessor against Lessee, and shall specifically apply to, but not limited to, suits by Lessor for an unlawful detainer of the Leased Premises, for the recovery of any rent due under the provisions of this Lease, or for any obligation of Lessee arising under this Lease or by the law.

28. INSURANCE*.

(a) Lessee shall maintain coverage as follows:

Commercial General Liability	\$1,000,000 each occurrence \$1,000,000 personal & adv injury \$2,000,000 general aggregate \$2,000,000 products - completed operations
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Worker's Compensation	Per Statute
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Automobile Liability (if required)	\$1,000,000 combined single limit
Medical Expenses	\$5,000 per person/ \$5,000 per accident
Uninsured/Underinsured Motorist	\$1,000,000 bodily injury/property damage

Liquor Liability (if required)	\$2,000,000 per occurrence
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Property Insurance ("All Risks") covering (a) all office furniture, trade fixtures, office (including

electronic data processing equipment), electronic data and media, inventory, merchandise, business records, and all other items of Lessee's property on the Premises installed by, for, or at the expense of Lessee, and (b) all Lessee improvements, Alterations and other improvements and additions in and to the Leased Premises, including any improvements, alterations or additions installed above the ceiling of the Leased Premises or below the floor of the Leased Premises against, at a minimum, the perils insured under the ISO special causes of loss form (CP 10 30) or its equivalent. The policy must also include coverage for vandalism and malicious mischief, sprinkler leakage, earthquake damage, leakage from any window or sill, and all other types of water damage, including bursting, leakage or stoppage of any pipes. Coverage also should include spoilage and contamination and equipment breakdown. This insurance must cover the full replacement cost of the property insured, and any coinsurance requirement in the policy must be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the policy form.

The Certificate Holders should be:
Happy Face LLC
PO Box 3147
Homer, AK 99603

Additional Insureds are as follows:

Happy Face LLC, the directors and officers, employees and Pilots of SWAPA on all Policies.

Primary Non-contributory Endorsement in favor of Additional Insureds for Commercial General Liability. Endorsements in favor of Additional Insureds for Liquor Liability, and Auto Liability (if required).

Waiver of Subrogation Endorsements in favor of Additional Insureds for all policies

*Initials: 

29. **DESTRUCTION OF THE PREMISES.** In the event the Leased Premises are destroyed or damaged by fire, earthquake, tsunami, or other casualty to such an extent as to render the same unusable in whole or any substantial part thereof, either party shall have the option to terminate this Lease. If either party elects to terminate this Lease, it shall notify the other, in writing, of its intention to terminate the Lease within ten (10) days after said fire, earthquake, tsunami, or other casualty and said Lease shall then terminate and be of no further force and effect and any advanced rentals not earned shall be returned to Lessee. Lessor shall be under no obligation to rebuild the premises for the benefit of Lessee. In the event that Lessor does not elect, within ten (10) days, to rebuild, then Lessee may cancel this Lease within fifteen (15) days. In the event the Leased Premises are not rebuilt within one hundred and eighty (180) days, Lessee may cancel this Lease with fifteen (15) days' written notice via email. The monthly lease payment shall be held in abeyance during the construction period.

30. **WAIVER OF BREACH.** No failure by Lessor to insist upon the strict performance of any term or condition of this Lease, or to exercise any right or remedy available on a breach thereof, and no acceptance of whole or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term or condition or the

right to declare this Lease terminated.

No term or condition of this Lease required to be performed by Lessee, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter any term or condition of this Lease, and each such term or condition shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

31. **SUBORDINATION OF LEASE.** This lease shall be subject and subordinate at all times to liens of existing mortgages, deeds of trust or other underlying obligations, and to liens, mortgages, deeds of trust or other obligations which hereafter may be made a lien or encumbrance on the leased premises by the Lessor. Although no instrument or act on the part of Lessee shall be necessary to effectuate such subordination, Lessee will, nevertheless, execute and deliver such further instruments subordinating this Lease to the lien of any such mortgages, deeds of trust or other obligations as may be desired by Lessor. Lessee hereby appoints Lessor its attorney-in-fact, irrevocably, to execute and deliver such instrument or instruments for Lessee.

32. **ENTIRE AGREEMENT; MODIFICATION.** This Lease contains the entire agreement between Lessee and Lessor and supersedes all and any other prior agreements and understandings between the parties, and any executory agreement hereafter made shall not be effective to change, modify or discharge any part of this agreement unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

33. **NOTICES.** Any notice or demand which, under the terms of this Lease or any statute, may or must be given or made by the parties hereto shall be sufficient when given in writing and hand-delivered or mailed by certified mail, addressed to the other party as follows:

Lessor: **Happy Face LLC
P.O. Box 3147
Homer, Alaska 99603**

Lessee: **Spittoon LLC
P.O. Box 297
Homer, AK 99603**

Either party may, however, designate in writing such new or other address to which said notice or demand shall thereafter be so given, made or mailed. Any notice given hereunder by mail shall be deemed delivered when deposited in the United States general or branch post office, enclosed in a certified, prepaid envelope, addressed as set forth above.

34. **TIME IS OF THE ESSENCE.** Time is of the essence of each and every term, condition, provision and covenant of this Lease.

35. **BINDING EFFECT.** This Lease shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, successors, heirs and assigns. This provision, however, shall not affect any other provision in this Lease with respect to restrictions on

assignments or default of Lessee.

36. **EXCUSE FOR NONPERFORMANCE.** Either party to this Lease shall be excused from performing any or all of its obligations under this Lease for such times as the performance of any such obligation is prevented or delayed by an act of God, floods, explosions, elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, material or supplies in the open market, failure of transportation, strikes, walk-outs, action by labor unions or laws or governmental agencies or for any other cause, whether similar or dissimilar to the foregoing, which is not within the reasonable control of such party.


37. **INVALID OR PROHIBITED PROVISIONS.** If any provision of this Lease is found to be invalid or prohibited by law, such invalidity or prohibition shall not affect the remaining provisions of this Lease and the remaining provisions shall continue in full force and effect.

38. **CHOICE OF LAW.** The parties to this Agreement expressly agree that the laws of the State of Alaska shall govern the validity, construction, interpretation, and effect of this Lease

39. **INDEPENDENT COUNSEL.** Each party acknowledges that it has enjoyed the opportunity to seek the advice and representation of competent legal counsel in negotiating, entering into, executing, and delivering this Lease. The fact that this Agreement may have been drafted in whole or in part by one such party's counsel shall not cause all or any part of this Agreement to be construed against such party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year set opposite their respective signatures.

Dated: 1/21/2025

Happy Face LLC
Signed by:
By: 
D4478G8640FC486...

Its: President
"Lessor"

Dated: 1/23/2025

Spittoon LLC
DocuSigned by:
By: 
E3301FAECDAF4E7

Its: Owner
"Lessee"

Alaska Department of Commerce, Community, and Economic Development

Division of Corporations, Business, and Professional Licensing

PO Box 110806, Juneau, AK 99811-0806

This is to certify that

Spittoon LLC

PO Box 297, Homer, AK 99603

owned by

Spittoon LLC

is licensed by the department to conduct business for the period

December 17, 2024 to December 31, 2026
for the following line(s) of business:

72 - Accommodation and Food Services



This license shall not be taken as permission to do business in the state without having complied with the other requirements of the laws of the State or of the United States.

This license must be posted in a conspicuous place at the business location.
It is not transferable or assignable.

Julie Sande
Commissioner

Spittoon LLC
PO Box 297
Homer, AK 99603



KENAI PENINSULA
Borough

Sales Tax

A Division of the Finance Department

144 North Binkley Street, Soldotna, AK 99669 | (P) 907-714-2175 | (F) 907-714-2376 | www.kpb.us

Sales Tax Account # 00213400

Sales Tax Introduction Letter and Certificate of Registration



March 6, 2025

RED TABLE BBQ
PO BOX 297
HOMER AK 99603
UNITED STATES

Dear Business Owner:

Attached is your new certificate of Authority to Collect Sales Tax.

Net proceeds of the borough-wide sales tax of 3% is dedicated to our Borough schools. In addition, sales tax is collected for, and turned over to the cities. The schools and cities must have this sales tax money to operate; therefore, enforcement of the sales tax ordinance is strictly maintained.

Businesses are encouraged to promptly file sales tax returns and remit the taxes collected each reporting period by the due date prescribed. By reporting promptly, accounts may receive a 5% credit of the sales tax up to \$1,000 per quarter. Filing is required on a **QUARTERLY** basis. Please note that a return **MUST** be filed for **EVERY** reporting period, even if there were no sales (*check the box, "RETURN HAS NO SALES"*). The Sales Tax Division will mail returns at the end of each reporting period. The due date on the return is the day that the return **MUST BE POSTMARKED BY or TURNED IN TO OUR OFFICE BY.**

Returns filed online must be submitted by 5:00 p.m. of the due date.

Accounts will be subject to a missing filing fee of \$25 for each return not filed; if two (2) consecutive returns are missed a reinstatement fee of \$100 will be assessed, in addition to any penalty or interest for late filing and remittance.

The sales tax code of ordinances is available at <http://www.kpb.us/finance-dept/sales-tax/sales-tax-information>. A paper copy can be requested by phone (907)714-2175 or email salestax@kpb.us. The Sales Tax staff in the Finance Department will be glad to answer questions or assist in any way they can regarding your sales tax account.

Certificate

Mar 6 2025 12:59AM 4

KENAI PENINSULA BOROUGH
CERTIFICATE OF AUTHORITY TO COLLECT BOROUGH SALES TAX

THIS IS TO CERTIFY THAT RED TABLE BBQ

is authorized and empowered by the Mayor of the Kenai Peninsula Borough to collect for the Borough Sales Tax on retail Sales, Rents and Services imposed pursuant to Ordinance No 5.18 of the Kenai Peninsula Borough.

This certificate is non-assignable and non-transferable and must be surrendered to the Mayor by the seller to whom it was issued upon his ceasing to do business at the location named herein, or any change in ownership, form of ownership, or any other change.

RED TABLE BBQ
PO BOX 297
HOMER AK 99603

UNITED STATES

THIS CERTIFICATE MUST BE DISPLAYED PROMINENTLY AT THE PLACE OF BUSINESS.

ACCOUNT
NUMBER 00213400

DATE OF
REGISTRATION June 1, 2025

MAYOR

**CITY OF HOMER
HOMER, ALASKA**

City Manager/
Port Director

RESOLUTION 25-027

A RESOLUTION OF THE CITY COUNCIL OF HOMER ALASKA,
APPROVING A LEASE ASSIGNMENT FROM BERTH II INC. TO HAPPY
FACE LLC FOR THE PROPERTY ENTITLED T 7S R 13W SEC 1
SEWARD MERIDIAN HM 0890034 HOMER SPIT AMENDED LOT 32,
HOMER RECORDING DISTRICT, STATE OF ALASKA AND
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE
THE APPROPRIATE DOCUMENTS.

WHEREAS, Resolution 24-068 approved a lease assignment from Y & C, LLC to Berth II
Inc.; and

WHEREAS, Berth II, in order to separate components of their real estate holdings into
discrete entities, sold the buildings on the property to Happy Face, LLC, which is largely
comprised of the same members as Berth II, Inc.; and

WHEREAS, Section 6.02 of the Lease requires that any buildings, fixtures, and
improvement will remain the property of the Lessee; and

WHEREAS, At the direction of City staff, Happy Face, LLC, applied for an assignment for
the duration of the term of the Lease from Berth II, Inc.; and

WHEREAS, The City finds the Tenants to otherwise be in compliance with the Lease and
considers their planned use of the facility to be appropriate for the property's Marine
Commercial zoning.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska hereby
approves the lease assignment from Berth II, Inc. to Happy Face, LLC of the Ground Lease and
Security Agreement for the property entitled T 7S R 13W SEC 1 Seward Meridian HM 0890034
Homer Spit Amended Lot 32, Homer Recording District, State of Alaska and authorizes the City
Manager to negotiate and execute the appropriate documents.

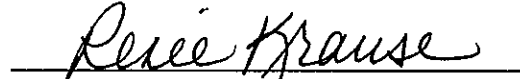
PASSED AND ADOPTED by the Homer City Council this 14th day of April, 2025.

CITY OF HOMER



RACHEL LORD, MAYOR

ATTEST:



RENEE KRAUSE, MMC, CITY CLERK

Fiscal Note: Resolution 24-068.

