

USE AGREEMENT PERMIT

(MOA-Permittee)

THIS USE AGREEMENT PERMIT, made and entered into as of the 30 day of June, 2023, by and between the Municipality of Anchorage (MOA), hereinafter "Permitter," whose address is P.O. Box 196650, Anchorage, AK, 99519-6650, and Henning Inc., hereinafter "Permittee," whose address is 921 W. 6th Ave., Suite 100, Anchorage, AK 99501.

WITNESSETH:

In consideration of the mutual covenants contained herein, the parties to the Use Agreement Permit agree as follows:

1. Premises. The MOA does hereby grant to the Permittee a non-exclusive, revocable Use Agreement Permit, hereinafter "Permit," containing the right, permission, and authority to enter upon MOA property known as the former Golden Lion Hotel (Golden Lion), located at 1000 E. 36th Avenue., Anchorage, Alaska, (Permit Area) for the limited purpose(s) of:

Rooming house for individuals who have a condition which
substantially impairs their daily activity or mobility

Permittee shall have a non-exclusive access to the Permit Area. Permittee shall notify Permitter of its intent to use the Permit Area immediately prior to its commencement of above-mentioned activities. Permittee shall comply with any and all restrictions and conditions placed upon it under this Permit.

2. Term. This Permit shall be for approximately Sixty (60) days, commencing on June 30, 2023 and ending August 29, 2023, provided that either party may terminate the Permit at any time, upon thirty (30) days written notice to the other party.

- A. At the end of the Permit term, or any extension thereof, Permittee shall remove all personal property from the Permit Area and restore the Permit Area as required under Paragraph 6. In the event Permittee fails to remove all personal property from the Permit Area and restore the Permit Area as required under Paragraph 6, the MOA shall remove all personal property of the Permittee and restore the Permit Area at Permittee's sole expense.
- B. In the event the MOA terminates the Permit without cause, Permittee shall have thirty (30) days from the notice of termination to remove all personal property from the Permit Area and restore the Permit Area as required under Paragraph 6. In the event Permittee fails to remove all personal property from the Permit Area and restore the Permit Area as required under Paragraph 6, the MOA shall remove all personal property of the Permittee and restore the Permit Area at Permittee's sole expense.
- C. Any continued use of the Permit Area by the Permittee after the expiration of the original term, without an approved extension or new permit, or after thirty (30) days from the notice of termination, shall be deemed a trespass subject to ejectment. All costs incurred to effect ejectment, including attorney fees, shall be borne by the Permittee.

3. **Fees.** As consideration for this Permit, Permittee shall pay Zero Dollars (\$0.00) per month.
4. **Title to Property.** This Permit does not create for the Permittee any interest in or title to the above-described property.
5. **MOA use.** The MOA reserves for itself, its successors, assigns, permittees and licensees, the right to use the Permit Area for any purpose whatsoever, subordinate to the parameters as outlined in Anchorage Municipal Code 25.40.
6. **Alterations/Improvements.** Permittee shall not make any alterations, additions or improvements in or to the Permit Area without prior written approval from the MOA. Any signage must comply with the MOA's sign policies and standards and must receive prior MOA approval before being displayed or installed.
7. **Restoration of the Permit Area.** Upon completion of the limited purposes(s) described in Paragraph 1 above, or by the date of termination, whichever occurs first, all rights and obligations contained within the Permit shall terminate except for obligations imposed by this Permit on Permittee to repair, replace, or restore the Permit Area, structures or improvements thereon, and the indemnity imposed by Paragraphs 7, 8 and 9 below. Structures or improvement thereon, if any, currently existing within the Permit Area which are removed or damaged during the Permit Term shall be replaced or repaired upon completion of the activities by Permittee, to the satisfaction of Permitter. Upon expiration, abandonment, or termination of this Permit, the Permittee shall remove from and off the Permit Area all property owned or controlled by the Permittee and restore the Permit Area to its prior condition in a manner satisfactory to Permitter. Upon failure to do so, Permitter may perform such work at Permittee's expense. Until said property is removed and the Permit Area restored, either by Permittee or Permitter, this Permit and all terms contained herein, including payment of fees, shall, at Permitter's option, remain in effect.
8. **Indemnification.** Permittee shall indemnify, defend, and hold the MOA, its officers, employees, and agents harmless from all liability, claims, causes of action, and costs (including attorney's fees) arising directly out of Permittee's use and related conduct in the Permit Area or from the conduct of Permittee's business or from any activity, work or things done, permitted or suffered to be done by Permittee in or about the Permit Area.
9. **Insurance.** Permittee shall deliver to the MOA a certificate of liability insurance on or before the effective date of this Permit. Insurance shall cover the entire Permit Term. Permittee shall deliver to the MOA photocopies of the policy or policies of insurance, certificates of insurance or copies of endorsements upon request. The policy or policies purchased pursuant to this paragraph shall name the MOA and Permittee as co-insureds with respect to the Premises and the use or business operated by Permittee on the Premises.
 - A. The Permittee shall maintain in good standing the insurance described in subsection B of this section. Before rendering any activities under the Permit, Permittee shall furnish the MOA with proof of insurance in accordance with subsection B in a form acceptable to the MOA Risk Manager.

- B. The Permittee shall provide the following insurance:
- (1) Workers' Compensation as required by Alaska law and Employer's Liability with limits not less than \$1,000,000.
 - (2) Commercial Automobile Liability per occurrence in the amount of \$1,000,000, single limit to include: owned, hired and non-owned.
 - (3) Commercial General Liability, including \$2,000,000 General Aggregate, \$2,000,000 Products/Completed Operations, \$1,000,000 Personal & Advertising Injury, \$1,000,000 Each Occurrence, \$10,000 Medical Payments, \$1,000,000 Sexual Abuse & Molestation.
 - (4) Professional Liability Insurance with limits not less than \$5,000,000 per occurrence and in the aggregate.
 - (5) Cyber/Privacy Liability Insurance with limits not less than \$3,000,000. The cyber coverage shall include, but not be limited to, claims involving invasion of privacy violations (including HIPPA), information theft, and release of private information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.
- C. Policies written on a "claims made basis" must have a two (2) year tail of coverage from the completion of the Permit requirements.
- D. Each policy of insurance required by this section shall provide for advance notice to the MOA prior to cancellation of no less than thirty (30) days. If the insurer does not notify the MOA upon policy cancellation it shall be the Permittee's responsibility to notify the MOA of such cancellation.
- E. With the exception of Worker's Compensation and Professional Liability, each policy shall name the MOA as an "additional insured" and the actual policy endorsement shall accompany each Certificate of Insurance.
- F. General Liability, Automobile Liability and Workers' Compensation policies shall be endorsed to waive all rights of subrogation against the MOA by reason of any payment made for claims under the above coverage. This policy endorsement should accompany each Certificate of Insurance.
- G. All policies for General Liability should state that the insurance is primary and that any insurance policy owned by the MOA will be considered as excess and non-contributory to the underlying policy.
- H. If Permittee maintains broader coverage and/or higher limits than the minimums shown above the MOA shall be entitled to the broader coverage and/or the higher limits maintained by the Permittee. Any available insurance proceeds in excess of the specified limits of insurance and coverage shall be available to the MOA.
- I. Permittee shall require and verify that any subcontractors maintain insurance meeting all requirements stated herein, and Permittee shall ensure that the MOA is an additional insured on insurance required from subcontractors.

10. Services and Utilities. Permittee shall pay and be responsible for any services which Permittee obtains for the Permit Area including janitorial, pest control/abatement, internet/cable, phone lines and security. The Permittee shall be responsible for services and utilities generally provided to the Premises, being gas, electricity, water/sewer, and refuse.

11. Parking. Parking is allowed on a non-exclusive basis in the onsite parking lot.

12. Ingress and Egress of Persons. Permittee and Permittee's employees, agents, customers, vendors, delivery persons and invitees shall have the right to use all means of common ingress and egress for persons to the Permit Area.

13. Assignment. This Permit may only be assigned or transferred with prior written consent of the MOA, which shall not be unreasonably withheld.

14. Maintenance and Repairs.

- A. The MOA shall and specifically agrees to furnish major maintenance to the Permit Area, the roof, the parking lots, and the electrical, mechanical, plumbing and heating systems of the building at no cost to the Permittee.
- B. At all times during the term hereof, Permittee shall: (I) keep the Permit Area safe and orderly; (II) conduct activities upon and generally maintain the Permit Area in such a manner and with such care commensurate with their age and condition; (III) not use the Permit Area in such manner to increase the rate of fire and extended coverage insurance or to cause cancellation of the insurance or to make coverage unavailable; (IV) not use or permit any part of the Permit Area to be used for any unlawful or unauthorized purpose; (V) not use for or permit any part of the Permit Area to be used for any purpose which is substantially or materially different from its current use without prior written consent of the MOA; (VI) comply with Municipal, State, Federal and other governmental laws, statutes, ordinances, rules and regulations of whatever type and nature including, but not limited to, zoning ordinances, health, fire, safety and environmental regulations; (VII) not cause or permit any waste, damage or injury to the Permit Area.

15. Notices.

- A. All notices required or permitted in this Permit shall be deemed to have been fully given or made or sent in writing and deposited in the United States mail, registered or certified mail. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or other electronic means of communications as follows:

To Permitter:
Municipality of Anchorage
ATTN: Real Estate Services
P.O. Box 196650
Anchorage, AK 99519-6650

To Permittee:
Henning Inc.
ATTN: Shawn Hays
921 W. 6th Ave., Suite 100
Anchorage, AK 99501

- B. The address for notice for either party may be changed by written notice given by that party to the other party as above provided.

16. Environmental Considerations. Permittee must, at its own expense, comply with all laws, ordinances, regulations and administrative agency or court orders relating to health, safety,

noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs upon or from the Permit Area during the Permit Term or any holdover thereafter, Permittee shall immediately notify MOA and shall, at Permittee's own expense, clean and restore the Permit Area to the satisfaction of MOA and any governmental body or court having jurisdiction of the matter.

- A. Condition of the Property. Based on MOA's use, on-site inspection, and knowledge of an information acquired about the Permit Area, and upon reasonably diligent inquiry, MOA has no knowledge, evidence or information of the possible existence of toxic or hazardous substances, as defined below, on the Permit Area property or in the Permit Area surface or subsurface soils or groundwater and that no toxic or hazardous substances are known to MOA to now exist on, in or under the Permit Area property.
- B. Environmental Indemnity. Permittee agrees to indemnify, hold harmless and defend MOA against all liability, cost and expense (including, without limitation, any fines, penalties, diminution in value of the Permit Area, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against MOA as a result of Permittee's breach of this paragraph or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Permit Area, without regard to whether such liability, cost or expense arises during or after the Permit Term; provided, however, that Permittee shall not be required to indemnify MOA under this paragraph if the parties agree or a court of competent jurisdiction determines that such liability, cost or expense is caused directly and solely by the negligence of the Municipality of Anchorage, or a third party actor who is not an agent, employee, successor, or independent contractor associated with Permittee. The foregoing indemnity shall survive the expiration or earlier termination of this Permit.
- C. Toxic or Hazardous Substances. For purposes of this Permit, shall be interpreted broadly to include, but not be limited to, any material or substance that is defined or classified under federal, state or local laws as: (a) a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14) or Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, each as now or hereafter amended; (b) a "hazardous waster" pursuant to Section 1004 or Section 3001 of the resource Conservation and Recovery Act, 42 U.S.C. § 6903, 42 U.S.C. § 6921, as now or hereafter amended; (c) a toxic pollutant under Section 307(1)(a) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(1)(a); (d) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. § 7412, as now or hereafter amended; (e) a "hazardous material" under the Hazardous Material Transportation Act, 49 U.S.C. §1802(2), as now or hereafter under the aforementioned laws; or (g) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinance, or regulations, as now or as may be passed or promulgated in the future. "Toxic or Hazardous Substances" shall also mean any substance that after release into the environment and upon exposure, ingestion, inhalation or assimilation, either directly from the environment or indirectly by ingestion, inhalation or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be

anticipated to cause death, disease, behavior abnormalities, cancer or genetic abnormalities. "Toxic or Hazardous Substances" specifically includes, but is not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum based products and derivatives, flammable explosives, radioactive materials and urea formaldehyde.

- D. Environmental Testing. Permittee agrees that it shall be solely responsible for all costs and expenses associated with the performance of environmental testing of the Permit Area, which may be required at the MOA's sole discretion, upon the expiration or other termination of this Permit. Such environmental testing, conducted by a recognized engineering or environmental consulting firm acceptable to the MOA shall be the basis for determining the extent of any environmental impairment caused by the Permittee's use and occupancy of the Permit Area.

17. Default and Remedies. The occurrence of any one or more of the following events shall constitute a material default by Permittee:

- A. The failure to observe or perform any of the covenants, conditions or provisions of this Permit, including the following:
- (1) any general arrangement or general assignment by Permittee for the benefit of creditors;
 - (2) Permittee becomes a debtor in bankruptcy;
 - (3) appointment of a trustee or receiver to take possession of substantially all of Permittee's assets;
 - (4) attachment, execution or other judicial seizure of substantially all of Permittee's assets;
 - (5) providing MOA any financial statement including a materially false financial statement from any assignee of Permittee, any successor in interest of the Permittee or any guarantor of Permittee's obligation herein, was materially false at the time given;
 - (6) vacation or abandonment of the Permit Area by the Permittee;
 - (7) failure to maintain the required insurance coverage;
 - (8) assignment, attempted assignment, or other transfer of this Permit without written consent from MOA;
 - (9) waste or damage to the Permit Area, including any storage, use, discharge, leak, spill, emission or pollution of, on, or in the Permit Area of hazardous material or petroleum products.
- B. In the event of any material default by the Permittee, the MOA may at any time thereafter, without notice or demand and without limiting MOA in the exercise of any right or remedy which the MOA may have by reason of such default:
- (1) Terminate Permittee's rights under this Permit and pursue any remedies now or hereafter available to the MOA under this Permit in the Anchorage Municipal Code and Regulations, the laws or judicial decisions of the State of Alaska, or laws or judicial decisions of the United States; and
 - (2) Maintain the Permittee's obligations under this Permit. In such event the MOA shall be entitled to enforce all of MOA's rights and remedies under this Permit, including

the right to recover the payments due hereunder. The MOA may also pursue any other remedy now or hereafter available to MOA.

- C. Any payment due from the Permittee not received by MOA when such amount shall be due.

18. No Warranties. Permittee accepts the Permit Area “as-is” at the commencement of the term of this Permit and its then present condition, subject to all applicable zoning, municipal, state and federal laws, ordinances and regulations governing and regulating the use of the Permit Area and accepts this Permit subject to such. Permittee acknowledges that neither the MOA nor MOA’s agents have made any representations or warranties other than as expressly set forth in this Permit, and that this Permit does not include any representations or warranties with regard to the suitability of the Permit Area for the conduct of the Permittee’s business.

19. Counterparts and Signatures by Email. This Permit may be executed in counterparts, each of which shall constitute an original, and all of which together shall be deemed a single document. Signatures on this Permit forwarded by email are intended to be the equivalent of original signatures, with the original executed Permit thereafter to be provided promptly to the other party.

20. Miscellaneous.


- A. The captions of paragraphs in this Permit are for convenience of reference only and shall not be used in the construction of any term hereof.
- B. This Permit represents the entire agreement of the parties with respect to the subject matter hereof, and it may not be modified except by an agreement in writing signed by both parties.
- C. Time is of the essence with respect to any obligations to be performed under this Permit.
- D. This agreement shall be interpreted under the laws of the State of Alaska. Venue is in the Third Judicial District at Anchorage.
- E. Any clause herein found to be void or otherwise unenforceable may be severed, with the remainder of the Permit fully enforceable.

**Permitter:
Municipality of Anchorage**

By: kent kohlhase
Name: Kent Kohlhase
Title: Municipal Manager

Date: 06/30/2023

Permittee:

By: 
Name: Shawn Catherine Hays
Title: Executive Director

Date: 06/30/2023