



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
City Clerk	Erin Kelley - City Clerk	June 6, 2023

ITEM

New Retail Fermented Malt Beverage On/Off Premises Liquor License request for Howard General LLC dba Howard General at 108 Old Stage Road, Unit A.

BACKGROUND

A new Colorado Retail Fermented Malt Beverage On/Off Premises Liquor License application was filed with the City Clerk on April 10, 2023. The Notice of Public Hearing was published on April 14, 2023 and the premises was posted on May 16, 2023.

All proper fees have been remitted to the City and State of Colorado.

This license is unique as it is for the sale of fermented malt beverages for consumption on and off the licensed premises, only if the licensed premises is located in a **county with a population of less than thirty-five thousand** or in an underserved area. Underserved Area means an area that is within a county with a population of thirty-five thousand or more but lies outside of municipal boundaries or is a **city or town with a population of less than seven thousand five hundred**.

STAFF RECOMMENDATION

Staff recommends that the Liquor Licensing Authority approve a new Retail Fermented Malt Beverage, On/Off Premises Liquor License request for Howard General LLC dba Howard General at 108 Old Stage Road, Unit A.

SUGGESTED MOTION

Following a public hearing on the matter, a Liquor Authority member should “move to approve a new Retail Fermented Malt Beverage On/Off Premises Liquor License request for Howard General LLC dba Howard General at 108 Old Stage Road, Unit A.” followed by a second and roll call vote.

Colorado Fermented Malt Beverage License Application

<input checked="" type="checkbox"/> New License <input checked="" type="checkbox"/> New-Concurrent <input type="checkbox"/> Transfer of Ownership			
• All answers must be printed in black ink or typewritten • Applicant must check the appropriate box(es) • Local license fee \$ 1,053.75, includes Fire Inspection Fee of \$50.00 • Applicant should obtain a copy of the Colorado Liquor and Beer Code: SBG.Colorado.gov/Liquor			
1. Applicant is applying as a/an <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Corporation <input type="checkbox"/> Individual </div> <div> <input type="checkbox"/> Partnership (includes Limited Liability and Husband and Wife Partnerships) <input checked="" type="checkbox"/> Limited Liability Company </div> <div> <input type="checkbox"/> Association or Other </div> </div>			
2. Applicant(s) If an LLC, name of LLC; if partnership, at least 2 partners' names; if corporation, name of corporation <u>Howard General LLC</u>			FEIN <div style="background-color: black; width: 100px; height: 1.2em;"></div>
2a. Trade Name of Establishment (DBA) <u>Howard General</u>		State Sales Tax No. <div style="background-color: black; width: 100px; height: 1.2em;"></div>	Business Telephone <u>682-465-1848</u>
3. Address of Premises (specify exact location of premises) <u>108 Old Stage Rd Unit A</u>			
City <u>Salida</u>	County <u>Chaffee</u>	State <u>CO</u>	ZIP Code <u>81201</u>
4. Mailing Address (Number and Street) <u>108 Old Stage Rd Unit A</u>		City or Town <u>Salida</u>	State <u>CO</u>
		ZIP Code <u>81201</u>	
5. Email Address <u>molly@howardgeneral.com</u>			
6. If the premises currently has a liquor or beer license, you MUST answer the following questions			
Present Trade Name of Establishment (DBA) <u>NA</u>	Present State License No. <u>NA</u>	Present Class of License <u>NA</u>	Present Expiration Date <u>NA</u>
Section A Nonrefundable Application Fees		Section B Fermented Malt Beverage Beer License Fees	
<input type="checkbox"/> Application Fee for New License \$1,100.00		<input type="checkbox"/> Retail Fermented Malt Beverage On-Premises (City) \$96.25	
<input checked="" type="checkbox"/> Application Fee for New License - w/Concurrent Review \$1,200.00		<input type="checkbox"/> Retail Fermented Malt Beverage On-Premises (County) \$117.50	
<input type="checkbox"/> Application Fee for Transfer \$1,100.00		<input type="checkbox"/> Retail Fermented Malt Beverage Off-Premises (City) \$96.25	
		<input type="checkbox"/> Retail Fermented Malt Beverage Off-Premises (County) \$117.50	
		<input checked="" type="checkbox"/> Retail Fermented Malt Beverage On/Off-Premises (City) \$96.25	
		<input type="checkbox"/> Retail Fermented Malt Beverage On/Off-Premises (County) \$117.50	
		<input type="checkbox"/> Master File Location Fee \$25.00 x Total	
		<input type="checkbox"/> Master File Background \$250.00 x Total	
Questions? Visit SBG.Colorado.gov/Liquor for more information Do Not Write In This Space - For Department Of Revenue Use Only			
Liability Information			
License Account Number	Liability Date:	License Issued Through: (Expiration Date)	Total \$

		Yes	No
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):		<input checked="" type="checkbox"/>	
(a) been denied an alcohol beverage license?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(b) had an alcohol beverage license suspended or revoked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
(c) had interest in another entity that had an alcohol beverage license suspended or revoked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
If you answered yes to 8a, b or c, explain in detail on a separate sheet			
9. Has a Fermented Malt Beverage license for the premises to be licensed been denied within the preceding one year? If "yes," explain in detail.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Is the proposed Retail Fermented Malt Beverage Off Premises license within 500 feet of any public or parochial school, the principal campus of any college, university, or seminary? NOTE: The distances are to be computed using the methods outlined under C.R.S. 44-3-313(1)(d)(II). Some limited exceptions apply under C.R.S. 44-3-313.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Is the proposed Retail Fermented Malt Beverage Off Premises license, or On/Off premises license, within 500 feet of a Retail Liquor Store licensed under section 44-3-409 C.R.S.? Distance should be determined using guidelines outlined in 44-3-301(12)(c) C.R.S.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current or former financial interest in said business including any loans to or from a licensee.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____ a. If leased, list name of landlord and tenant, and date of expiration, EXACTLY as they appear on the lease:			
Landlord <u>Jon Fritz</u>	Tenant <u>Howard General LLC</u>	Expires <u>11/31/25</u>	
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 12. <input type="checkbox"/> <input checked="" type="checkbox"/>			
c. Attach a diagram or designate the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".			
14. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.			
Last Name <u>Gallagher</u>	First Name <u>Molly</u>	Date of Birth [REDACTED]	Interest [REDACTED]
Last Name	First Name	Date of Birth	Interest
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.			
15. Name of Manager(s) for all on premises applicants.			
Last Name <u>Gallagher</u>	First Name <u>Molly</u>	Date of Birth [REDACTED]	
16. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number. <input type="checkbox"/> <input checked="" type="checkbox"/>			
17. Tax Information. <input type="checkbox"/> <input checked="" type="checkbox"/>			
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business? <input type="checkbox"/> <input checked="" type="checkbox"/>			
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.? <input type="checkbox"/> <input checked="" type="checkbox"/>			

18. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the Applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment to be fingerprinted by an approved State Vendor through the Vendor's website. See application checklist, Section IV, for details.

Name <i>Molly Gallagher</i>	Home Address, City & State <i>112 Old Stage Rd Unit B Salida, CO</i>	Date of Birth [REDACTED]	Position [REDACTED]	% Owned [REDACTED]
Name	Home Address, City & State	Date of Birth	Position	% Owned
Name	Home Address, City & State	Date of Birth	Position	% Owned
Name	Home Address, City & State	Date of Birth	Position	% Owned

** If applicant is owned 100% by a parent company, please list the designated principal officer on above.

** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)

** If total ownership percentage disclosed here does not total 100%, applicant must check this box: ☐

Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.

Oath of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature <i>Molly Gallagher</i>	Printed Name and Title <i>Molly Gallagher</i>	Date <i>3/28/23</i>
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Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority <i>4/10/23</i>	Date of local authority hearing – for new license applicants cannot be less than 30 days from date of application 44-3-311(1) C.R.S.
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Each person required to file DR 8404-I has been:

☒ Fingerprinted

☒ Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license.

(Check One)

☒ Date of Inspection or Anticipated Date Before licenses given to applicant

☐ Upon approval of state licensing authority

☒ New Fermented Malt Beverage Off Premises licenses, and On/Off Premises licenses, distance requirements of 44-3-301 C.R.S. are satisfied

New Fermented Malt Beverage On/Off premises licenses must meet the qualifications of 44-4-104 C.R.S.

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S. and Liquor Rules. **Therefore, this application is approved.**

Local Licensing Authority for		Telephone Number	<input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Printed Name	Title	Date
Signature (attest)	Printed Name	Title	Date

PUBLIC NOTICE

Apr 14, 2023 Updated May 29, 2023  0



PUBLIC NOTICE

PURSUANT TO THE LIQUOR LAWS

OF COLORADO

Pursuant to the Liquor Laws of the State of Colorado, Howard General LLC dba Howard General, has requested the Local Licensing Authority of the City of Salida, Colorado to grant a Fermented Malt Beverage On/Off Premises (City) liquor license to sell malt beverages for consumption on premises at 108 Old Stage Road, Unit A, Salida, CO 81201 and off premises. A hearing on the application received April 10, 2023 will be held before the Local Licensing Authority of the City of Salida, Colorado at the hour of 6:00 p.m., or as soon thereafter as may be heard, on Tuesday, May 16, remotely through the GoToWebinar application via the following direct link:

<https://attendee.gotowebinar.com/register/6382995264411204366>

At said time and place, any interested persons may appear to be heard for or against the granting of said license.

LOCAL LICENSING AUTHORITY

Erin Kelley, City Clerk

Premises Posted by May 5, 2023

Published in The Mountain Mail April 14, 2023

NOTICE

PURSUANT TO THE LIQUOR LAWS OF COLORADO

Howard General LLC dba

Howard General

HAS REQUESTED THE LICENSING
OFFICIALS OF City of Salida

TO approve a new Fermented Malt On/Off premises LL
LICENSE AT: 108 Old Stage Road Unit A

HEARING ON APPLICATION TO BE HELD AT:

Council Chambers, 448 E 1st Street, Room 190

TIME AND DATE: JUNE 16
6pm

DATE OF APPLICATION: April 10, 2023

BY ORDER OF: City of Salida

OFFICERS: City Council

ADDRESS OF THE PLACE AT WHICH PETITIONS OR REMONSTRANCES MAY BE FILED

* INSERT GRANT, RENEW, OR TRANSFER OWNERSHIP OF

* Liquor and Beer License Hearing Sign

16A103 BUSINESS INK

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Howard General LLC

is a

Limited Liability Company

formed or registered on 05/26/2020 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20201458882 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/27/2023 that have been posted, and by documents delivered to this office electronically through 03/01/2023 @ 14:55:14 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 03/01/2023 @ 14:55:14 in accordance with applicable law. This certificate is assigned Confirmation Number 14743697 .



Jena Griswold

Secretary of State of the State of Colorado

*****End of Certificate*****

Notice: A certificate issued electronically from the Colorado Secretary of State's website is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's website, <https://www.coloradosos.gov/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our website, <https://www.coloradosos.gov> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

448 E 1st Street, Suite 112
City of Salida
cityofsalida.com



Phone: 719.530.2630
clerk@cityofsalida.com

Acknowledgement of Applicant

By signing below, the applicant acknowledges its receipt of this document and the Privacy Act Statement, the Privacy Act Applicant Rights statement, and the CBI Notice to Applicants.

Signature

Molly Gallagher

Printed Name

4/4/23

Date

COMMERCIAL LEASE

This Lease is made to be effective the 1st day of October, 2020, between **Fritzerland LLC** of 224 East First St, Salida, CO 81201, (herein "Landlord"), and **Howard General, LLC** of Salida, CO 81201, (herein "Tenant"), as follows:

RECITALS

WHEREAS, Landlord is the owner of the developed property located at 108 Old Stage Road, Unit A, Salida, CO 81201 ("Property"); and

WHEREAS, Tenant desires to lease a portion of the Property herein referred to as the "Premises" for the purposes of operating and maintaining a coffee shop as described herein; and

WHEREAS, the parties desire to enter into a Lease Agreement defining their respective rights, duties, obligations, and liabilities relating to the Premises and its use;

NOW THEREFORE, in consideration of the payment of rent and the performance of the covenants and agreements by the parties set forth below, the parties agree as follows:

1. **DESCRIPTION OF PREMISES.** Landlord leases to Tenant for Tenant's use the commercial space of said building ("Building") located at 108 Old Stage Rd, Unit A, Salida, CO excluding 265 sq ft occupying the rear entrance and corridor of the commercial space as pictured in Exhibit A ("Premises"). Subject to the terms of this Lease, Tenant, and its employees, agents, guests and invitees, shall have a non-exclusive right of ingress and egress to and from the Premises.

2. **PURPOSE AND USE.** Tenant shall use the Premises for the purpose of a coffee shop. Tenant shall not use the Premises for any other purposes, without the prior written consent of Landlord, which consent may be withheld at the sole discretion of Landlord. Tenant also agrees not to conduct or to permit to be conducted upon the Premises any business or any act which is contrary to or in violation of the laws of the United States of America or of the State of Colorado or of any ordinances, regulations, or orders of any municipality or other public authority affecting the Premises. Tenant shall neither use nor occupy, nor permit the use or occupancy of the Premises, or any part thereof, for any unlawful, disreputable, or hazardous purpose nor operate its business in a manner constituting a nuisance of any kind.

3. **TERM.** The term of this Lease shall be a two (2) year period commencing on February 1, 2023 and ending on January 31, 2025.

4. **RENTAL.** Installments of rent shall be payable in advance and without notice by electronic bank transfer. The rent for the first year shall be [REDACTED] For the second year of the term commencing February 1, 2024, the base rent shall be [REDACTED] Tenant shall pay rent to Landlord in monthly installments on the 1st day of each month.

5. PROPERTY INSURANCE AND UTILITIES. Tenant is responsible for paying property insurance and utilities (water, internet, waste, electricity) paid monthly at a rate of [REDACTED]. This amount will change after 12 months based on actual use and costs paid by HOA service. Receipts of insurance and utilities will be provided occasionally and upon request.

6. LATE PAYMENT CHARGE. In the event any payment required hereunder is not made within five (5) days after the payment is due, a late charge in the amount of five percent (5%) of the payment will be paid by the Tenant. As set forth in Section 22A, Tenant shall be in default if Tenant fails to pay monthly rent within five (5) days of its due date.

7. SECURITY DEPOSIT. Tenant shall deposit with Landlord, the receipt of which is acknowledged by Landlord, the sum of [REDACTED] as security for the performance of Tenant's obligations under this Lease, including, without limitation, the surrender of possession of the Premises to Landlord as provided in this Lease. If Landlord applies any part of the deposit to cure any default of Tenant, Tenant shall, upon demand, deposit with Landlord the amount so applied, so that Landlord shall have the full deposit on hand at all times during the term of this Lease. The deposit will be returned to Tenant within thirty (30) days after the end of the lease term if: (a) all obligations of Tenant have been performed, and (b) the Premises is not damaged and is left in its original condition, normal wear and tear excepted. Retention of said deposit shall not prevent Landlord from recovering additional damages. Tenant may not apply the deposit hereunder to the payment of rent reserved hereunder or the performance of other obligations. The Landlord may apply the deposit to cure any default under the terms of this Lease, including failure to pay rent or other charges, and shall account to the Tenant for the balance.

8. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS.

A. At no time shall Tenant make any alterations, additions, or improvements in or to the demised Premises without a written proposal of such changes first being approved by the Landlord in writing. Said written proposal shall contain Tenant's promise to pay the full cost of the improvements and shall delineate Tenant's need, the material composition, and the decorative coordination to be used. Tenant shall provide Landlord the names and addresses of all persons performing labor or furnishing skill, materials, machinery, or fixtures in the alteration, addition, or improvement of the Premises, as soon as those persons are known. Tenant shall give notice to the aforementioned persons that Landlord's interest shall not be subject to any liens arising from any improvements, repairs, or alterations provided at the request of Tenant. Tenant shall not permit any contractor or subcontractor whose employees are not adequately covered by Workers' Compensation insurance to perform any work on or within the Premises and shall hold harmless and indemnify Landlord with respect to any and all claims of any and all persons who perform work or other services for or for the benefit of Tenant or Tenant's contractors or subcontractors.

B. Should any mechanic's lien be filed against the Premises as the result of any remodeling or alterations done by the Tenant at any time following Tenant's taking of

possession, Tenant shall, within ten (10) days after demand by Landlord, cause said lien to be released.

C. Any approved alterations thereafter shall be performed in a workmanlike manner and shall not weaken or impair the structural strength or lessen the value of the building or any part thereof.

D. All work permitted hereunder shall be carried out and performed in accordance with requirements of applicable federal, state, and local statutes, laws, ordinance, codes, and regulations.

E. Subject to the requirements and restrictions set forth in the foregoing paragraphs A. through E. of this Section 9, Landlord shall not unreasonably withhold its approval of alterations, additions, or improvements to the demised Premises which might from time to time be requested by Tenant.

F. Upon the approval of any alterations, Landlord and Tenant must also agree in writing as to whether any such alteration or improvement shall be deemed a fixture which shall remain with the Premises upon termination or shall be deemed to be the personal property of Tenant which will be removed upon termination. The parties shall also set forth in writing the conditions or restoration needed for removal of any such improvement. In the absence of any such written agreement, all improvements and fixtures shall constitute the sole property of the Landlord as set forth in Section 10 herein. Specifically, the parties agree that upon termination of this Lease, Tenant shall be permitted to remove the custom gun racks and counters installed by Tenant. Upon removal, Tenant shall repair all holes and any damage caused to the Premises by the removal.

9. FIXTURES. Any alterations made in the Building located on the Premises by Tenant and any equipment or fixtures built into the Premises by Tenant shall upon the termination of this Lease become the sole property of the Landlord, unless otherwise agreed in writing by the parties.

10. TENANT'S MAINTENANCE OBLIGATIONS. Tenant covenants to maintain, repair, replace and keep all exterior signage, all glass, all doors and windows, and lighting fixtures, as well as the interior of the Premises, and all improvements, fixtures and personal property therein, including, but not limited to, all appliances, all furniture, flooring, all doors, all restrooms, and all plumbing, electrical, and mechanical systems water heaters, and fixtures, except the furnace, in good, safe and sanitary condition, order and repair and in accordance with all applicable laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction; to pay all costs and expenses in connection therewith; and to contract for the same in Tenant's own name. All maintenance and repairs by Tenant shall be done promptly, in a good and workmanlike fashion, and without diminishing the original quality of the Premises.

A. Tenant shall also be responsible for the repair of damages if any damage or defect was caused by the negligence of Tenant or Tenant's employees, agents, contractors,

customers, clients, or other invitees, or if the damage or defect is caused by or otherwise due to work performed by Tenant or Tenant's agents or contractors.

B. Tenant shall keep the entire exterior Premises free from all litter, dirt, debris and obstructions; and to keep the Premises in a clean and sanitary condition as required by the ordinances of the city and county in which the Premises are situated.

C. Tenant shall maintain the grounds and yard in front of and to the side of the Building and keep the sidewalks on and around the Premises free and clear of ice and snow, and keep the entire exterior Premises free from all litter, dirt, debris and obstructions; and to keep the Premises in a clean and sanitary condition as required by the ordinances of the City of Salida.

D. Tenant agrees to return the Premises at the end of the Lease term, including all fixtures and lease improvements, in the same condition as the beginning of this Lease and in good working order subject to normal wear and tear.

11. LANDLORD'S MAINTENANCE OBLIGATIONS. Landlord covenants and agrees to maintain, repair, replace and keep the roof, exterior walls, foundation of the Premises, (excluding glass, signage, doors, water heaters, and lighting), and furnace in good, safe and sanitary condition, order and repair and in accordance with all applicable laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction and to pay all costs and expenses in connection with. Further, if any repair, replacement or restoration is necessitated by any act or omission of Tenant, or any of Tenant's officers, employees, agents, guests or invitees, all costs and expenses incurred by Landlord in connection therewith shall be payable by Tenant immediately upon written request therefor by Landlord. Except as provided in Section 21H, there shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord, by reason or inconvenience, annoyance or injury to, or interruption of business, arising from Landlord, Tenant or others making any repairs, restorations, replacements, alterations, additions or improvements in or to any portion of the Building or the Premises, or in or to fixtures, appurtenances or equipment thereof.

12. UTILITIES. All applications and connections for necessary gas, water, waste, and electricity services to the Premises shall remain in the name of the Premise HOA (Summit HOA Services). Phone services shall be connected by, and be in the name of, Tenant. From the date Tenant takes possession of the Premises until this Lease is terminated, Tenant shall be solely liable for the payment of all telecommunications deposits and charges for facilities and services as such deposits and charges become due and owing for the Premises and for the accessory dwelling unit on the rear of the property.

13. TAXES.

A. Tenant's Taxes. During the term of this Lease, Tenant shall pay in full, as and when the same become due and payable, all personal property taxes levied on or with respect to Tenant's personal property located in or used in connection with the Premises, and all sales, use, and other taxes levied on or in connection with the operation of Tenant's business in the Premises.

B. Real Property Taxes. Landlord shall pay the real property taxes for the Premises.

14. **SIGNS**. Tenant shall at no time build, construct, erect, attach, or hang signs in the absence of Landlord's prior written consent, which will not be unreasonably withheld. All permitted signs must be erected and maintained in accordance with the provisions of applicable federal, state, and local law, rules, and regulations.

15. **PARKING**. No off-street parking is provided to Tenant. Parking by Tenant should be in lot spaces instead of street spaces.

16. OTHER COVENANTS OF TENANT.

A. Compliance with Insurance Requirements. Tenant covenants and agrees that nothing shall be done or kept on the Premises which might impair or increase the cost of insurance maintained with respect to the Premises, which might increase the insured risks, or which might result in cancellation of any such insurance.

B. No Waste or Impairment of Value. Tenant covenants and agrees that nothing shall be done or kept on the Premises which might impair the value of the Premises or which would constitute waste.

C. No Nuisance, Noxious or Offensive Activity. Tenant covenants and agrees that no noxious or offensive activity shall be carried on upon the Premises nor shall anything be done or kept on the Premises which may be or become a public or private nuisance or which may cause embarrassment, disturbance, or annoyance to others on adjacent or nearby property.

D. No Unsightliness. Tenant covenants and agrees that no unsightliness shall be permitted on the Premises which is visible from any adjacent or nearby property. Without limiting the generality of the foregoing, all unsightly conditions, equipment, objects and conditions shall be kept enclosed within the Premises; no refuse, scrap, debris, garbage, trash, bulk materials, used automobile parts, or waste shall be kept, stored or allowed to accumulate on the Premises except as may be enclosed within the Premises; no storage of abandoned vehicles shall be permitted on the Premises; and no vehicles shall remain parked on the Premises longer than that period of time which is reasonably required to service or repair said vehicles, and in no event longer than seventy two (72) hours.

E. Environmental Compliance and Indemnity. Tenant covenants and agrees to conduct its business and operations on and from the Premises in accordance with all federal, state and local environmental laws, regulations, executive orders, ordinances and directives including, but not limited to, the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, and state law counterparts, and any amendments thereto, including, without limitation, the Colorado Hazardous Waste Management Act, C.R.S. § 25-15-101 *et seq.*, and not to cause, suffer or permit any damage or impairment to the health, safety or comfort of any person or to

the environment at or on the Premises and surrounding property, including, but not limited to, damage or threatened damage to the soil, surface or ground water resources at the Premises and surrounding property or any condition constituting a nuisance or causing a violation of or resulting in liability under any state, federal or local law, regulation or ordinance. The foregoing obligations of Tenant shall hereinafter collectively be referred to as the "Environmental Obligations." In the event of any violation of, or failure to comply with, any of the Environmental Obligations, Tenant agrees, at its sole cost and expense, promptly to remedy and correct such violation or failure, including all required or appropriate clean up, clean up- related activities and all other appropriate remedial action. Tenant covenants and agrees to protect, indemnify and save Landlord harmless from and against any and all liability, obligations, claims, including administrative claims and claims for injunctive relief, loss, cost, damage, expense or liability, including without limitation, any liability arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, plus reasonable attorney fees, incurred by or asserted against Landlord resulting from any failure to comply with the provisions of this Section 17 E. Landlord shall have the right to defend itself in any action, suit or proceeding commenced against Landlord as a result of Tenant's violation of or failure to comply with the provision of this Section 17 E., with attorneys and, as necessary, technical consultants chosen by Landlord, and Tenant agrees to pay to Landlord all reasonable attorney fees, consultant fees, and other costs in connection therewith incurred by Landlord. The provisions of this Section 17 E. shall survive the expiration or termination of this Lease.

F. OFAC Compliance. Tenant represents and warrants to Landlord that Tenant is currently in compliance with and shall at all times during the term of this Lease (including any further extensions or renewals) remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

G. No Security Interest. Tenant agrees and warrants that no security interest will or may be granted with respect to any fixture physically attached to the Premises at any time during the term hereof.

H. Dogs. Tenant's employees shall not leave dogs unattended in vehicles on the Premises or anywhere on Landlord's property.

I. Smoking. Smoking anywhere on the Premises or Landlord's Property shall be prohibited.

17. CONDITION OF THE PREMISES. The taking of possession of the Premises by Tenant shall be conclusive evidence as against Tenant that the Premises were in satisfactory condition when possession of the same was taken. Tenant shall be permitted to make a final walk-through inspection of the Premises prior to its taking possession thereof.

18. ACCESS AND QUIET ENJOYMENT. Landlord warrants that Tenant shall have

peaceable and quiet enjoyment of the Premises free from any eviction or interference by Landlord if Tenant pays the rent and other charges provided for herein, and otherwise fully and punctually performs the terms and conditions hereof.

19. RESERVATIONS AND INSPECTION BY LANDLORD. Landlord or its agents shall have the right at any time to enter the Premises to examine the same, or to make such repairs as it may deem necessary or proper for the safety, improvement, or preservation thereof. Landlord shall at all times have the right, at its election, to make such alterations of, changes in, or additions to any adjoining buildings, if any, not leased to the Tenant, as may appear desirable to Landlord, and to demolish and/or dispose of the adjoining premises as it shall elect, at Landlord's sole expense. Landlord may show the Premises to prospective purchasers and mortgagees, and during the three months prior to termination of this Lease, to prospective tenants, during business hours upon reasonable notice to Tenant.

20. LIABILITY OF LANDLORD, INDEMNIFICATION, AND INSURANCE.

A. Except as otherwise provided herein, Tenant shall be in exclusive control and possession of the Premises from the date this Lease is executed until it is terminated. Landlord shall not be liable for any injury or damages to any property or to any person on or about the Premises nor for any injury or damage to any property of the Tenant. Landlord shall not be liable to Tenant for any entry on the Premises for inspection or repair purposes.

B. To the fullest extent permitted by applicable law, Tenant shall hold harmless and indemnify Landlord from and against all expenses, liabilities, and claims of every kind and character, including reasonable attorney fees and court costs, incurred, raised, or brought by or on behalf of any person or entity arising out of either: (1) a failure by Tenant to perform any of the terms or conditions of this Lease, (2) any injury or damage happening on or about the Premises, except for injury or damage caused solely by the negligence of Landlord, (3) Tenant's failure to comply with any law of any governmental authority, or (4) any mechanic's lien pertaining to work, services, or materials contracted for by Tenant or security interest filed against the Premises or equipment, materials, or alterations of buildings or improvements thereon which pertains to any indebtedness incurred by Tenant.

C. Tenant shall insure all building materials, supplies, personal property, furnishings, equipment, inventory, and records that it uses or stores on the Premises at any time following the execution hereof against fire and other hazards and shall promptly furnish proof of such insurance coverage to Landlord. Landlord shall be named as an additional insured under said policy.

D. Tenant shall obtain and maintain prior to taking possession of the Premises and at all times thereafter during the term hereof, including any optioned term, insurance against liability for bodily injury and property damage, all to be in amounts and in forms of insurance policies as may from time to time be required by Landlord, with policy limits in an amount not less than \$1,000,000.00 for death, illness or injury to one or more

persons, and \$1,000,000.00 for property damage, in respect of each occurrence. Tenant shall provide Landlord with certificates evidencing such insurance coverage before performing any work within the Premises. Landlord shall be named as an additional insured under such policies.

E. Policies for such insurance shall be in a form and with an insurer reasonably acceptable to Landlord, which shall mean the same company issuing policies to Landlord in connection with insuring the Property, and shall require at least 15 days written notice to Landlord of termination or material alteration during the term of this Lease, and shall waive any right of subrogation against Landlord and all individuals and entities for whom Landlord is responsible in law. Tenant shall deliver to Landlord, on the commencement date of the term of this Lease and on each anniversary thereof, certified copies or other evidence of such policies, or other evidence satisfactory to Landlord that all premiums thereof have been paid and that the policies are in full force and effect. Any default or breach of the insurance requirements of this Lease shall be deemed an immediate default and shall not require Landlord to give a 10-day notice of default described in Section 22 herein.

F. Landlord shall maintain at all times during the term of this Lease insurance coverage for the Premises for property damage, fire and casualty, and extended coverage.

G. In the event the Premises shall be damaged by fire or other casualty during the term of the tenancy, in a manner rendering all or a part of the Premises unusable for the intended purpose under this Lease, the parties shall be entitled to exercise the following options:

(1.) Landlord may repair the Premises at its own expense. Landlord shall be entitled to reimbursement from insurance proceeds from any casualty insurance for the Premises paid as a result of such damage to the Premises. If the casualty insurance policy was maintained by Tenant, Landlord shall be entitled to reimbursement not to exceed the total cost of repair to the Premises.

(2.) Tenant may repair the Premises at its own expense. Tenant shall be entitled to reimbursement from insurance proceeds from any casualty insurance for the Premises paid as a result of such damage to the Premises.

(3.) If neither party elects to repair the damaged portions of the Premises, by giving written notice of its intent to make the repairs to the other, within thirty (30) days following the date of the damage by fire or other casualty, or if the damage to the Premises cannot be substantially repaired within 180 days following the date when the Premises were damaged, Tenant or Landlord shall be entitled to declare this Lease null and void.

H. Except in cases where the damage to the Premises was proximately caused by the negligent actions or omissions of Tenant, or its employees, agents, customers, clients, or invitees, Tenant shall be entitled to an abatement of Tenant's obligation to pay rent

hereunder as to so much of the Premises as are rendered unusable for their intended purpose under this agreement as a result of fire or other casualty for so long as the Premises remain unusable.

21. DEFAULT AND REMEDIES. Each of the following events shall constitute a default or breach of this Lease by Tenant:

A. If Tenant fails to pay Landlord such monthly rent within five (5) days of its due date, subject to the late charges set forth in Section 6.

B. If Tenant fails to perform or comply with any of the other terms or conditions of this Lease and if the breach or nonperformance continues for a period of ten (10) days after notice thereof is given by Landlord to Tenant.

C. If Tenant vacates or abandons the Premises.

D. If this Lease or the estate of Tenant hereunder is transferred to or shall pass to any other person or party, except in the manner and to the extent herein permitted.

E. Tenant shall be in default in the event any lien is placed on the business of Tenant, Tenant's assets of any kind, on the Premises, Landlord's real or personal property, whether voluntarily by Tenant or by any creditor, taxing authority, or any party whatsoever.

F. In the event of any default hereunder, as set forth above, the rights of Landlord shall be as follows:

(1.) Landlord shall have the right to cancel and terminate this Lease, as well as all of the right and interest of Tenant hereunder, by giving to Tenant not less than three (3) days notice of the cancellation and termination in accordance with Colorado law and to re-enter and repossess the Premises, and to remove therefrom any personal property belonging to the Tenant, without prejudice to any claim for rent or for the breach of covenants hereof.

(2.) Landlord may elect, but shall not be obligated, to make any payment required of Tenant herein or comply with any agreement, term or condition required hereby to be performed by Tenant, and Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Landlord shall not be deemed to waive or release the default of Tenant or the right of Landlord to take any action as may be otherwise permissible hereunder in the case of default.

22. LIEN. The Landlord shall have at all times a valid lien for all sums of rent due hereunder from the Tenant upon all of the personal property of the Tenant situate in the Premises, and said property shall not be removed therefrom without the consent of the Landlord until all arrearages in rent shall have first been paid and discharged.

23. REMEDIES CUMULATIVE. No reference to nor exercise of any specific right or remedy by Landlord shall prejudice or preclude Landlord from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but Landlord may from time to time exercise any one or more of such remedies independently or in combination.

24. ATTORNEY FEES. In the event there is controversy or dispute regarding this Agreement and/or any related documents and the parties are unable to settle the controversy or dispute through mediation or otherwise, the prevailing party in any administrative or legal action shall be entitled to recover from the breaching party all reasonable attorney fees actually incurred, together with costs, including mediation fees. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement or judgment.

25. SURRENDER AND POSSESSION. Tenant shall, on the last day of the term or on earlier termination and forfeiture of the Lease, peaceably and quietly surrender and deliver the Premises to Landlord, including all buildings, additions, keys and security codes, and improvements constructed and placed thereon by Tenant, except Tenant's personal property, all in good condition and repair. Any personal property belonging to Tenant, if not removed at or before the termination or forfeiture date, and if Landlord shall so elect, shall be deemed abandoned and become the property of Landlord without any payment or offset therefor. Landlord may at its option remove such personal property from the Premises and store it at the risk and expense of Tenant. Tenant shall repair and restore all damage to the Premises caused by the removal of equipment and other personal property or be liable for the costs incurred in such repair or restoration. Tenant shall deliver the Premises back to Landlord in substantially the same condition as exists on the date on the execution of this Lease, normal wear and tear excepted. Upon termination of this Lease at any time for any reason, Tenant shall not have the right to remove from the Premises any leasehold improvements, including fixtures physically attached to any portion of the Premises, regardless of whether such leasehold improvements, including fixtures, were installed by Tenant, Landlord, or others. Once attached, such leasehold improvements, including fixtures, shall become a part of the Premises subject to the terms of Sections 9 F. and 10 above.

26. HOLDING OVER. It is mutually agreed that if, after the expiration of this Lease, the Tenant shall remain in possession of the Premises, without a written agreement as to such holding, then such holding over shall be deemed and taken to be a holding upon a tenancy from month to month at a monthly rental equal to the monthly rental last payable hereunder, payable in advance on the 1st day of each calendar month. Any month-to-month tenancy or tenancy at sufferance hereunder shall be subject to all other terms and conditions of this Lease and nothing contained in this Section 27 shall be construed to alter or impair any of Landlord's rights of re-entry or eviction or constitute a waiver thereof.

27. ASSIGNMENT AND SUBLEASE. Tenant may not assign or sublease any interest in the Premises without the prior written consent of Landlord. Tenant and all guarantors shall remain responsible for the lease payments under any approved sublease agreement. Nor shall any

assignment for the benefit of creditors or by operation of law be effective to transfer any rights to the said assignees without the prior written consent of the Landlord first having been obtained.

28. LANDLORD'S ASSIGNMENT. Landlord may, without notice, assign this Lease in whole or in part. Any such assignment shall operate to release Landlord from liability from and after the effective date thereof upon all of the covenants, terms and conditions of this lease, express or implied, and Tenant shall thereafter look solely to Landlord's successor in interest in and to this Lease. This Lease shall not be affected by any such assignment, and Tenant shall attorn to Landlord's successor in interest thereunder.

29. SUCCESSORS. Subject to the restrictions of Section 28 above, the covenants and agreements contained in the within Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors, and assigns, except as expressly otherwise hereinbefore provided.

30. CONDEMNATION. In the event of a condemnation or other taking by any governmental agency, all proceeds shall be paid to the Landlord hereunder, the Tenant waiving all right to any such payments.

31. TENANT'S BANKRUPTCY OR INSOLVENCY. It is further agreed between the parties hereto that if the Tenant shall be declared insolvent or bankrupt, or if any assignment of the Tenant's property shall be made for the benefit of creditors or otherwise, or if the Tenant's leasehold interest herein shall be levied upon under execution, or seized by virtue of any writ of any court of law, or a Trustee in Bankruptcy or a receiver be appointed for the property of the Tenant, whether under the operation of the state or the federal statutes, then and in any such case, the Landlord may at its option immediately, with or without notice, terminate this Lease and immediately retake possession of the Premises without the same working any forfeiture of the obligations of the Tenant hereunder.

33. WAIVER. No assent, express or implied, to any breach of any one or more of the agreements hereof shall be deemed or taken to be a waiver of any succeeding or other breach. Any payment by Tenant or acceptance by Landlord, of a lesser amount than due shall be treated only as a payment on account.

33. SEVERABILITY. All agreements and covenants contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this contract shall be interpreted as though such invalid agreements or covenants are not contained herein.

34. NOTICES. All notices required to be given in this Lease shall be in writing deposited in the United States Mail, certified or registered, with postage prepaid, and addressed to the parties at their respective addresses set forth herein, or notices may be delivered by e-mail or other electronic delivery with verified receipt, or maybe hand-delivered to the principal office of the party, or hand delivered to a principal or manager of the party.

35. MEMORANDUM OF LEASE. Tenant agrees, from time to time, to complete and execute a memorandum of lease for filing with the Department of Revenue, State of Colorado, in

compliance with Sections 39-22-604, 39-26-117, and 39-26-205, C.R.S., or similar laws.

36. **TIME IS OF THE ESSENCE.** The parties hereto agree that time is of the essence of this Lease.

37. **ESTOPPEL.** Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior notice from Landlord, execute, acknowledge and deliver a written statement ratifying this Lease and certifying any information concerning Tenant's lease and occupancy of the Premises reasonably required by Landlord.

38. **GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Colorado. All questions in dispute under this Lease between the parties shall be settled with venue in Chaffee County, Colorado.

39. **COUNTERPARTS.** This Lease may be executed in counterparts, in which case each such counterpart shall be construed as an original. Facsimile signatures shall be equally as binding as original signatures.

40. **INDEPENDENT COUNSEL.** The parties acknowledge and agree that Scott Mountain Law, LLC represents Landlord. Tenant is advised to seek independent counsel if so desired.

41. **ENTIRE AGREEMENT.** This Lease sets forth all the covenants, provisions, agreements, conditions, and understandings between the parties, and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. Any modifications of this Lease must be in writing and signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

LANDLORD:



Date: 12/30/2022

Representative of Fritzerland, LLC (Jonathan Fritz or Julia Fritz)

TENANT:



Date: 12/30/22

Molly Gallagher, Owner, Howard General LLC

Entrance License & a Area Approx 28' X 23' Inside 25' H

