

## KITCHEN LICENSE AGREEMENT

This KITCHEN LICENSE AGREEMENT ("**Agreement**"), dated as of [\_\_\_\_\_, 2016], is by and between [OUR SAVIOUR'S EVANGELICAL LUTHERAN CHURCH, WILLIAMSBURG, VIRGINIA], a Virginia nonstock corporation ("**Licensor**") and [NAME OF LICENSEE], [a [STATE] ENTITY] ("**Licensee**").

### RECITALS

- R-1. Licensor owns the building having an address at 7479 Richmond Road, Williamsburg, Virginia (the "**Building**").
- R-2. The Building contains a commercial kitchen (the "**Kitchen**").
- R-3. The parties desire by this Agreement to provide for the licensing by Licensor to Licensee of the right to use and occupy the Kitchen during the time period and upon the conditions set forth herein for the purpose of \_\_\_\_\_ (the "**Purpose**").

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. License; Kitchen.

(a) License. Licensor hereby grants to Licensee a limited and revocable license (the "**License**") to use the Kitchen for the Term (as hereinafter defined), together with the right to use all other areas in and about the Building which are used in common with others including, without limitation, the lobbies, elevators, stairways, rest rooms, delivery areas and parking areas (collectively, the "**Common Areas**"). The License permits the Licensee to use the Kitchen only for the Term during the Hours (hereinafter defined), subject to and upon all of the terms, covenants and conditions contained in this Agreement. The License shall not, under any circumstances, be coupled with an interest in the Kitchen. The parties do not intend to create a lease or any other interest in real property for Licensee through this Agreement, and the parties only intend to create a license that is revocable at will by either Licensor or Licensee. Licensee acknowledges and agrees that no more than [\_\_\_\_\_] guests will occupy the Kitchen at any time.

(b) Furniture, Fixtures and Personal Property. Licensee shall also have the right to use Licensor's furniture, fixtures and personal property ("**Licensor's Personal Property**") as may be located in the Kitchen during the Term, and shall be returned to Licensor at the end of the Hours each day of the Term (as defined in Section 2) or earlier termination of the Term pursuant to the terms and conditions of this Agreement. Throughout the Term, Licensee shall take good care of the Kitchen and the Licensor's Personal Property. Notwithstanding anything else herein or in the Kitchen Rules to the contrary, Licensee shall have access to [\_\_\_\_\_] square feet of secure dry storage, and access to refrigeration and freezer space as agreed upon by Licensor and Licensee during the term of the License.

(c) As-is. Licensee has inspected the Kitchen and agrees to accept the Kitchen as-is on the date hereof. THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE KITCHEN, THE LICENSOR'S PERSONAL PROPERTY, OR THE REAL PROPERTY OR PROPERTY INTERESTS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 2. Term and Hours.

(a) The term of this License shall be for a period of [six months] (the “**Term**”) commencing on \_\_\_\_\_ (“**Commencement Date**”), and ending \_\_\_\_\_ (“**Expiration Date**”), on Mondays through Fridays between the hours of [TIME] and [TIME], which includes set up and take down time (the “**Hours**”). Licensor agrees not to license the Kitchen to any other users during the Hours, and it is the intent of the parties that Licensee shall have the exclusive use of the Kitchen during the Hours, subject to the terms hereof. Licensee, Licensee's employees, agents, officers, and other independent contractors, contracted vendors, and service providers retained by Licensee (collectively, “**Licensee's Representatives**”) shall not have access to the Kitchen at any time other than during the Hours of the Term, unless Licensee receives prior written authorization from Licensor.

(b) The Term shall automatically renew for a period of [\_\_\_\_\_] (the “**Renewal Term**”), unless Licensor or Licensee provides written notice of termination thirty (30) days prior to the expiration of the Term. The same terms contained herein shall apply during any Renewal Term, except that the Fees may be adjusted at the time of renewal pursuant to Exhibit A.

(c) Notwithstanding anything to the contrary herein, this Agreement shall be revocable by either party at any time during the Term, provided that thirty (30) days' prior written notice is delivered by the terminating party to the non-terminating party. The termination notice shall include the date of termination and shall be sent in accordance with the notice requirements of this Agreement. Either party's termination right is subject to no default existing under this Agreement at the time the termination notice is sent and on the actual termination date.

## 3. Deposit and Fees.

(a) Licensee shall pay to Licensor the following deposits and fees (collectively, the “**Fees**”) determined in accordance with the fee schedule contained on Exhibit A attached hereto in the following manner:

(i) a refundable security deposit fee in the amount of [\_\_\_\_\_] Dollars \$[AMOUNT] (the “**Security Deposit**”) shall be due and payable to Licensor upon the execution of this Agreement. Licensor shall refund the Security Deposit to Licensee within [fifteen (15)] days after the Term, provided, however, all or a portion of the Security Deposit may be retained by Licensor pursuant to **Section 3(c)**, **Section 3(d)**, and **Section 11**. set forth below;

(ii) a license fee in the amount of [NUMBER SPELLED OUT] Dollars \$[AMOUNT] (the “**License Fee**”) shall be due and payable to Licensor [on the first day of each month] for each month of the Term.

(b) Notwithstanding the foregoing, Licensee shall pay upon the execution and delivery of this License Agreement an amount equal to one (1) month's License Fee. If the Commencement Date is on the first day of a month, such payment shall be credited against the first month's License Fee payment due and payable under this Agreement. If the Commencement Date is not on the first day of a month, then Licensee shall pay upon the execution and delivery of this License Agreement: (i) one month's License Fee; and (ii) a portion of the License Fee that is calculated on a per diem basis for the number of days from the Commencement Date through the last day of the month in which the Commencement Date occurs (both dates inclusive). The one month's License Fee payment made by Licensee shall be credited toward the monthly License Fee for the next succeeding calendar month immediately following the Commencement Date.

(c) If Licensee fails to pay any of the Fees by the applicable due dates set forth above, Licensor shall have the right to revoke the License and retain the full amount of the Security Deposit.

(d) The Security Deposit shall be returned to Licensee within [fifteen (15)] days after the conclusion of the Term, unless the Kitchen is not left in the same or similar condition in which it was found. In the event any repair and/or excessive cleaning is required to be performed by Licensor, the Security Deposit will be applied to such costs and Licensee shall be responsible for any deficiencies, which shall be payable to Licensor within [fifteen (15)] days after written demand.

(e) All Fees shall be payable in cash or check.

4. Conduct and Noise. Smoking in the Kitchen, in or within 25 feet of the Building, loitering, disparaging remarks, physical violence or illegal activities will not be tolerated. Licensee shall occupy and use the Kitchen only for the Purpose. Licensee shall not permit any conduct or condition which may endanger, disturb or otherwise interfere with the Licensor or any other Building occupant's use of or operations from the Building or interfere with the management of the Building. Licensee may use all Common Areas only for their intended purposes. Licensor shall have exclusive control of all Common Areas at all times. Licensee shall comply with Licensor's rules and regulations attached to this Agreement as Exhibit B as they may be amended from time to time ("**Kitchen Rules**").

5. Insurance.

(a) Licensee's Insurance Requirements. Licensee shall, at its own cost and expense, maintain and keep in force at all times during the Term: (i) commercial general public insurance, which shall include coverage against claims for personal injury, death or property damage occurring on, in or about the Kitchen with limits of not less than \$[AMOUNT] with respect to the Kitchen, Licensor's Personal Property and Licensee's conduct of business therein and excess umbrella coverage of not less than \$[AMOUNT]], Licensor shall be named as additional insured; and (ii) employers' liability and workers' compensation insurance to the extent required by the laws of the Commonwealth of Virginia. Notwithstanding anything to the contrary set forth in this Agreement, Licensor and Licensee hereby release one another and their respective partners, officers, employees and property manager from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for loss or damage covered by said insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

(b) Licensor Not Liable. In no event shall Licensor be liable for any damage to or loss of personal property or equipment sustained by Licensee, whether or not it is insured, even if such loss is caused by the negligence of Licensor, its employees, officers, directors or agents. Any property of any kind brought to the Kitchen or Building by Licensee shall be at the sole risk of Licensee and shall be promptly removed at the expiration of this Term pursuant to this Agreement.

6. Compliance with Laws. Licensee shall comply with all applicable laws and shall obtain any and all required permits and licenses necessary to use the Kitchen. Licensee shall not use the Kitchen in any manner that would violate local, state or federal laws or regulations related to Licensee's use of the Kitchen.

7. Indemnification. Licensee hereby indemnifies, defends and holds harmless Licensor, its officers, directors, employees and agents, from any damages, liabilities, actions, suits, claims, costs (including reasonable attorneys' fees), penalties, or expenses arising out of or in connection with any damage to the property or any injury caused to any person (including death): (a) as a result of Licensee's use of the

Kitchen, including any acts or omission on the part of Licensee, its officers, directors, employees or agents; or (b) caused by any of Licensee's Representatives.

8. Permitted Use and Capacity. Licensee is authorized, pursuant to the License, to use the Kitchen for the Purpose, and for no other purpose, unless Licensor gives Licensee prior written authorization for additional permitted uses. Licensee shall not use the Kitchen in any manner that may result in increased insurance premiums for Licensor with respect to the Kitchen or render such insurance void. Licensee acknowledges and agrees that the maximum capacity of the Kitchen is [ ] people and Licensee will not exceed such limit.

9. Access and Right of Entry. Licensor shall have the right to enter the Kitchen at any time, without the consent of Licensee, for any reasonable purpose, including any emergency that may threaten damage to the Kitchen, or injury to any person in or near the Kitchen.

10. Force Majeure. In the event Licensor is unable, for reasons beyond its reasonable control, to make the Kitchen available to Licensee during the Term for the purpose set forth in this Agreement, Licensee shall be refunded the Fees and this Agreement shall terminate. Licensor shall not be liable for any additional costs, expenses or damages suffered by Licensee (over and above the License Fee) arising out of the unavailability of the Kitchen.

11. Revocation of License. Licensor shall have the right to revoke the License at any time prior to the Expiration Date provided Licensor provides written notice of such revocation to Licensee. Licensor's right of revocation shall be limited to the following events: (a) nonpayment of Fees by the applicable due dates; or (b) breach of this Agreement by Licensee; or (c) the Licensor's use of the Kitchen is of a nature that Licensor finds subjectively inappropriate. Upon receipt of the revocation of the License for default as set forth in this paragraph, Licensee shall have five (5) days to cure such default before the License is terminated. In the event Licensor revokes the Agreement because of subsection 11(c), Licensor shall refund the Security Deposit and such amount of the License Fees that has been paid for days of the Term that have not been used. In all other events, Licensor shall retain all amounts paid to Licensor (including but not limited to the Security Deposit) as liquidated damages and not as a penalty.

12. Maintenance by Licensor. Licensor shall keep and maintain in good repair and working order and make all repairs and replacements to and perform necessary maintenance upon (a) the structural components of the Kitchen, including the foundations, load bearing walls, and roofs, (b) the exterior of the Kitchen, including parking areas, loading and unloading areas, storage areas, trash areas, roadways, walkways, parkways, driveways, and exterior lighting facilities, and (c) all other repairs to the Kitchen, including without limitation, any repairs relating to the roof, plumbing, electrical, or heating, ventilation, and air conditioning(HVAC) system serving the Kitchen.

13. Surrender.

(a) At the end of the Hours on each day of the Term, Licensee shall return the Kitchen to Licensor in good condition and clean pursuant to the Kitchen Rules.

(b) Prior to the expiration or termination of this Agreement, Licensee shall remove from the Building all of its food, equipment (unless Licensor directs Licensee otherwise), and all other personal property installed by Licensee or its employees. Licensee shall repair any damage resulting from such removal and shall restore the Kitchen to good order and condition. Any of Licensee's personal property not removed as required shall be deemed abandoned, and Licensor, at Licensee's expense, may remove, store, sell or otherwise dispose of such property in such manner as Licensee may see fit and/or Licensor may retain such property or sale proceeds as its property. If Licensor does not return possession of the

Kitchen to Licensor in the condition required under this Agreement, Licensee shall pay Licensor all resulting damages Licensor may suffer.

(c) If Licensee remains in possession of the Kitchen after the expiration or termination of the Term, Licensee's occupancy of the Kitchen shall be that of a tenancy at will. Licensee's occupancy during any holdover period shall otherwise be subject to the provisions of this Agreement (unless clearly inapplicable), except that the Fees shall be one hundred fifty percent (150%) the monthly Fee payable for the last full month immediately preceding the holdover. No holdover or payment by Licensee after the expiration or termination of this Agreement shall operate to extend the Term or prevent Licensor from immediate recovery of possession of the Kitchen by summary proceeding or otherwise. Any provision in this Agreement to the contrary notwithstanding, any holdover by Licensee shall constitute a default on the part of Licensee under this Agreement entitling Licensor to exercise, without obligation to provide Licensee any notice or cure period, all of the remedies available to Licensor in the event of a Licensee default, and Licensee shall be liable for all damages, including consequential damages, that Licensor suffers as a result of the holdover.

14. Storage of Items. Licensee shall be entitled to store its items and personal property after the Hours, but during the Term, in a designated area within the Kitchen, in Licensor's sole discretion.

15. Alterations; Repairs.

(a) Alterations. No alterations may be made by Licensee to the Kitchen without the prior written consent of Licensor which consent may be withheld or conditioned at Licensor's sole discretion.

(b) Repairs. Licensee shall be responsible for the cost to repair any damage caused by the Licensee to the Kitchen.

16. Default. If either party defaults in the performance of any of its obligations under this Agreement, and such default continues for more than [five (5)] days after receipt of written notice from the non-defaulting party, the non-defaulting party shall have the right to terminate this Agreement and pursue any other remedies available at law or in equity, except as limited herein.

17. Sublicensing and Assignment. Licensee may not assign its rights under this Agreement, or sublicense the whole or any part of the Kitchen, without the prior written consent of Licensor, which may be withheld in Licensor's sole discretion.

18. Notices. Any notice, authorization or other communication required or otherwise given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given:

(a) When delivered by hand (with written confirmation of receipt).

(b) On the third (3<sup>rd</sup>) day after the date mailed, if sent by registered or certified mail, return receipt requested, postage prepaid.

(c) When received by the addressee, if sent by a nationally recognized overnight courier (receipt requested).

(d) On the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after the normal business hours of the recipient.

(e) All notices and other communications shall be sent to the respective parties at the following addresses or at such other address for a party as shall be specified in a notice given in accordance with this Section 18:

If to Licensor:

[LICENSOR ADDRESS]

[Facsimile: [FAX NUMBER]]

[Email: [EMAIL ADDRESS]]

Attention: [NAME AND TITLE OF PERSON TO RECEIVE NOTICES]

If to Licensee:

[LICENSEE ADDRESS]

[Facsimile: [FAX NUMBER]]

[Email: [EMAIL ADDRESS]]

Attention: [NAME [AND TITLE] OF PERSON TO RECEIVE NOTICES]

19. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the Commonwealth of Virginia, without regard to conflicts of laws principles.

20. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

21. Severability. If any one or more parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

22. Headings. The headings for each section herein are for convenience only and shall not affect the meaning of the provisions of this Agreement.

23. Entire Agreement. This Agreement constitutes the entire agreement between Licensor and Licensee, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings of other agreements, whether oral or written, relating to the subject matter of this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**LICENSOR:**

[OUR SAVIOUR'S EVANGELICAL LUTHERAN  
CHURCH, WILLIAMSBURG, VIRGINIA]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**[FEE SCHEDULE]**



**EXHIBIT B**  
**KITCHEN RULES**