

Commercial Kitchen User Agreement

This **Commercial Kitchen User Agreement** (together with the documents referenced herein and attachments hereto, the “Agreement”) dated the ____ day of _____, 2023, is made by and between Fluvanna County, a political subdivision of the Commonwealth of Virginia, (hereinafter referred to as the "County"); and [legal name of applicant(s) and any fictitious/doing business as name used]_____ (whether one or more, hereinafter interchangeably referred to as the "User" or “Applicant”), a [if business, type of entity, state of formation, if foreign entity must be authorized to transact business in VA by the State Corporation Commission]_____.
County and User are sometimes each referred to herein as a “party” (whether one or more) and collectively as the “parties”.

Whereas, the County has opened a commercial Kitchen certified for food production in the Fluvanna County Community Center located at 5725 James Madison Highway, Fork Union, Virginia 23055 (referred to interchangeably herein as the “Commercial Kitchen” or “Kitchen”) and is willing to allow persons to use the Kitchen and the equipment contained therein (“Equipment”), including without limitation any stoves, sinks, refrigerators, freezers, counters, for the use fees set forth in any Approved Application (as defined below) under certain terms and conditions as set forth in this Agreement;

Whereas, the “Applicant” or “User” is the above-named person or persons, group, entity, or business or industrial establishment that has requested use of the Kitchen for a single use, a recurring use, or use from time to time. All applicants are jointly and severally liable for all obligations of this Agreement, including without limitation, any liability for damages and the payment of any and all amounts due hereunder;

Whereas, a “person” as used in this Agreement is any individual, firm, company, association, society, partnership, municipal corporation, governmental body or agency, corporation, municipality, legal entity or other similar organization, agency or group or other legal entity;

Whereas, this Agreement together with the attachments hereto shall set forth the terms and conditions, parameters, guidelines, and expectations that must be met by any User of the Kitchen;

Whereas, the day-to-day operations of the Kitchen are overseen by the Kitchen Coordinator for the County whose office is located at the Fluvanna County Community Center, 5725 James Madison Highway, Fork Union, VA 23055, whose telephone number is (434) 842-3150, and whose email address is econdev@fluannacounty.org;

Whereas, the Director of Economic Development, (“Director”) supervises the Kitchen Coordinator and is the County’s contact for purposes of this Agreement, her address is 132 Main Street, Palmyra, VA 22936, whose telephone number is (434) 591-1921, and whose email address is econdev@fluvannacounty.org;

Whereas, the User agrees prior to entering into this Agreement, that the User has read and understands the Commercial Kitchen Use Handbook and this Agreement and further the User agrees prior to making its first use of the Kitchen during the Term will schedule an initial consultation through the Economic Development Department by emailing econdev@fluvannacounty.org;

NOW, THEREFORE, for valuable consideration the sufficiency of which is acknowledged, the parties do hereby mutually agree to the following:

The recitations above are a material part of this Agreement and are hereby made a part of the body of this Agreement.

A. **Requirement for Use.**

1. **Application Required.** The County requires that each User submit with their initial Application this completed Agreement which is required for any use of the Kitchen during the Term. The parties agree that this Agreement binds the parties for any and all Approved Applications (as defined herein) of User submitted during the Term unless earlier terminated by either party hereto as specifically permitted under this Agreement. Use of the Kitchen includes use of any and all Equipment in the Kitchen by User for its intended purpose and in full conformance with all safety and use requirements. The County may take any Equipment out of service at any time for any reason with or without notice to User.

2. **Application.** An Approved Application may be issued for any and all discrete or recurring use of the Kitchen permitted under this Agreement, permissible under Applicable Law and approved by the County. For each scheduled use of the Kitchen the User must submit an Application to the County on the County's form requesting use on specified dates and times during the Term, such Application may request use on more than one date and time, recurring use, one time use or other period of use as is acceptable to the County, except that all such use must be during the Term; any Application for use by the User of the Kitchen during the Term which is approved by the County in writing (each an "Approved Application") shall become a part of this Agreement.

3. **Permits, etc.** Every User must submit evidence to the County with its Application(s) to the County of the User's valid, unexpired, and true and complete permit(s) and inspection(s) from the Virginia Department of Health and to the Virginia Department of Agriculture and Consumer Services with its Application(s) evidencing the User's ability to use the Kitchen (together "State Permits") consistent with Applicable Law (as defined below). No Application requesting dates for use of the Kitchen after expiration of such Permit may be approved or permitted. No use of the Kitchen can be made without valid and unexpired State Permits. If any State Permits are rendered invalid, rescinded or the User is otherwise not permitted by any State agency from using the Kitchen under Applicable Law, then the User must immediately notify the County and the User agrees to make no further use of the Kitchen under this Agreement; and in such cases the County shall refund any Deposit and any prepaid use fee paid by the User if such User is otherwise in full compliance of all terms of this Agreement and if the County receives the notice of User's inability to use the Kitchen at least fourteen (14) days prior to the stated commencement of User's use of the Kitchen in Approved Application.

4. **Certificates.** If the User is required by Applicable Law to have a ServSafe or Food Handler's Certificate for the intended use of the Kitchen under an Application, then the User must submit such certificate with such User's Application.

5. **Contents of Application.** Users are responsible for submitting complete and valid Applications under this Agreement. Users represent and warrant that all information contained in any Application made under this Agreement is true and correct in all materials respects, contains all required attachments, conforms to any and all requirements and obligations of this Agreement and has been signed by a duly authorized party able to bind User.

6. **Use Fees.** The User agrees to pay the County for all use it makes of the Kitchen under any Application and this Agreement and such will be in accordance with the Billing provisions this Agreement, including, without limitation, Section D of this Agreement. The User agrees to pay 200% of the fees per hour for any use of the Kitchen beyond or outside the stated time(s) in any Approved Application which has not been approved by the County in writing in advance.

7. Security Deposit. The User agrees to pay with any initial Application the deposit (the “Deposit” or “Security Deposit”) required by such Application (as of March 1, 2023, the Deposit was \$100, but such amount is subject to change). If the User acts in full conformance with this Agreement and the Application, then such Deposit shall be refunded to the User by the County within forty-five (45) days of the end of the Term. Should the Deposit held by the County ever be less than Deposit amount required by the Application during the Term, the User agrees to immediately deposit additional funds with the County to bring said Deposit held by the County under this Agreement back up to the Deposit required under the Application – except that a User may request the County refund the Deposit during the Term if the User notifies the County of its termination of this Agreement as permitted hereunder, in such cases, the Deposit shall be refunded to the User within 45 days of the termination. Notwithstanding any of the foregoing, if the User owes the County any amounts under this Agreement, has damaged the Kitchen, used the Kitchen beyond or outside the times permitted in an Approved Application or other breached this Agreement or caused the Kitchen or County property any damage, claim, injury or similar, than such Deposit shall be forfeited to the County, however such amount is not paid to the County as liquidated damages and in no way limits the liability of the User for claims, losses, damages or other injury suffered by the County, to the Kitchen or to other County property, real or personal.

8. Adjustment or Termination of Approved Application. The County may rescind its approval for any Approved Application under this Agreement for any reason at any time upon verbal or written notice to the User (including without limitation in cases of inclement weather). If such rescission of any approved Application is for the County’s convenience and not for cause due to the fault, breach or failure of User to comply with this Agreement, then the County shall refund any deposits (including any Deposit) or prepayments made by User to the County for use of the Kitchen related to such rescinded Approved Application within forty-five (45) days of such rescission by the County for convenience. The County will use its best efforts to provide as much notice as possible to the User of any rescission of an Approved Application, but in any event the County shall not be liable to the User for any costs, loss, claim or other damages of User related to any rescission of any Approved Application. The County may rescind any Approved Application at any time. Without limitation, the County may rescind an Approved Application owing to a change in use fees or inclement weather.

9. User Cancellation. In the event of cancellation by the User of any use under an Approved Application when User no longer needs the Kitchen for the dates set forth in an Approved Application, User agrees all reasonable efforts will be made to give the County as much notice as possible of such cancellation, however at least fourteen (14) days prior written notice of cancellation by the User of any use under an Approved Application is required. If the County does not receive the notice of cancellation at least fourteen (14) days prior to commencement of such scheduled use by User under the Approved Application, then the County shall retain any Deposits paid by the User and any prepaid use fee paid by the User.

Fluvanna County Community Center Commercial Kitchen Use Handbook. The policies, rules, requirements and provisions of the Fluvanna County Community Center Commercial Kitchen Use Handbook are incorporated herein as a material part of this Agreement. The User agrees to comply with all policies, rules, requirements and provisions of the Fluvanna County Community Center Commercial Kitchen Use Handbook reasonably adopted by the County from time to time for the use, operation, safety, care, good order, and cleanliness of the Kitchen and Equipment. A current version of the Fluvanna County Community Center Commercial Kitchen Use Handbook is available on the County’s website at: <https://www.fluvannacounty.org/parksrec/page/commercial-kitchen-reservation-0>.

B. Licenses, Requirements of Applicable Law and Other Requirements.

User shall keep and maintain in good standing all permits, licenses, and other regulatory permissions that might be required for the conduct of User's food preparation business and of User's lawful use of the Kitchen, including, without limitation, any required business license, sales tax license, seller's permit, and/or processing food registration. User shall maintain current at the Kitchen, and present for County inspection upon request, a Food Safety Managers Certificate or a Servsafe Certificate covering all persons using the Kitchen for or on behalf of User. User, to the fullest extent provided by law, shall indemnify County for, and hold it harmless against, any damages suffered by County as a result of User's failure to comply with the provisions of this Section. At all times during User's use of the Kitchen, it will have clearly visible signage indicating its legal name and licensure information.

The User represents and warrants that it: (1) duly holds all necessary certificates, permits or licenses required by Applicable Law to enter into this Agreement and use the Kitchen for its intended purposes; (2) will furnish satisfactory proof of such certificate(s), permit(s), licensure(s) and insurance to the County at the time of execution of the Agreement, and will provide the County with updated information upon the occurrence of any change or renewal; and (3) that if User is not a sole proprietor, that User is an entity properly registered with the Virginia State Corporation Commission to transact business in Virginia and will maintain such status for the duration of this Agreement (for any such entity, any termination of the User's corporate existence or registration must be immediately reported to the County and shall cause immediate termination of this Agreement). The User covenants that it will maintain its required certificates, permits and licensures, if applicable, with the appropriate governmental authorities and its insurance as required by this Agreement; and will immediately notify the County in the event any such licensing, certificates, or permits have lapsed, are suspended, withdrawn or revoked. The User agrees that such lapse, suspension, revocation or withdrawal shall constitute grounds for the immediate termination of this Agreement. Misrepresentation of the contents or possession of such insurance, certificates, permits or license shall constitute a material breach of the terms of this Agreement by User and without limitation, the County shall be permitted to terminate for cause and keep all prepayments and any Deposit of User.

C. Kitchen Use.

1. General. The User shall use the Kitchen: (i) only as permitted by Applicable Law and in accordance with this Agreement; (ii) only for the specific use and specific dates permitted under any Approved Application (iii) only to make such approved food(s) approved in advance by the County and set forth in writing in the menu submitted with the Approved Application; (iv) only during the dates and time specifically approved in the Approved Application; and (v) in a safe and professional manner so as would pass without exception in the trade and so as to keep the Kitchen and all Equipment safe and free from harm or defect. A detailed complete inclusive menu must be submitted with each Application. The User shall permit the Kitchen Coordinator, Director or any representatives of the County to access the Kitchen at any time and to conduct reviews to assess compliance with this Agreement, the Approved Application and for any other proper purpose.

2. Changes. The User shall notify County of any changes affecting their Approved Application in writing as soon as practicable. The County may approve or reject any such change in its sole discretion. Only changes to an Approved Application approved in writing by the County shall be valid and binding on the County.

3. Rates. The amount of the Deposit and rates for use of the Kitchen are set forth in the Application. The rates are subject to change by the County from time to time without advance notice to the

User. Any refunds from the County shall only be made in accordance with this Agreement and are limited to the amounts paid by the User to the County under this Agreement.

4. Inspection. The User shall meet the Kitchen Coordinator, or his or her designee, at least 30 minutes prior to each scheduled use of the Kitchen on each day that the User makes any use of the Kitchen. The parties will walk through the Kitchen and examine the cleanliness and condition thereof, and of the Equipment. The Kitchen Coordinator and User will sign the attached Inspection Report detailing any issues or problems with the Kitchen or Equipment. The User also must accept the Kitchen and Equipment as is. The User shall not be responsible for any issues or problems documented in such Inspection Report and not caused by the fault, negligence, or conduct of User. Notwithstanding the foregoing, if the User fails to sign the attached Inspection Report as required, then it is agreed that the Kitchen was in clean and good working order at the commencement of User's use thereof and all Equipment was in good condition and working order. The User will complete the Post-Use portion of the Inspection Report after each use. User shall notify the Kitchen Coordinator prior to departure after each use of the Kitchen, shall complete and sign the Inspection Report, and will make a final walk through the Kitchen with the Kitchen Coordinator before leaving. User must notify the Kitchen Coordinator immediately in the event of any accident or injury in the Kitchen.

5. Cleaning and Condition After Use. After each use of the Kitchen, User will restore to a clean and sanitary condition the Kitchen and Equipment used by User, including, without limitation, any floors, sinks, equipment, pots, pans, utensils, storage areas, work surfaces, and the like. User agrees it shall be charged for any cleanup required to be performed by County to bring the Kitchen or any Equipment to a clean and sanitary condition, within the sole discretion of County. User must return the Kitchen and Equipment in a clean condition suitable for the next user. User shall not be responsible for any condition or defect identified in the Inspection Report and not caused by the fault, negligence or conduct of User. User must account for the time needed for cleaning and return of the Kitchen and Equipment to its original condition in its Application.

6. Kitchen and Equipment Provided "As Is". The Kitchen, including all portions thereof and all Equipment provided for User's use, are provided "As Is." The County makes no representations, warranties, or guarantees, express or implied, including, without limitation, the warranty of merchantability and the warranty of fitness for a particular purpose, relating to the Kitchen or to User's use thereof. The County makes no guarantee or representation that any particular equipment located in the Kitchen will be available for User's use at any particular time. User shall seek instruction for each person using the Kitchen for or on behalf of User in the safe use and proper cleaning of all Equipment. User will refrain from operating any Equipment without having first obtained such instruction. User shall be responsible for any damage, injury, or loss, including personal injury and property damage, resulting from the improper use or cleaning of any Equipment.

7. User Equipment. User shall bear sole responsibility for damage or loss to, and the fitness for a particular purpose of, any items of personal property delivered to the Kitchen for, or at the request of, User, including, without limitation, supplies and equipment required for the conduct of User's food preparation or processing business. Each User must bring their own cleaning towels, cooking items, ingredients, utensils, small wares and other special items necessary to their specific production needs; and any items of property stored in the Kitchen belonging to User shall be at the risk of User. The County is not an insurer of User's property. Any equipment or personal property of the User left in the Kitchen after the Term shall at the option of the County in the County's sole discretion (i) become the property of the County; or (ii) be removed from the Kitchen by the User at a time and place designated by the County in the County's sole discretion. County is not responsible for the loss or theft of any items owned by User stored in the Kitchen.

8. Destruction of Kitchen or Damage to Fluvanna County Community Center. In the event of the destruction of all or any part of the Fluvanna County Community Center including the Kitchen, or any property of the County, by fire, explosion, the elements, or otherwise, due to the act, omission, fault, willful misconduct, or negligence of User, or User's employees, representatives, invitees, guests, or agents, then User agrees to compensate County for the full replacement value of the Fluvanna County Community Center, the Kitchen, other real property and tangible personal property and Equipment and this compensation shall be in addition to any other damages, claims, compensation or other amounts County may seek in law or equity under Applicable Law.

D. **Billing.**

1. Billing Notifications. All use of the Kitchen shall be prepaid. User shall also be billed after use for any time used beyond or outside the times set forth in the Approved Application and User agrees to pay all such fees for use at 200% of the standard use fee. All use by User of the Kitchen shall be in increments of one-hour. Use for any partial hour shall be billed as one hour of use. User shall be billed by County for any damage, claims, loss or costs of any kind incurred by the County on account of User's use of the Kitchen or Equipment, or any act or omission of User under or related to this Agreement or any Application. Any billing-related correspondence from the County should be sent to the following contact person for User:

User:

Name: _____

Address: _____

(If applicable) ATTN: _____

Telephone: _____

Facsimile: _____

Email: _____

2. Payments Due. User agrees to pay all invoices from the County under this Agreement within fifteen (15) calendar days. By sending any invoice, the County does not waive any breach, misconduct, fraud, act, omission or similar conduct of User. Furthermore, the County reserves all rights under this Agreement including any claims, losses, or damages, related to use of the Kitchen by User, loss or damage occasioned by the County on account of any act or omission of User, use of any Equipment by User, or relating to this Agreement, including without limitation to later dispute or send additional invoices to User. Should County later discover an issue relating to an invoice previously paid, it will notify the User of the dispute. Notwithstanding any other provision herein, this Agreement shall be extended and continue at the County's election until the date the disputed invoice(s) and claims of the County are all resolved to the County's satisfaction. All claims of the County against User related to the use of the Kitchen or Equipment or in any way related to this Agreement, including all rights of the County related thereto, survive termination of this Agreement.

3. Disputes. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by negotiation and agreement shall be referred to the County for further consideration. Their decision is final and shall be reduced to writing and with a copy being supplied to the User. This provision shall not preclude the User exercising any rights under Applicable Law and consistent with this Agreement for failure of the County to comply with the terms of this Agreement.

E. **Accounting and Record Keeping.**

The User must maintain a system and supporting records adequate to comply with Applicable Law.

F. **Complaints.**

If a complaint is submitted to the County concerning the User, the User shall promptly provide all verbal or written information or documents within its control relevant to such complaint to the County upon a request by the County for such information. The County can terminate this Agreement at any time upon notice to the User for any breach by User of any term of this Agreement or in the event any act of User causes damage to the Kitchen or Equipment, is unsafe, or interferes with use of the Community Center by others. This is in addition to any other rights of the County to terminate this Agreement.

G. **Subcontracts and Assignment.**

The User shall not enter into any subcontract for any use of the Kitchen approved under this Agreement unless: (i) such is specifically disclosed in the Application; and (ii) each Subcontractor executes and delivers to the County this Agreement. It is the User's responsibility to ensure compliance and maintain documentation of said compliance with this Agreement. User shall make such documentation available to County upon request. This Agreement may not be assigned by the User.

H. **Responsibility and Independent Users.**

The User shall, at its own expense, be responsible for its actions in making use of the Kitchen, Equipment and County Property, and for all personnel, materials, tools, equipment, appliances and property of any and all description used in connection therewith. The County shall in no event be responsible for any direct or indirect damage of injury to the property or persons used or employed by the User on or in connection with the use of the Kitchen or Equipment, or any damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Agreement. The User and its employees, assignees, or subcontractors are independent contractors, and none shall be deemed employees or agents of the County or the County.

I. **Term of Agreement.**

The terms of this Agreement shall commence and be in full force and effect on the date this Agreement is executed by the User and the County and shall terminate on June 30, 2024, or as sooner terminated by either party as permitted under this Agreement (the "Term"). This Agreement does not involve a definite financial obligation on the part of the County and the County shall keep and maintain the Kitchen and Equipment to the County's standards and at the County's sole discretion. The User shall only be permitted to use the Kitchen and Equipment in accordance with this Agreement during the times, under the additional conditions, and for the specific purposes set out in an Approved Application under this Agreement with each such Approved Application incorporated herein by reference. This Agreement, together with all documents referenced herein and all exhibits hereto, and each fully Approved Application hereunder, shall constitute the contractual agreement between the User and the County.

J. **Notices.**

Any written notices required or made under this Agreement shall be effective when delivered in person or sent by United States mail, postage prepaid, or recognized overnight courier, to the following persons and addresses:

User:

Name: _____

State Corporation Commission ID (if applicable): _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

County:

Fluvanna County

Attn: Economic Development Director

132 Main Street

P.O. Box 540

(434) 591-1921

econdev@fluvannacounty.org

Palmyra, Virginia 22963

with a copy to:

Fluvanna County Attorney

414 East Jefferson Street

Charlottesville, VA 22902

K. **Miscellaneous Provisions.**

1. **APPLICABLE LAW AND COURTS:** This Agreement, including without limitation any Application issued under it, and its terms, the parties' obligations under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia, and exclusive jurisdiction and venue of any dispute or matters involving litigation between the parties hereto shall be in the courts of Fluvanna County, Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia, that would cause the application of any laws other than those of the Commonwealth of Virginia, shall not apply. The User shall comply with all Applicable Law in performance of the Agreement. User shall comply with all applicable federal, state, and local laws, rules, regulations, statutes and ordinances, including without limitation, all requirements of the Virginia Department of Health ("Applicable Law") relating to its use of the Kitchen, food handling and this Agreement. User shall at all times maintain proper food handling and safe use of the equipment comprising the Kitchen in compliance with this Agreement, and Applicable Law. User's Person-in-Charge shall be present at all times will User is using the Kitchen during the Term. The Person-in-Charge must have completed an accredited food manager certification program. User shall pay, and be solely responsible for the payment of, all social security, Federal, and State unemployment taxes, and any similar payroll taxes relating to its employees.

2. **PROVISION AND OWNERSHIP OF INFORMATION:** County reserves its rights of ownership to the Kitchen, all Equipment, and all Materials or items of any kind, real or personal, tangible or intangible, (collectively, the "County Property") allowed or permitted to be used from time to time as specifically stated in any Approved Application hereunder by the User under this Agreement and further County reserves its rights of ownership to such County Property.

3. **INSURANCE:** The User agrees that, during the period it makes any use of the Kitchen pursuant to this Agreement, it shall carry (and provide County with evidence of coverage) the following minimum amounts of insurance:

Public Liability	\$1,000,000	
Professional Liability	\$1,000,000	
Excess Liability	\$2,000,000	Aggregate Over Above Policy Limits (Excluding Professional Liability)
Worker's Compensation Amount required by Virginia law		

The User shall provide a copy of a Certificate of Insurance, evidencing such insurance and such endorsements as prescribed herein, and shall have it filed with the County at the time of the signing of this Agreement. On this Certificate of Insurance, the County shall be named or indicated as additional insureds for comprehensive general liability. No change, cancellation or non-renewal shall be made in any insurance coverage without a forty-five (45) day written notice to the County and such shall be noted in the policy. The User shall furnish a new certificate prior to any change or cancellation date. The failure of the User to deliver a new and valid certificate shall result in suspension of all use of the Kitchen until new certificate is furnished. The insurance required by this Agreement shall be in full force and effect throughout the Term. If the User fails to provide the County with acceptable evidence of current insurance within ten (10) days after written notice during the Agreement term, the County shall have the absolute right to terminate the Agreement without any further obligation to the User.

4. **SEVERABILITY:** If any term, covenant or provision this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall remain in effect and be construed without regard to such provision.

5. **TITLES:** The titles and section headings herein are inserted solely for convenience and are not to be construed as a limitation on the scope of the provisions to which they refer.

6. **ATTORNEYS' FEES:** In the event of a dispute between County and User under any Agreement which cannot be amicably resolved, in addition to all other remedies, the party substantially prevailing in any litigation including all appeals shall be entitled to recover its reasonable expenses, including, but not limited to, reasonable attorneys' fees, costs and expert witness fees.

7. **NO WAIVER:** No extension of time, shall operate as a waiver of any provision of any Agreement, nor of any power herein reserved to County, or any right to damages herein provided, nor shall any waiver of any breach of any Agreement be held to be a waiver of any other or subsequent breach. A waiver hereunder shall only be effective if in writing and signed by the County Administrator. Failure of County to require compliance with any term or condition of any Agreement shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.

8. **DEFAULT:** Failure of a User to redeliver the Kitchen, Equipment and any other County Property after use in accordance with this Agreement and any Application hereto including all terms and conditions and/or within the time specified, or failure to clean and restore the Kitchen and Equipment as

required, immediately or as directed by County, or failure of the User to act in accordance with the Agreement in any material respect, as reasonably determined by County, shall constitute a “default” by the User and shall further authority for County to terminate this Agreement and any Application effective immediately upon said default and without any reductions in amounts owed for the use of the Kitchen under any Application or refund of payments or Deposits previously made by User. These remedies shall be in addition to any other remedies which County may have, including but not limited to, any remedies at law, under the Agreement or in equity. The County may, at its sole discretion, terminate or cancel the Agreement effective immediately upon notice to the User for any reason. If the County cancels this Agreement for convenience and not owing to a default by User under this Agreement, then if such cancellation is prior to User’s use of the Kitchen under an Approved Application, and if the County holds any Deposit or prepayment for use of the Kitchen, such Deposit and/or prepayment shall be refunded if the User if such User is otherwise in full compliance with this Agreement.

9. **NON-DISCRIMINATION ASSURANCES:** The User shall conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and § 2.2-4311 of the Virginia Procurement Act: During the performance of any Agreement, the User agrees as follows: (i) the User will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the User; (ii) the User agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (iii) the User, in all solicitations or advertisements for employees placed by or on behalf of the User, will state that such User is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section; and (iv) The User shall include the provisions of (i) above in every subcontract or purchase over \$10,000.00 so that the provisions will be binding upon each subcontractor or Vendor.

10. **MODIFICATION:** This Agreement entered into by County and any User shall not be subject to change, modification, or discharge except by written instrument signed by an authorized agent of the County and User.

11. **INDEMNIFICATION:** User agrees to indemnify, keep and save harmless County, its officers, agents, officials, employees and volunteers against any and all claims, claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, losses, costs and expenses, including but not limited to costs of investigation, all reasonable attorneys' fees (whether or not litigation results), and the cost of any appeal, occurring or arising in connection with the User’s or its employees, representatives, invitees, guests or agents negligence or wrongful acts or omissions in connection with its performance of this Agreement, relating to use of the Kitchen, relating to use of the Equipment, or in any way affecting the Kitchen or Equipment or related to the use thereof. The User shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against County in any such action, the User shall, at his or her own expenses, satisfy and discharge the same. Nothing contained in this Agreement shall be deemed to be a waiver of the County’s sovereign immunity. User’s obligations under this Section specifically extend to any actions, orders, penalties, or enforcement procedures brought by or on behalf of any governmental agency or unit connection with the personal property of User, including equipment and materials, stored or otherwise present at the Kitchen. User’s obligations to indemnify County under the provisions of this Paragraph shall survive the termination of this Agreement.

12. **RELEASE:** To the fullest extent permitted by Applicable Law, User now and forever releases and discharges the County and its attorneys, officers, directors, agents, employees and representatives, and whoever else may be liable, from any and all claims, liabilities, damages, and causes of action of any nature, including, but not limited to, those for personal injury, death, and/or property damage, that in any manner arise from or are relate to User's use of the Kitchen pursuant to the provisions of this Agreement or relating to this Agreement. User hereby releases the County from any damage or injury to person or property caused by or resulting from use of the Kitchen, use of the Equipment, steam, electricity, gas, water, rain, ice or snow, or any leak o or from any damage or injury resulting from any cause whatsoever relating to this Agreement, and for any damage, injury, or inconvenience caused by interruption of any use of the Kitchen or Equipment. The County shall not be liable for any loss or claim due to theft from the Kitchen of commodities, equipment, inventory, or other User-owned items which are all stored at the risk of the User.

13. **DRUG-FREE WORKPLACE:** Pursuant to Virginia Code § 2.2-4312: During the performance of this Agreement, the User agrees to (i) provide a drug-free workplace for the User's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a Statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the User's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all Solicitations or advertisements for employees placed by or on behalf of the User that the User maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section, "*drug-free workplace*" means a site for the performance of work done in connection with the Agreement with User in accordance with Applicable Law, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

14. **TERMINATION:** This Agreement will remain in force for the Term, unless: (i) terminated by County upon written notice to the User at County's convenience in County's sole discretion ("termination for convenience"); or (ii) earlier terminated by County as specifically permitted under any provision of this Agreement. Any Agreement cancellation notice shall not relieve the User of the obligation to redeliver the Kitchen, Equipment and County Property back to the County in relation to any existing Application, nor relieve the User from performing any outstanding obligations related to this Agreement and/or any Approved Applications issued prior to the effective date of the termination; or (ii) Terminated by County for cause, default or negligence on the part of the User, including termination due to damage, destruction or any closure of the Kitchen. There is no advance notice requirement in the event of Termination for Cause and termination is effective immediately upon notice to User of the termination for cause.

15. **APPROPRIATIONS:** Notwithstanding any other provision of any Agreement, any of the County's obligations under this Agreement to maintain the Kitchen and Equipment shall be subject to annual appropriations by the Board of Supervisors of County in each fiscal year of monies sufficient to satisfy the same.

16. **COMPLIANCE WITH IMMIGRATION LAW:** Pursuant to Virginia Code § 2.2-4311.1, in every Contract the following provision applies: the County does not, and shall not during the performance of the Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

17. **CLAIMS PROCEDURE:** The procedure for consideration by County of contractual claims for any Agreement shall be that set forth in Virginia Code § 15.2-1243, *et seq.*

18. **ORDER OF PRECEDENCE:** Where there exists any inconsistency between the provisions of this Agreement and the provisions other documents that have been incorporated into this Agreement by reference or otherwise, the provisions of this Agreement shall control.

19. **PRIOR AGREEMENTS:** This Agreement supersedes any verbal or prior agreements that may be in effect between the User and the County relating to the subject matter hereof.

20. **REMEDIES CUMULATIVE:** All remedies afforded in this Agreement shall be construed as cumulative, that is in addition to every other remedy provided herein or by Applicable Law.

21. **BINDING:** No document other than this Agreement and any Approved Applications executed by both County and User shall bind or obligate County to the User.

User:

County:
Fluvanna County

By:_____

By:_____

Print Name:_____

Print Name:_____

Print Title: _____

Print Title:_____

Date:_____

Date:_____

Approved as to Form:

Fluvanna County Attorney

ATTACHMENT:

Commercial Kitchen Pre/Post Inspection Report