

## KITCHEN RENTAL AGREEMENT

THIS SITE RENTAL AGREEMENT, hereinafter referred to as "Agreement," is made and entered into by and between the SOUTH SANTA CLARA VALLEY MEMORIAL DISTRICT, a California Special District, hereinafter referred to as "District," and the NAME, hereinafter referred to as "Renter."

### RECITALS

1. District is the owner of that certain parcel of real property located at 74 West 6<sup>th</sup> Street, Gilroy, California, on which the Veteran Memorial Hall is located (the "Site").
2. Renter desires to use the kitchen for food prep.

NOW, THEREFORE, as full and complete consideration of the covenants and agreements hereinafter set forth, District and Renter agree as follows:

### AGREEMENT

**A. PREMISES:** District hereby rents to Renter and Renter hereby rents from District the kitchen on the Site (the "Premises").

**B. RENT:** Renter agrees to pay District, as Rent for the Premises, \$30.00hour on the following dates/times: \_\_\_\_\_. A deposit of \$300.00 is payable and due upon execution of this contract.

**C. USE OF PREMISES:**

1. **Permitted Uses.** District hereby grants permission to Renter to use the Premises to prepare food. Such use shall occur on pre-determined dates, availability permitting.

2. **Site Facilities.** Renter shall not make any improvements to the Premises without the prior written consent of the Executive Director of District.

3. **Included with the kitchen:** The kitchen is a shared use facility, equipped with commercial stoves, ovens, sinks, refrigerators, tables, dry and cold storage and other food preparation equipment. The District shall maintain the kitchen in a sanitary and orderly state and ensure that all equipment available to the user operates to all applicable health and safety standards. It is the user's responsibility to furnish all small wares needed for their food process.

4. **Not Included with the kitchen:** The user shall furnish their own food, spices, bowls, utensils, towels, pots and pans necessary for their process unless otherwise agreed. When processing is completed for the day, user must remove their equipment from the kitchen or store it in a designated storage space as agreed upon with the District. All stored items must be properly washed and sanitized. The District will not be held responsible for misplaced items. The user and District agree that the following basic kitchen supplies will be provided as part of the monthly or hourly rate: Mop, mop bucket, broom, dust pan, cleaning and sanitation

chemicals. If you are storing products or ingredients for products in the facility, you must check your stock for current dates. No expired dates are allowed on premises.

5. **Compliance with Governmental Regulations.** Renter shall, at Renter's expense, faithfully observe and comply with all Municipal, State and Federal statutes, rules, regulations, ordinances, requirements, and orders (collectively referred to as "Rules"), now in force or which may hereafter be in force pertaining to the Premises or Renter's use thereof. Renter, at its sole cost and expense, shall obtain any and all permits required. The judgment of any court of competent jurisdiction, or the admission of Renter in any action or proceeding against Renter, whether District be a party thereto or not, that Renter has violated any Rules or failed to obtain any necessary permits shall be conclusive proof of that fact as between District and Renter.

**D. USER PREREQUISITES:** All users of the kitchen must complete and provide the following documentation to the District before use of the kitchen begins: copy of Food Safe Certification, copy of business license and General Liability/Product Liability Insurance. Users are responsible for providing updated copies of these documents whenever they are renewed.

**E. KEY(S):** Renter may be provided with one key to the front door. The Renter shall be responsible for the key and shall not make any copies of the key.

**F. NOTICE:** Any notice, request, demand, instruction or other communication to be given to either party hereunder shall be in writing and shall either be (a) hand- delivered, (b) sent by Federal Express or a comparable overnight mail service, (c) mailed by U.S. registered or certified mail, return receipt requested, postage prepaid, or (d) sent by telephone facsimile transmission provided that an original copy of the transmission shall be mailed by regular mail, to District and Renter at their respective addresses set forth below. Notice shall be deemed to have been given upon receipt or refusal of delivery of said notice. The addresses for the purpose of this section may be changed by giving notice. Unless and until such written notice is received, the last addressee and address stated shall be considered in effect for all purposes hereunder.

District:  
SOUTH SANTA CLARA VALLEY MEMORIAL  
DISTRICT  
74 W. 6<sup>th</sup> Street Gilroy, CA 95020  
Attn: Executive Director Tel: (408) 842-3838

Renter:  
  
Tel:

**G. LIABILITY AND INDEMNITY:**

1. **Of District.** Renter shall indemnify and hold harmless District, and its agents, employees, partners, shareholders, officers, directors, invitees, and independent contractors (collectively "Agents") of District against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) arising from Renter's use of the Premises or from any activity done, permitted or suffered by Renter in or about the Premises. If any action or proceeding is brought against District by reason of any such claim, upon notice from District, Renter shall defend the same at Renter's expense by counsel reasonably satisfactory to District.

**2. Of Renter.** District shall indemnify and hold harmless Renter, and its agents, employees, partners, shareholders, officers, directors, invitees, and independent contractors (collectively "Agents") of Renter against and from any and all claims, liabilities, judgments, costs, demands, causes of action and expenses (including, without limitation, reasonable attorneys' fees) arising from District's use of the Premises or from any activity done, permitted or suffered by District in or about the Premises. If any action or proceeding is brought against Renter by reason of any such claim, upon notice from Renter, District shall defend the same at District's expense by counsel reasonably satisfactory to both Renter and District. The obligations of Renter and District under this Section H. shall survive any termination of this Agreement.

**H. SURRENDER:** Renter agrees that on the last day of the Term, or Extended Term, Renter shall surrender and vacate the Premises in good condition and repair (damage by Acts of God, fire, and normal wear and tear excepted). All property of Renter not so removed in thirty (30) days, unless such non-removal is consented to by District in writing, shall be deemed abandoned by Renter, provided that in such event Renter shall remain liable to District for all reasonable costs incurred in storing and disposing of such abandoned property of Renter. The obligations herein shall survive the termination of the Agreement.

**I. MAINTENANCE OF PREMISES:** After each use, Renter shall clean all areas of the Premises used after each use and return the areas to the condition they were in prior to use. When leaving the Premises, Renter shall ensure that the building is locked and the alarm is set. If anything is broken, damaged or lost during use, Renter shall be responsible for replacing the item broken, damaged or lost. Renter shall not do anything to cause any damage to the Site. In the event damage is caused by Renter or any of its customers, Renter shall promptly repair the damage at its sole cost and expense. Renter shall be responsible for cleaning the Premises on a regular basis and properly disposing of any trash associated with each use of the Premises. If the user fails to leave the facility in the proper condition, user will default the \$300.00 cleaning deposit. A new deposit must be given before subsequent access to the kitchen is allowed. Upon a second such failure, this agreement will be terminated.

**I. TERMINATION:** Either party has the right to terminate this Agreement at any time upon providing the other party thirty (30) days' written notice for any reason or no reason. Should either party terminate pursuant to this provision, the termination shall be subject to the surrender provisions set out above, as if it were the last day of the Term.

**J. RENTER'S DEFAULT:** The occurrence of any one of the following events shall constitute an event of Default on the part of Renter ("Default"):

1. The complete abandonment of the Premises by Renter;
2. Failure to pay two (2) continuous installments of Rent or any other monies due and payable hereunder, said failure continuing for a period of ten (10) days after written notice thereof from District to Renter;
3. A general assignment by Renter for the benefit of creditors, without the prior written approval of District, which approval shall not be unreasonably withheld;
4. The filing of a voluntary petition in bankruptcy by Renter, the filing of a voluntary petition

for an arrangement, the filing of a petition, voluntary or involuntary, for reorganization, or the filing of an involuntary petition by Renter's creditors, said involuntary petition remaining undischarged for a period of sixty (60) days; notwithstanding the foregoing, this paragraph shall not apply if Renter continues to make timely rental payments to District;

5. Failure in the performance of any of Renter's covenants, agreements or obligations hereunder which failure continues for ten (10) days after written notice thereof from District to Renter, provided that, if Renter has exercised reasonable diligence to cure such failure and such failure cannot be cured within such ten (10) business day period despite reasonable diligence, Renter shall not be in Default under this subsection unless Renter fails thereafter diligently and continuously to cure such failures; or

6. Chronic delinquency by Renter in the payment of Rent, or any other periodic payments required to be paid by Renter under this Agreement. "Chronic Delinquency" shall mean failure by Renter to pay Rent, or any other payments required to be paid by Renter under this Agreement within ten (10) days after written notice thereof for any three (3) months (consecutive or nonconsecutive) during any twelve (12) month period. In the event of a Chronic Delinquency, in addition to District's other remedies for Default provided in this Agreement, at District's option, District shall have the right to require that Rent be paid by Renter quarterly, in advance.

Renter agrees that any notice given by District pursuant to the above shall satisfy the requirements for notice under California Code of Civil Procedure section 1161, and District shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

**K. DISTRICT'S REMEDIES:**

1. **Termination for Breach.** In the event of any Default by Renter, then in addition to any other remedies available to District at law or in equity and under this Agreement, District shall have the immediate option to terminate this Agreement and all rights of Renter hereunder by giving written notice of such intention to terminate. In the event that District shall elect to so terminate this Agreement then District may recover from Renter:

a. the worth at the time of award of any unpaid Rent and any other sums due and payable which have been earned at the time of such termination; and

b. such reasonable attorneys' fees incurred by District as a result of a Default, and costs in the event suit is filed by District to enforce such remedy; and

2. **Re-entry.** In the event of any Default by Renter, District shall also have the right, and if District terminates this Agreement in compliance with applicable law, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Renter.

3. **Re-letting.** In the event of the abandonment of the Premises by Renter or in the event that District shall elect to re-enter as provided above or shall take possession of the Premises pursuant to legal proceedings or pursuant to any notice provided by law, District may re-let the Premises.

4. **Cumulative Remedies.** The remedies herein provided are not exclusive and District shall have any and all other remedies provided herein or by law or in equity.

5. **No Surrender.** No act or conduct of District shall be deemed to be or constitute an acceptance of the surrender of the Premises by Renter prior to the expiration of the Term, or as specifically provided for above, and such acceptance by District of surrender by Renter shall only flow from and must be evidenced by a written acknowledgment of acceptance of surrender signed by District.

L. **DISTRICT'S DEFAULT:** District shall not be considered to be in Default under this Agreement unless: (a) District is given notice specifying the Default, and (b) District has failed for thirty (30) days to cure the Default, if it is curable, or to institute and diligently pursue reasonable corrective acts for Defaults that cannot be reasonably cured within thirty (30) days.

M. **LIABILITY INSURANCE:** During the term of this Agreement, Renter shall, at Renter's expense, obtain and keep in force a policy of Commercial General Liability policy covering the Property in an amount of not less than \$1,000,000 per occurrence. The policy shall name District as additional insured on the Commercial General Liability Policy; (ii) shall be primary insurance; (iii) shall be carried with companies licensed to do business in California and which have a general policy holders' rating of at least "A-" and a Financial rating of at least "VIII" as set forth in the most current issue of Best's Insurance Guide; (iv) shall provide that such policy shall not be subject to cancellation, lapse or change except after at least thirty (30) days (or 10 days in the event of a failure to pay premiums) prior written notice to District so long as such provision of thirty (30) days' notice is reasonably obtainable, but in any event not less than ten (10) days prior written notice; (v) shall contain a cross liability endorsement; (vi) shall contain a severability' clause and (vii) shall be written on an "occurrence" basis.

N. **ASSIGNMENT BY RENTER:** Renter shall not voluntarily or by operation of law assign all or any part of Renter's interest in the Agreement or in the Premises, without District's prior written consent, which consent may be withheld in the sole and absolute discretion of District or conditioned.

O. **ATTORNEY'S FEES:** In the event any legal action or proceeding, including arbitration and declaratory relief, is commenced for the purpose of enforcing any rights or remedies pursuant to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, as well as costs of suit, in said action or proceeding, whether or not such action is prosecuted to judgment.

P. **WAIVER:** The waiver of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent by District shall not be deemed to be a waiver of any preceding breach by Renter, other than the failure of Renter to pay the particular rental so accepted, regardless of District's knowledge of such preceding breach at the time of acceptance of such Rent. No

delay or omission in the exercise of any right or remedy of District on any Default by Renter or in the exercise of any right or remedy of Renter shall impair such a right or remedy or be construed as a waiver. Any waiver by District of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provisions of this Agreement.

Q. **SUBORDINATION:** District shall have the right to cause this Agreement to be and remain subject and subordinate to any and all mortgages and deeds of trust, if any ("Encumbrances") that are now or may hereafter be executed covering the Premises, or any renewals, modifications, consolidations, replacements or extensions thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, together with interest thereon and subject to all the terms and provisions thereof; provided only, that upon the foreclosure of any such mortgage or deed of trust, so long as Renter is not in Default, the holder thereof ("Holder") shall agree in writing to

recognize Renter's rights under this Agreement as long as Renter shall pay the Rent and observe and perform all the provisions of this Agreement to be observed and performed by Renter. Within twenty (20) days after District's written request, Renter shall execute, acknowledge and deliver any and all reasonable documents required by District or the Holder to effectuate such subordination. If Renter fails to do so, such failure shall constitute a Default by Renter under this Agreement. Pursuant to the terms of this paragraph, Renter hereby agrees to attorn to any person or entity purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under such Encumbrance.

**R. CONSTRUCTION:** This Agreement shall be construed and interpreted in accordance with the laws of the State of California. If any provision of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

**S. MISCELLANEOUS:** This Agreement and any attached exhibits and addenda, as signed by the parties hereto, constitute the entire agreement between District and Renter; no prior written promises, nor prior, contemporaneous, or subsequent oral promises or representations, shall be binding. This Agreement shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit or amplify the provisions of this instrument. The provisions of this instrument shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said District and Renter.

IN WITNESS WHEREOF, District and Renter have executed this Agreement as of \_\_\_\_\_.

**DISTRICT:**

**RENTER:**

**South Santa Clara Valley Memorial District**

By: \_\_\_\_\_  
Ellen Herrera, Executive Director

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