

**RIGHT OF ACCESS AND USE LICENSE AGREEMENT BETWEEN
FULTON COUNTY, GEORGIA AND THE CENTER HELPING OBESITY IN
CHILDREN END SUCCESSFULLY, INC.**

THIS RIGHT OF ACCESS AND USE LICENSE AGREEMENT (“Agreement”) is made and entered into by and between Fulton County, a political subdivision of the State of Georgia (“Fulton County,” the “County,” or “Licensor”), and The Center Helping Obesity in Children End Successfully, Inc., a non-profit corporation organized under the laws of the State of Georgia (“CHOICES” or “Licensee”) (collectively referred to as, the “Parties”).

WITNESSETH:

WHEREAS, CHOICES is located at 1275 Shiloh Road, Suite 2660, Kennesaw, Georgia 30144; and

WHEREAS, CHOICES is a non-profit organization focused on nutrition education by way of healthier cooking and training the trainer classes/seminars; and

WHEREAS, in furtherance of this purpose, CHOICES prepares, cooks, packages and distributes food for economically disadvantaged families within the community; and

WHEREAS, Fulton County owns the Oak Hill Child, Adolescent, and Family Center located at 2805 METROPOLITAN PARKWAY, SW, ATLANTA, GEORGIA (hereinafter, “Premises”); and

WHEREAS, CHOICES desires to utilize certain portions of the Premises, as identified in the attached Exhibit A (the “License Area”), periodically each month to store, prepare, cook, package, and distribute food to serve economically disadvantaged families in Fulton County; and

WHEREAS, pursuant to O.C.G.A § 36-1-19.1, Fulton County is authorized to make contributions to any corporation, association, institution, or individual for purely charitable

purposes, provided that the activities funded by any such contribution must take place within Fulton County, with “purely charitable purposes” meaning charitable, benevolent, or philanthropic purposes for health, education, social welfare, arts and humanities, or environmental organizations; and

WHEREAS, the Parties deems it to be in the best interest of both Parties to enter into this Agreement to allow CHOICES to store, prepare, cook, package, and distribute food to serve economically disadvantaged families in Fulton County.

NOW THEREFORE, in consideration of the mutual benefits to inure to both Parties, it is hereby agreed as follows:

1.

GRANT AND TERM OF LICENSE

Fulton County hereby grants CHOICES the right of access and non-exclusive use license to the Premises for a period of two (2) weeks per month (the second and fourth week of each month) beginning upon execution by the Parties of this Agreement and ending on December 31, 2023. Subject to the termination provisions of Section 4 below, this Agreement will automatically renew for five (5) one-year renewal terms (each a “Renewal Term”), with each Renewal Term beginning on the 1st day of January 2024, 2025, 2026, 2027 and 2028 respectively, and ending on December 31st of each year in which it is renewed. Notwithstanding any other provision in this Agreement, the County in its sole discretion can terminate the automatic renewal of the Agreement by providing written Notice of Non-Renewal to Licensee. Upon delivery of the County’s Notice of Non-Renewal, the Agreement will end absolutely on December 31st of the year in which the Notice of Non-Renewal is delivered to Licensee.

RIGHT OF ACCESS AND USE OF THE LICENSE

Licensee, along with any of its agents, has the non-exclusive right to use the area detailed in Exhibit A as the License Area, which generally includes the parking lot, kitchen, and ground floor B side of the premises, in accordance with the terms and conditions of this Agreement for the purpose of receiving, storing, preparing, cooking, packaging, and distributing food to serve economically disadvantaged families in Fulton County. Licensee's use of the License Area shall be limited to the second and fourth week of each month. Licensee shall comply with all applicable state, local, and federal laws, regulations, policies and procedures in its use of the Premises. Under no circumstances shall Licensee knowingly permit illegal activities to occur in conjunction with the use of the facilities subject this Agreement.

Licensee shall only conduct its activities within the License Area and shall not encroach onto other parts of the Premises. Licensee shall cooperate with Licensor and other parties utilizing the Premises. If any dispute arises between Licensee and another party utilizing the Premises, Licensee shall notify Licensor of such dispute. Licensee shall cooperate with Licensor in resolving the dispute. In the event that any such dispute cannot be resolved, the County Manager (or person designated by the County Manager), shall be the final decision maker.

At any time, at Licensor's sole discretion, Licensor may change, adjust, relocate, or modify the License Area. Licensee hereby acknowledges that planned construction and/or development at the Premises may disrupt or interrupt Licensee's access and use of the Premises, and Licensee hereby waives any complaint or grievance it may have about such disruption or interruption.

3.

MAINTENANCE

Licensors shall perform routine maintenance to the facility as the need arises, which shall include but not be limited to janitorial services or any other maintenance services as may be required for the intended operational use. Janitorial services do not include the disposal of waste, trash, or debris generated by Licensee's activities on the Premises and Licensee shall be solely responsible for the disposal of waste, trash, or debris generated by Licensee's activities on the Premises. At Licensee's sole cost and expense, Licensee may bring or cause to be brought onto the Premises a dumpster to dispose of the waste, trash, or debris generated by its activities on the Premises. Said dumpster may be brought to the Premises on the week Licensee has access to the License Area and shall be removed from the Premises no later than the Monday of the week following Licensee's access of the License Area. The location of the placement of the dumpster on the Premises shall be approved, in writing, by Licensors in its sole and absolute discretion.

4.

DEFAULT; CURE; TERMINATION OF AGREEMENT

In addition to the County's right to terminate the automatic renewal of the Agreement as provided in Section 1, if either Party violates any of its obligations under this Agreement, the non-violating Party will provide a written request for correction to the violating party within ten (10) days after its receipt of the request for correction. If the violating Party has not substantially corrected the noted breach, the non-violating Party, at its option, may terminate this Agreement immediately, and Licensee shall remove all property located inside the subject Premises within thirty (30) days of receiving or providing such written notice of termination of the Agreement.

Either Party may terminate or suspend the Agreement for convenience or any other reason with fifteen (15) days written notice to the other Party. Licensee shall remove all of its property located within the subject Premise within ten (10) days of receiving or providing such written notice of termination of this Agreement. Upon termination of this Agreement for any reason, Licensee and its agents shall have the right to remove any and all movable property and equipment which they have furnished or installed on the Premises, provided that Licensee shall repair any and all damages to the Premises caused by such installation or removal.

5.

SUSPENSION

The County may, by written notice to Licensee, suspend the access provided by this Agreement as needed. Upon receipt of a suspension notice, the Licensee must immediately vacate the Premises and remove any of its property which may be in the Premises. Only upon receipt of a notice that the suspension has been lifted may Licensee re-enter the Premises in accordance with this Agreement.

6.

INSURANCE

Licensee agrees to obtain and maintain during the entire term of this License Agreement all of the insurance required as specified in Exhibit B with the County as an additional insured and shall furnish the County with a Certificate of Insurance (“COI”) showing the required coverage.

7.

LIABILITY AND INDEMNIFICATION

Licensee, as the requestor of said License, further agrees that, as per this License Agreement, Licensee shall be responsible for all costs and damages stemming from all claims,

actions, damages, liability and expense, and shall indemnify and hold harmless Fulton County from all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and costs, in connection with personal injury or property damage arising out of the acts or omissions of Licensee, its employees, agents or contractors upon the Premises or any property surrounding the Premises in conducting the permitted activities.

Should Licensee retain a contractor or subcontractor to perform such activities, Licensee shall require that said contractor or subcontractor: (1) indemnify and hold harmless Fulton County from all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and costs, in connection with personal injury or property damage arising out of the acts or omissions of the contractor or subcontractor, its employees, agents or contractors upon the Premises or any property surrounding the Premises in conducting the permitted activities and (2) list the County as an additional insured on its automobile liability and general and excess liability coverages for their respective activities on the Premises or any property surrounding the Premises.

Notwithstanding the foregoing, nothing herein shall be construed as a waiver of Fulton County's sovereign immunity and the immunities available Fulton County officials, officers, employees and agents.

8.

NOTICES

All notices, requests, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by (i) certified U.S. mail, return receipt requested, (ii) a nationally recognized overnight delivery service, or (iii) by hand delivery with signature of recipient required by reputable courier, to each Party at the addresses set forth below. The day upon which such notice is hand delivered or mailed shall be deemed the date of service of such notice.

To Fulton County: Fulton County Manager
141 Pryor Street, SW, Suite 10061
Atlanta, Georgia 30303

With copies to: Office of the County Attorney
141 Pryor Street, SW, Suite 4038
Atlanta, Georgia 30303
Attention: County Attorney

Department of Real Estate and Asset Management
141 Pryor Street, SW
Atlanta Georgia, 30303
Attention: Director

To: CHOICES: The Center Helping Obesity in
Children End Successfully, Inc.
1275 Shiloh Rd. NW, Suite 2660
Kennesaw, Georgia, 30144
Attention: Chief Executive Officer

9.

MISCELLANEOUS

9.1 The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.

9.2 No failure of either Party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other Party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either Party's right to demand exact and strict compliance by the other Party hereto with the terms and conditions of this Agreement.

9.3 This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of the state of Georgia.

9.4 Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the Parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one Party by reason of the rule of construction than an instrument is to be construed more strictly against the Party who prepared the same.

9.5 This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Electronic, photocopy and facsimile copies of signatures may be used in place and stead of original signatures with the same force and effect as originals.

9.6 Licensee hereby acknowledges that it has not been induced by any representation, statements, or warranties by Licensor including, but not limited to, representations or warranties with respect to title to the Premises or the condition or suitability thereof for Licensee's purpose.

9.7 Licensee shall not place or store, nor permit to be placed or stored, any Hazardous Substances (as defined in 42 U.S.C. § 9601, *et seq.*), petroleum products or other pollutants, toxic substances or environmental hazards within, on or around Premises.

9.8 This Agreement supersedes all prior negotiations, discussions, statements and constitutes the full, complete and entire agreement between the Parties with respect to the Premises for Licensee's use thereof. No member, officer, employee, representative or agent of Licensor or Licensee has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either Party hereto unless

such modification or amendment shall be properly authorized, in writing, properly signed by both Licensor and Licensee and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, the Parties have set their hands and affixed their seals this the ____ day of April, 2023.

LICENSOR:

FULTON COUNTY, GEORGIA

Robert L. Pitts, Chairman
Fulton County Board of Commissioners

ATTEST:

Tonya R. Grier
Clerk to the Commission

APPROVED AS TO FORM:

Y. Soo Jo, County Attorney

LICENSEE:

**THE CENTER HELPING OBESITY IN
CHILDREN END SUCCESSFULLY, INC.**

By: _____
Its: _____

EXHIBIT A

License Area

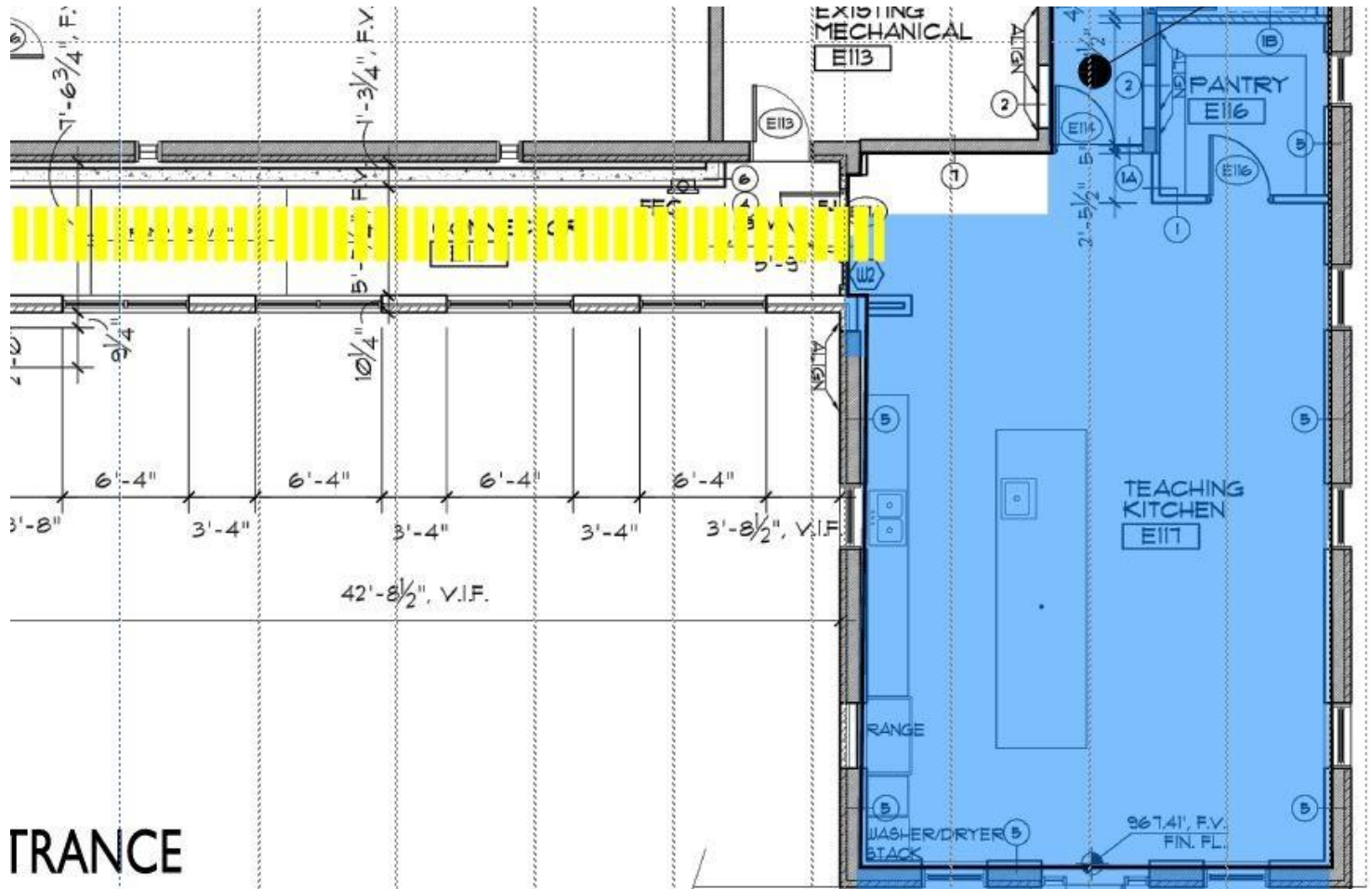


EXHIBIT B

Insurance

The following are the minimum insurance coverages and limits that Licensee must maintain. If Licensee maintains broader coverages and/or higher limits than the minimum shown below, Fulton County requires and shall be entitled to coverage for the higher limits maintained by Licensee.

It is Fulton County's practice to obtain Certificates of Insurance from our Licensees. Insurance must be written by a licensed agent in a company licensed to write insurance in the State of Georgia, with an A.M. Best rating of at least A-, subject to final approval by Fulton County. Respondents shall submit to Fulton County a Certificate of Insurance complying with the Insurance and Risk Management Provisions outlined below.

Proof of insurance **must** be provided to Fulton County prior to the start of access to the Premises as described in License Agreement. Any and all insurance coverage(s) required under the terms and conditions of the License Agreement shall be maintained during the entire term of the Agreement.

Accordingly, the Licensee shall provide a certificate evidencing the following:

1. WORKERS COMPENSATION/EMPLOYER'S LIABILITY INSURANCE – STATUTORY (In compliance with the Georgia Workers Compensation Acts and any other State or Federal Acts or Provisions in which jurisdiction may be granted)

Employer's Liability Insurance	BY ACCIDENT	EACH ACCIDENT	\$500,000
Employer's Liability Insurance	BY DISEASE	POLICY LIMIT	\$500,000
Employer's Liability Insurance	BY DISEASE	EACH EMPLOYEE	\$500,000

2. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)

Bodily Injury and Property Damage Liability (Other than Products/Completed Operations)	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
Products\Completed Operation	Aggregate Limit	\$2,000,000
Personal and Advertising Injury	Limits	\$1,000,000
Damage to Rented Premises	Limits	\$100,000

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Bodily Injury & Property Damage (Including operation of non-owned, owned, and hired automobiles)	Each Occurrence	\$1,000,000
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4. UMBRELLA LIABILITY Each Occurrence \$1,000,000
(In excess of above noted coverages)

Certificates of Insurance

Licensee shall provide written notice to Fulton County immediately if it becomes aware of or receives notice from any insurance company that coverage afforded under such policy or policies shall expire, be cancelled or altered. Certificates of Insurance are to list Fulton County, its officials, officers and employees as an Additional Insured (except for Workers' Compensation and Professional Liability), using ISO Additional Insured Endorsement form CG 20 10 (11/85) version, its equivalent or on a blanket basis.

This insurance shall apply as primary insurance before any other insurance or self-insurance, including any deductible, non-contributory, and waiver of subrogation provided in favor of Fulton County.

If Fulton County shall so request, the Licensee will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices **must** identify the "Certificate Holder" as follows:

Fulton County Government – Purchasing and Contract Compliance Department
130 Peachtree Street, S.W.
Suite 1168
Atlanta, Georgia 30303-3459