

## INCUBATOR KITCHEN LEASE / OPERATING AGREEMENT

THIS AGREEMENT, is made and entered into by and between the Denver Enterprise Center, hereinafter "DEC" and \_\_\_\_\_, Hereinafter, "Tenant Company." (Name of Company)

### TERM OF AGREEMENT

This agreement shall commence at 12:01 AM on \_\_\_\_\_, 1999 and terminate at 12:01 AM on \_\_\_\_\_, 1999

### 1. SERVICES TO BE PROVIDED

The DEC agrees to provide Tenant Company access to and use of the kitchen facilities at the DEC. Facilities and services provided shall include, but not be limited to, use of stoves, sinks, refrigerators, freezers, counters, individual storage areas, and other such services described in the Kitchen Rate Sheet, attached and marked as Attachment #1, and incorporated herein by reference. DEC will not provide all of the equipment that may be necessary for production. Users must provide their own stirring spoons, measuring cups, mixing bowls, cooking trays, etc., and any specialized equipment required.

### 2. OPERATING SCHEDULE

Kitchen availability is scheduled by the DEC Kitchen Incubator Kitchen Manager. No later than the 25<sup>th</sup> of each month Tenant Company will submit a proposed schedule of kitchen use for the following month.

### 3. PRICING SCHEDULE

The Tenant Company will be charged in accordance with the Kitchen Rate Sheet in Attachment #1.

#### Start-Up Fees:

In addition to the monthly statement, tenants will be charged as follows:

(a) One-time application processing fee	\$200.00
(b) One-time orientation/training fee	\$ 10.00
(c) Yearly security/alarm fee	\$ 50.00
(d) Deposit (Refundable)	<u>\$200.00</u>
Total:	\$460.00

#### 4. RENT

Rent shall be due and payable in advance on the first day of each calendar month. Use will not be permitted unless rent has been paid in advance. A late payment of \$50.00 will be charged if rent is not received by the 5<sup>th</sup> of the month. **Tenant agrees to rent a minimum of 10 hours per month during the first six months of this agreement and 20 hours per month thereafter.** Tenant Company will be charged for the minimum allowed hours even if Tenant Company uses the kitchen less.

#### 5. PERSONAL GUARANTOR

Unconditionally and irrevocably guarantees to DEC the payment when due of all amounts due under this agreement, and further unconditionally and irrevocably guarantees DEC the timely performance of all obligations of Tenant Company under this agreement. Guarantor understands and agrees that its liability hereunder shall not be affected in any way by amendment, settlement, or other agreement between Tenant Company and DEC. Guarantor waives any defense by reason of statute of limitations, bankruptcy, or other disability of Tenant Company and agrees that DEC may proceed against Guarantor without first proceeding against Tenant Company or exhausting any security now or hereafter held by DEC. Guarantor waives all presentments, demands for payment or performance, notices of default, protest, acceptance of this guaranty and all other notices to which Guarantor might otherwise be entitled, and agrees to pay on demand all costs and expenses, including reasonable attorney's fees, that may be incurred by DEC in enforcing this guaranty.

#### 6. DEPOSIT

Upon execution of this agreement, Tenant Company shall deposit \$200.00 as a security deposit with DEC, the amount specified in the Kitchen Rate Sheet. The security deposit shall be retained by DEC and may be applied by DEC, to the extent necessary, to pay and recover any loss, cost, damage or expense, including attorney's fees sustained by DEC by reason of the failure of Tenant Company to comply with any provision, covenant or agreement of Tenant Company contained in this agreement. To the extent not necessary to cover such loss, cost, damage or expense, the security deposit shall be returned to Tenant Company within **60days** after expiration if this agreement or as may be otherwise provided by law. The security deposit shall not be considered as an advance payment of rent or as a measure of the loss, cost, damage or expense which is or may be sustained by DEC. In the event all or any portion of the security deposit is applied by DEC to pay any such loss, cost, damage or expense, Tenant Company shall, promptly upon demand, deposit with DEC such amounts as may be necessary to replenish the security deposit to its original amount.

#### 7. SECURITY

The DEC Kitchen Incubator is equipped with individual storage areas. The DEC assumes no responsibility for the security of any equipment or supplies the Tenant Company any bring into the facility for its use. Tenant Companies may affix their own lock(s) on the storage compartments-which may be assigned to them upon execution of this agreement. Any additional security of storage arrangements shall be the Tenant Company's sole responsibility.

8. IMPROVEMENTS AND GENERAL ADMINISTRATION

DEC reserves the right to make improvements at any time to the Kitchen Incubator facility that may include, but not be limited to, making changes in rules of operation, accessibility, Tenant Company identification and security procedures, and support services.

9. EXCUSABLE DELAYS

DEC shall not be liable by reason of any failure of performance of this agreement in accordance with its terms, if such failure arises out of causes beyond DEC's control or discretion and/or without fault or negligence of DEC.

10. SURRENDER OF PREMISES

Tenant Company shall promptly surrender to DEC possession of Kitchen Incubator premises at the termination of this lease. In the event that DEC is required to bring any action for the enforcement of any if the terms of this agreement, and is successful in such action, Tenant Company, in addition to all other payments required herein, shall pay all costs and reasonable attorney's fees for any actions brought by DEC.

11. LIABILITY OF TENANT COMPANY

DEC shall not be liable for any damages to either person or property sustained by Tenant Company or its personnel or by any third party arising in any way from:

- (a) The Tenant Company's use, operation or occupancy of the Kitchen Incubator Premises or any portion thereof; or
- (b) The sale, distributions or use of any product that is produced at the Kitchen Incubator.

Tenant Company covenants and agrees to indemnify, defend and hold harmless the DEC and its employees from any and all claims, costs and liabilities arising from, or in connection with damages or injuries to persons (including death) or property arising in any way from:

- (a) The Tenant Company's use, operation or occupancy of the DEC Kitchen

- Incubator premises, any portions thereof; or
- (b) The sale, distribution or use of any product manufactured by the Tenant Company on the DEC Kitchen Incubator premises.

12. EMPLOYEES

Tenant Company shall be solely responsible for its employee's safety and the actions of employees.

13. LICENSES / SALES TAX LICENSE / PROFESSIONAL / BUSINESS LICENSE

Tenant Company will maintain at all times a current excise license.

- (a) "Business Professional License" – issued by the City and County of Denver.
- (b) Sales Tax License (current)

14. PUBLIC AND PRODUCT LIABILITY INSURANCE

Tenant Company will maintain at all times a minimum of \$500,000 of both product liability insurance and general liability insurance – with DEC listed as an additional named insurance in each case. Proof of such insurance must be provided to the Kitchen Manager before any use of the facility will be permitted. DEC may at any time require Tenant Company to show proof of the required insurance:

- (a) Professional License
- (b) Sales Tax License

15. UNLAWFUL USE

Tenant Company shall not use or permit Kitchen Incubator premises or any parts thereof to be used by any person in violation of any municipal, county, state or federal ordinance or law, or in any manner disruptive to DEC or its tenants. Such behavior shall include, but not be limited to , theft, fighting or consumption of alcohol on the premises.

16. ACCESS

Tenant Company will access the facility through the main entrance of the Denver Enterprise Center. Tenant Company agrees to "punch in" and "punch out" before and after each use of the premises and agrees that failure to do so may result in termination of the lease. If Tenant Company is the last tenant to leave the premises, Tenant Company agrees to do a "closing walk through", turning off all equipment, appliances and lighting, and also agrees to secure the DEC kitchen alarm.

17. INSPECTION

The DEC and its agent shall have the right to inspect Kitchen Incubator premises at any time and reserves the right to enter whenever the DEC, in its sole discretion, determines such inspections to be necessary.

18. HEALTH DEPARTMENT INSPECTIONS

Tenant Company shall submit to Health Department inspections as often as the City and County Health Inspector shall require. Tenant Company agrees to cooperate with the Health Department. All personnel are required to have a current Food Handler's Card.

19. FOOD EQUIPMEN SAFETY AND SANITATION

All Tenant Company personnel will be required to complete the Kitchen Incubator's course on food and equipment safety and sanitation at a charge of \$10.00 before using the facility. Tenant Company is responsible for maintaining proper food handling procedures, cleanliness and safety of workstations and food storage areas (dry or cold) on a daily basis.

20. PROCEDURES, POLICIES & REGULATIONS (Attach and reference copy of facility policy)

Tenant Company agrees to comply with all posted or distributed procedures, policies or regulations of DEC.

21. PRODUCTS

Only those items that will be used for human consumption will be deemed appropriate for manufacturing at the DEC Kitchen Incubator.

22. SIGNS AND ADVERTISING

No signs or other advertising will be attached or displayed on Kitchen or Business Incubator premises without prior approval of DEC management.

23. DEFAULT

As time is of the essence, a Tenant Company will have three (3) days after receipt of a written notice from the Kitchen Manager to remedy any violation, breach or failure to keep or perform any conditions of the Kitchen Incubator policy or this agreement. If Tenant Company fails to correct or cure the problem within three days, the DEC may terminate the rights of the Tenant Company under this agreement. In addition, the Kitchen Manager may remove the Tenant Company's property (including Tenant Company storage unit contents) from the facility and charge a reasonable fee for storage.

Notwithstanding the foregoing, if the violation, breach or failure to keep or perform any conditions of the Kitchen Incubator policy or this agreement constitutes a health or safety hazard in the opinion of the Kitchen Manager, the Tenant Company must act immediately to correct the problem upon receipt of notice thereof, which notice may be oral or written. If Tenant Company fails to commence immediate corrective action, DEC may take such action itself and Tenant Company shall reimburse DEC for all costs of such action. DEC may also terminate the rights of the Tenant Company under this agreement. The remedies set forth herein for default shall be in addition to other remedies available to DEC.

#### 24. FINANCIAL REPORTS

Tenant Company shall provide DEC with quarterly financial statements, including a balance sheet, and profit/loss statement. Financial statements will be due no later than 20 days following the close of each calendar quarter. Employment Statistical Information (**Addendum E**), will be provided annually.

#### 25. TENANT MEETINGS

Tenant Company shall be required to attend tenant meetings with DEC on a monthly basis, or when otherwise requested by DEC.

#### 26. GENERAL

- (a) The laws of the State of Colorado shall govern this agreement. Venue shall be The City and County of Denver.
- (b) DEC makes no representations, warranties or guarantees, express or implied, including, without limitation, any warranties for the merchantability of the fitness for the intended use of the Kitchen Incubator facilities, other than those contained in this agreement.
- (c) Tenant Company acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms. Further Tenant Company agrees that this agreement constitutes the entire agreement between the parties and supersedes all proposals, oral and written, and all negotiations, conversations or discussions had between the Tenant Company and DEC related to the subject matter of this agreement.
- (d) Tenant Company further acknowledges that it has inspected the premises and accepts them "as is" for purposes of the Tenant Company's use during the term of its lease.

#### 27. ASSIGNMENT

Tenant Company shall not transfer usage privileges or sublet the whole or any part of the Kitchen Incubator premises.

QUIET ENJOYMENT

The DEC Kitchen Incubator is a unique facility meant to be used and enjoyed by its users. The Tenant Company agrees to respect the rights and property of other users.

AMENDMENTS

This agreement may be amended by mutual consent so long as the amendment is in writing.

NOTICES AND COMMUNICATIONS

All written notices or official written communications which may be required under this agreement shall be delivered personally or sent by regular mail, postage prepaid, addressed as follows unless additional mailing requirements are required by this agreement.

Written notices and communications from DEC to the Tenant Company should be mailed or delivered to:

Written notices and communications from Tenant Company to Dec should be mailed or delivered to:

Kitchen Center Manager  
Denver Enterprise Center  
3003 Arapahoe Street  
Denver, CO 80205

Notices delivered personally shall be effective when delivered. Notices sent by mail shall be effective when delivered or three days after mailing, whichever is earlier.

Landlord:

Tenant Company:

Denver Enterprise Center, Inc .  
A Colorado Corporation

\_\_\_\_\_  
(Name of Corporation)

By: \_\_\_\_\_  
Kitchen Center Manager

By: \_\_\_\_\_  
Signature of Representative

Name: \_\_\_\_\_  
Print Name of Representative

Date: \_\_\_\_\_, 19 \_\_\_\_

Date: \_\_\_\_\_ 19, \_\_\_\_

\_\_\_\_\_  
Signature of Guarantor

Date: \_\_\_\_\_ 19, \_\_\_\_