



Monticello Community Center Kitchen Facilities Use Agreement

(Commercial Venture Usage)

The parties to this Facilities Use Agreement (the "Agreement") are the City of Monticello Community Center Kitchen and _____ ("User").

I. Recitals

1. The Monticello Community Center Kitchen was created to provide a commercial kitchen space for community functions. The goal of this program is to encourage the development of small businesses involved with the preparation and/or processing of food. The Monticello Community Center makes available to such small businesses the shared use of a high-quality commercial kitchen facility located at 505 Walnut Suite 1, Monticello, Minnesota. (the "Facilities").
2. User is a small business involved with the preparation and processing of food. The Monticello Community Center wishes to grant to User, and User wishes to obtain from the Monticello Community Center, the right to use the Facilities on a shared basis for the purpose of assisting User with the User's preparation or processing of food in connection with its business, all subject to the terms and conditions of this Agreement set forth below.

II. Terms of the Agreement

1. Right to Use Facilities. The Monticello Community Center hereby grants to User, and User hereby accepts from the Monticello Community Center the right to use the Facilities, including, but not limited to, stove, sinks, refrigerators, freezers, counters, individual storage areas and units and such other facilities, equipment and services as might be provided by the Monticello Community Center on a shared use basis with other client businesses of the Monticello Community Center ("Other Users"), all subject to the terms and conditions set forth in this Agreement. All use by the User of the Facilities shall in all ways conform to those terms and conditions. Each User will have up to a 36-month period at the Community Center upon approval of their application. Throughout the duration of the 36-month program, Community Center staff will conduct a review every 6 months with the User which will allow both parties an opportunity to address concerns or issues that have arisen. The program generally has space for 1-3 small businesses at a time depending upon how intensive each business' use of the kitchen is and other kitchen needs.
2. Interference with Use by Others. User and the Associated Personnel shall follow all provisions of the Statement relating to cooperation, courtesy, and lack of disruption in the use of the Facilities. User and the Associated Personnel shall not make use of the Facilities that, in the Monticello Community Center's sole discretion, disrupts the orderly operation of the Facilities by the Monticello Community Center and/or use of the Facilities by Other Users who are authorized to do so. Behavior deemed disruptive by the Monticello Community Center, may, without limitation, include: arguing, discourteous behavior; fighting or menacing; theft; conversion; or unauthorized use of another's property; the repeated use of profanities;

consumption of illegal drugs or alcohol; use of the Facilities under the influence of illegal drugs or alcohol; any behavior in violation of one or more of the provisions of the Statement; or any other behavior that might be disruptive of the orderly operation of the Facilities by Monticello Community Center or by or its client small businesses. User and the Associated Personnel shall diligently report to the Monticello Community Center any violations of the Statement and/or disruptive behavior by the Other Users, or any of them. Violation by User of any of the provisions of this Paragraph 2, above, shall be a default under the provisions of Paragraph 15 of this Agreement.

3. Inspections and Removal of Items. User hereby grants to the Monticello Community Center, its authorized agents, and to all agencies of local, State or Federal government with jurisdiction over the Monticello Community Center and its operations, the right, at any time and without notice to User except as might be required by applicable law, to inspect all of the property belonging to User and/or the Associated Personnel present or stored at the Facilities, including any equipment, utensils, products and supplies. The right to inspect described above shall extend to any private or semi-private storage area or unit, whether or not independently secured by User and/or the Associated Personnel, the use of which has been granted to User by the Monticello Community Center. User shall fully cooperate with the conduct of such inspections. User hereby authorizes the Monticello Community Center to take such actions as might be necessary, in its sole discretion, to correct any unsatisfactory conditions discovered by such inspections and to remove and dispose of, at User's sole cost and expense any items of User posing a risk to the health and safety of the users of, or visitors to, the Facilities. User hereby waives any right to seek reimbursement for the value of any items of User so removed and/or disposed of by the Monticello Community Center. Failure by User to comply with the provisions of this Paragraph 3 shall be a default under the provision of Paragraph 15 of the Agreement.
4. Food Equipment Safety and Sanitation. Each person comprising the User, and all persons comprising the Associated Personnel who shall be making use of the Facilities for or on behalf of User, shall be required to complete a course regarding the safe and sanitary use of the Facilities, including food and equipment, known as the "Food Safety Manager's Certification." User shall at all times maintain proper food handling and safe use of the equipment comprising the Facilities in compliance with applicable provisions of the Statement, this Agreement, and applicable law, including the safety and sanitation course described in this Paragraph 4. Failure by User to comply with the provisions of this Paragraph 4 shall be a default under the provisions of Paragraph 15 of this Agreement.
5. Permits and Licenses. User, so long as it and/or the Associated Personnel continue to use the Facilities, shall maintain in good standing all permits, licenses, and other regulatory permissions that might be required for the conduct of User's food preparation and/or processing business and of User's lawful use of the Facilities, including, without limitation, any required business license, sales tax license, seller's permit, and/or processing food registration. User shall maintain current at the Facilities, and present for the Monticello Community Center inspection upon request, a Food Safety Managers Certificate or a Servsafe Certificate covering all persons using the Facilities for or on behalf of User. User, to the fullest extent provided by law, shall indemnify the Monticello Community Center for, and hold it harmless against, any damages suffered by the Monticello Community Center as a result of User's failure to comply with the provisions of

this Paragraph 5 of this Agreement, above. Failure by User to comply with the requirements of this Paragraph 5 of this Agreement, above, shall be a default under the provision of Paragraph 15 of this Agreement.

6. Fees and Key Deposit. In consideration of the right to use the Facilities in accordance with the provisions of this Agreement, User shall pay the Monticello Community Center the following fees:
 - (a) A refundable key deposit in the amount of \$25 (the "Key Deposit") to cover the loss of any keys to the building.
 - (b) Hourly rate: \$20 / hour for use of the Facilities. User is responsible for fees incurred for all reserved hours including those hours unused.
 - (c) Fee for storage of any equipment in the Facilities must be pre-approved and assigned a reasonable fee by the Associated Personnel of the Facilities.
 - (d) User is responsible for cleaning their work areas in the Facilities. If User does not keep the Facilities clean during and after use and a professional cleaner is needed, User will be charged a cleaning fee in the amount of \$100 per hour for the time required to clean and organize the User's work area. The cleaning fee will be charged as required on a monthly basis, at the same time and the same manner as the usage fees.
7. Scheduling. User shall schedule time with the Community Center staff for use of the Facilities in accordance with applicable provisions of the Statement. Time can be scheduled up to six months in advance. Saturdays may not be reserved until two weeks prior to the desired date. The Monticello Community Center shall make it's reasonable best efforts to provide access for User's use of the facilities at times so reserved and scheduled by User. However, the Monticello Community Center shall retain the right, in its sole discretion, to determine that all or part of the Facilities should be closed for cleaning, repairs, to make alterations of the Facilities, for necessary inspections, for public safety reasons, or for any other reason deemed by the Monticello Community Center to require the temporary closing of all or a part of the Facilities. In the event the Facilities have been closed at a time duly reserved and scheduled by User for its use, User shall comply with any such closing and shall have no recourse of any kind against the Monticello Community Center for any claims, damages, or losses caused by the Facilities' being closed at the reserved and scheduled time. The Monticello Community Center shall make a reasonable effort to accommodate the User by making the Facilities available for use for the reserved number of hours after the same have been reopened for use. Notwithstanding any other provision of this Agreement, The Monticello Community Center reserves to itself the sole right to determine the availability and suitability for use of the Facilities.
8. Facilities Provided "As Is". The Facilities, including all portions thereof and all equipment provided for User's use, are provided "As Is." The Monticello Community Center 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 Facilities or to User's use thereof.
9. Reporting of Injuries and Damage. User shall immediately notify the Monticello Community Center of the following:
 - (a) any injuries requiring medical attention;
 - (b) any damage to or malfunction of the equipment located in the Facilities; and/or
 - (c) any other condition that may affect the safe and orderly operation of the Facilities.

10. Cleaning. After each use, and prior to User's departure, User will restore to a clean and sanitary condition any portion of the Facilities 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 the amount of \$100 per hour (1 hour minimum) for any cleanup required to be performed by the Monticello Community Center to bring the Facilities to a clean and sanitary condition, within the
11. sole discretion of the Monticello Community Center. The Monticello Community Center shall have the right to remove any items of personal property stored at the Facilities by User, including any items stored in any private or semi-private storage areas or units, if doing so, the Monticello Community Center's sole discretion is necessary for purposes of maintaining the health and safety of personnel present at the Facilities.
12. Deliveries. User shall bear the responsibility to be present at the time of delivery of items requiring cold storage. 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 Facilities 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. In the event, the Monticello Community Center, by prior arrangement with User, agrees to accept delivery of any such items or equipment for, on behalf of, User, the Monticello Community Center shall not be responsible in any way for the condition of the items or equipment so accepted. The Monticello Community Center reserves the right to refuse to accept delivery of, and/or to require the immediate removal from the Facilities of, any items of personal property, including supplies and equipment, that appear, in the Monticello Community Center, to be defective, spoiled, or otherwise unsatisfactory for their intended use by User.
13. Storage. After each use of the kitchen facility, user shall contain all items pertaining to their business to the assigned storage area. Food trucks may only be parked at the Community Center if they are participating in an event which is taking place at the Community Center or for short periods of time for loading/unloading.
14. Insurance.
 - (a) Commencing within fourteen (14) days after execution of this Agreement and continuing through the entire term of this Agreement and any extension term or terms thereof, User shall at User's sole cost and expense, procure and maintain in full force and effect and insurance policy or policies protecting User and Monticello Community Center and its respective directors, officers, employees, and building owners against any loss, liability, or expense whatsoever from personal injury, theft, death, property damage, or otherwise, arising out of, or occurring upon or in connection with, User's business, of the Facilities pursuant to this Agreement, or by reason of User's and/or the Authorized Personnel's use of the business premises comprising the Facilities. The insurance required by this Paragraph 14(a) shall expressly cover claims based on product liability, property damage, and personal injury. The Monticello Community Center shall be named as an additional insured in such policy or policies of insurance and the User shall execute a waiver of subrogation in favor of the Monticello Community Center. Such policy or policies of insurance shall be written by an insurance company acceptable to the Monticello Community Center and shall include general liability coverage of One Million Dollars (\$1,000,000) per incident; and such insurance as may be required by law

in the State of Minnesota. The insurance afforded by the policy or policies of insurance described above shall not be limited in any way by reason of any insurance that may be maintained by the Monticello Community Center. Evidence of insurance shall be given to the Monticello Community Center and shall include a statement that the policy or policies may not be canceled or altered without at least thirty (30) days' prior notice to the Monticello Community Center. User shall, throughout the term of this Agreement and any extension term thereof, provide the Monticello Community Center with such information regarding the insurance required by the provisions of this Paragraph 14(a) of this Agreement, as the Monticello Community Center might request from time to time.

- (b) Commencing within fourteen (14) days after execution of this Agreement and continuing throughout the entire term of this Agreement and any extension term or terms thereof, User may at User's sole cost and expense, procure and maintain in full force and effect an insurance policy or policies protecting User, the Monticello Community Center against damage to, or loss of, User's personal property present at the Facilities, including all of User's equipment and supplies. In the event that the User procures such insurance, the insurance shall expressly cover claims based on fire, burglary, and vandalism. The Monticello Community Center shall be named as an additional insured in such policy or policies of insurance and the User shall execute a waiver of subrogation in favor of the Monticello Community Center. Such a policy of insurance shall be written to include coverage of a minimum of three hundred thousand (\$300,000). Evidence of insurance shall include a statement that the policy or policies may not be canceled or altered without at least thirty (30) days' prior notice to the Monticello Community Center. User may, throughout the term of this Agreement and any extension term thereof, provide the Monticello Community Center with such information regarding the insurance referred to by the Provisions of this Paragraph 14(b) of this agreement, as the Monticello Community Center may require from time to time. This provision as set forth in Paragraph 14(b) regarding User's personal property present at the Facilities is the only insurance provision in this Agreement that is not required under the terms of this Agreement. The provisions as set forth in 14(a) and 14(c) in connection with obtaining Workers' Compensation, product liability, property damage and personal injury coverage are mandatory.
- (c) User shall provide Workers' Compensation insurance in an amount that complies with statutory limits in the State of Minnesota for all personnel using the Facilities for or on behalf of User who are employees of User, and User shall pay, and be solely responsible for or on behalf of User who are employees of User, and 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 such employees. User shall be for all purposes, be considered an independent contractor, and will not directly or indirectly, act as an agent, servant or employee of the Monticello Community Center, or make any commitments or incur any liabilities on behalf of the Monticello Community Center without first having obtained the Monticello Community Center express written consent. User shall, throughout the term of this Agreement and any extension term thereof, provide the Monticello Community Center with such information regarding the

Worker's Compensation insurance required by the Provisions of this Paragraph 14(c) of this Agreement, as the Monticello Community Center might request from time to time.

- (d) Failure by User to comply with the provisions of Paragraphs 14(a) through 14(c) of this Agreement, above, shall be a default under the provisions of Paragraph 15 of this Agreement.

15. Default and Termination.

- (a) This Agreement shall be terminated:
 - (1) upon the expiration of the term hereof and any extension term, if not renewed by mutual agreement by the parties;
 - (2) by either party on 30 days prior written notice to the other; and/or
 - (3) if destruction has rendered the Facilities substantially unfit for use by User for purposes of this Agreement.
- (b) The following shall constitute an event of default under this Agreement:
 - (1) Failure by User to perform a duty or obligation arising under this Agreement the occurrence of which is expressly designated as a default under the provisions of Paragraphs 2,e,4,5 and 14(d) of this Agreement; and/or
 - (2) Failure by User to perform any material duty or obligation arising under the provisions of this Agreement that is not otherwise listed in Paragraph 15(b) (1), above.
- (c) In the event of the occurrence of an event of default caused by an act or omission of User:
 - (1) Termination will be effective thirty (30) days after written notice of default is given to User by the Monticello Community Center if the event of default complained of in the notice has arisen under the provisions of Paragraph 13(b)(2), above.
 - (2) Termination will be effective immediately upon written notice of default from the Monticello Community Center to User if any default arising under the provisions of Paragraphs 2,3,4,5,and 12(d) of this Agreement has occurred and has not been cured by User to the complete satisfaction of the Monticello Community Center within such time as is set forth in that notice of default.
- (d) Upon termination of this agreement for any reason, User shall pay to the Monticello Community Center all unpaid amounts that User might be obligated to pay pursuant to the provisions of this Agreement and shall be credited for any unused paid for and unused time reserved and scheduled for use of the Facilities. User shall also remove all of its items of personal property, including supplies and equipment, from the Facilities, and shall leave the portions of the Facilities used by User in clean, sanitary, and orderly condition, ordinary wear and tear excepted.

16. Limitation on Liability. The Monticello Community Center is not liable for any indirect, incidental, special or consequential damages of any nature whatsoever, whether in an action in contract or tort or based on a warranty, even if the Monticello Community Center has been advised of the possibility of such damages arising. The Monticello Community Center liability for damages under the provision of this Agreement shall not exceed the amounts of fees actually paid by the user for use of the Facilities and/or otherwise pursuant to the provisions of this Agreement. The Monticello Community Center makes no representations or warranties,

whether expressed or implied, with respect to the services rendered and the Facilities provided for Users' use under the provisions of this Agreement, including without limitation any warranties of merchantability or fitness for a particular purpose.

17. Release; Indemnity.

(a) Except for the willful or grossly negligent acts or omissions of the Monticello Community Center or its agents or employees, User shall, to the fullest extent provided by law, defend, indemnify, and hold the Monticello Community Center harmless from and against any and all claims, losses, actions, damages, liabilities, and expenses (including reasonable attorney's fees) that:

- (1) Arise from or are in connection with User's use, maintenance, or control of the Facilities, or any portion of the Facilities;
- (2) Arise from or are in connection with any willful or negligent act or omission of User, the Associated Personnel, or any of their respective agents, employees, guests, service providers, creditors, or invitees;
- (3) Result from any default, breach, violation, or nonperformance of User arising under the provisions of this Agreement; and/or
- (4) Arise from injury or death to persons or damage to property sustained on or about the rented premises.

(b) 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 connected with the personal property of User, including equipment and materials, stored or otherwise present at the Facilities. User's obligations to indemnify the Monticello Community Center under the provisions of Paragraph 21 hereof shall survive the termination of this Agreement.

(c) User on behalf of User and the Associated Personnel, now and forever, releases and discharges the Monticello Community Center and its attorneys, insurers, officers, directors, employees and contractors, 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 related to User's use of the Facilities pursuant to the provisions of this Agreement.

(d) The release provided by User under the provisions of Paragraph 15(c) of this Agreement, above, extends to and includes any and all claims, liabilities, injuries, damages and causes of action that the parties do not presently anticipate, know, or suspect to exist, but which may develop, accrue, or be discovered in the future. User represents and warrants that User has considered the possibility that claims, liabilities, injuries, damages and causes of action that User does not presently know or suspect to exist in its favor may develop, accrue or be discovered in the future and voluntarily assumes that risk as part of the consideration for this Agreement.

18. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and shall not be modified or amended in any respect except by a written instrument executed by User and the Monticello Community Center. This Agreement replaces and supersedes all prior written or oral agreements by and between the parties to this Agreement.

19. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.
20. **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable, that provision shall be deemed to be severed from this Agreement and the remaining provisions of this agreement shall remain in full force and effect.
21. **Benefit of the Parties.** This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any rights by virtue of this Agreement.
22. **Notices.** All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party by first class mail, or given directly to the User or the Monticello Community Center.
23. **Inconsistent Position.** No party shall take a position with any third party or governmental agency, instrumentality, department or authority that is contrary to, or inconsistent with, the provisions of this Agreement.
24. **Advice of Counsel.** Each party to this Agreement warrants that that party has had the opportunity to consult with an attorney of that party's own choosing regarding the provisions of this Agreement.
25. **Interpretation.** The Agreement shall not be construed against any party because that party or that party's attorney drafted any of its provisions.
26. **Cancellation Policy.** If a user needs to cancel time they have reserved in the kitchen, they may do so up to a week in advance with no penalty. If a cancellation within a week of the reserved date is needed, the hourly fee is still billed.

Monticello Community Center

Dated: _____

By: _____

Membership Services Manger
505 Walnut Suite 1, MN 55362
763-271-7123

Dated: _____ Client: _____

By: _____

Address: _____

City, State, Zip: _____

Phone # _____

Email _____