

Burgaw Incubator Kitchen

Personal Use Tenant Operating Agreement

This person joins this Agreement as Tenant of Burgaw Incubator Kitchen facility.	
Full Legal Name of Tenant:	
Mailing Address:	Email Address:
Phone Number:	Fax Number:

THIS AGREEMENT, is made and entered into by and between the TENANT (identified above) and TOWN OF BURGAW, a North Carolina municipal corporation, (hereinafter referred to as the “Burgaw Incubator Kitchen” or “BIK”).

WITNESSETH:

WHEREAS, BIK owns and operates a commercial kitchen located within the Historic Town of Burgaw Train Depot; and

WHEREAS, BIK operates an incubator kitchen in accordance with applicable federal and North Carolina law, rules, and regulations; and

WHEREAS, BIK is desirous of wanting to lease its commercial kitchen in accordance with the terms and provisions as hereinafter set forth within this Agreement;

NOW, THEREFORE in consideration of the agreement and covenants as hereinafter set forth to be done and performed by Tenant Company and the payment of the rental fees in accordance with the attached Fee Schedule, BIK does hereby let and lease unto Tenant Company the non-exclusive use of BIK’s kitchen facilities located within the Historic Town of Burgaw Train Depot located in the town of Burgaw, State of North Carolina subject to the following terms and conditions as hereinafter set forth.

TERMS OF AGREEMENT

This agreement shall commence at 12:01 AM on _____, 20____ and terminate at 12:01 AM on _____, 20____.

1. FACILITY AND SERVICES

BIK agrees to provide Tenant access to and nonexclusive use of the kitchen facility. Facilities and services provided shall include, but not be limited to, use of stoves, sinks, refrigerators, freezers, counters, and other such services described in the Fee Schedule, attached and marked as Attachment 1, and incorporated herein by reference. The equipment located with BIK's kitchen facilities may be utilized by Tenant during its tenancy; however, Tenant may use and provide its own specialized equipment so long as such specialized equipment is approved and inspected by BIK. BIK shall maintain the kitchen in a sanitary and orderly state and ensure that all equipment it makes available to Tenant operates to all applicable health and safety standards.

2. FOOD PRODUCTS

Tenant must obtain specific authorization from BIK for each food product prior to production. A list of all foods to be prepared will be provided to kitchen administrator at the time of scheduling kitchen use.

3. OPERATING SCHEDULE

Because the kitchen is a shared-use facility, BIK shall control the times and manner of all Tenants' access to and use of the kitchen. Tenant shall request use of the kitchen in advance, in accordance with all kitchen policies and procedures.

4. RENT

- a. FEE SCHEDULE. The fees for various uses of the kitchen and/or equipment are set out in the Fee Schedule, Attachment 1 of this Agreement. BIK reserves the right to amend the Fee Schedule in its discretion and with such amended Fee Schedule to take effect upon giving Tenant at least thirty (30) days advance written notice. All previously scheduled kitchen use time will be subject to the fees listed when time was reserved.
- b. PAYMENT TERMS. BIK will bill Tenant for facility and storage use at the end of each calendar month. Payment is due within fifteen days. If Tenant pays any bill late, BIK may require them to pay as they go. A five percent (5%) fee may be charged for payments made more than 30 days after the date of the invoice.

5. DEPOSIT

Upon execution of this agreement, Tenant shall deposit sums as outlined by Fee Schedule as a security/cleaning deposit with BIK. The security/cleaning deposit shall be retained by BIK and may be applied by BIK, to the extent necessary, to pay and recover any loss, cost, damage or expense, including attorney's fees sustained by BIK by reason of the failure of Tenant to comply with any provision, covenant, or agreement of Tenant contained in this agreement. To the extent not necessary to cover such loss, damage, or expense, the security/cleaning deposit shall be returned to Tenant within

sixty (60) days after expiration of this agreement or as may be otherwise provided by law. The security/cleaning 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 BIK. In the event all or any portion of the security/cleaning deposit is applied by BIK to pay any such loss, cost, damage, or expense, or in the case that additional sums be required due to a change in Fee Schedule, Tenant shall, promptly upon demand, deposit with BIK such amounts as may be necessary to replenish the security/cleaning deposit to amount stated on fee schedule. Tenant will not be able to use or schedule kitchen facility until the security/cleaning deposit as stated on the Fee Schedule is paid to BIK.

6. USER DUTIES

- a. RENTAL AND USE POLICIES. Tenant acknowledges that Tenant Company has received and read the *Burgaw Incubator Kitchen Standard Operating Procedures* and policies, a copy of which is attached and marked as Attachment 2. BIK reserves the right to amend the kitchen standard operating procedures or policies at any time upon written notice to the Tenant. If Tenant violates these, BIK may impose a \$50 fine upon Tenant and upon repeated violation BIK may in its discretion terminate Agreement. Tenant agrees to comply with all of the rules and obligations set for in the *Burgaw Incubator Kitchen Standard Operating Procedures* and policies as currently stated and as modified at any time in the future.
- b. CONTACT INFORMATION. Tenant affirms that the identification, address, and contact information stated at the beginning of this document are current and correct. Tenant agrees to keep BIK informed of any changes in Tenant's legal identify, address, or other contact information.
- c. SECURITY. Tenant may be provided with keys and/or pass codes for access to the kitchen facility and agrees to use kitchen facility in accordance with kitchen schedule only. No keys or pass codes provided for authorized use by the Tenant shall be copied or shared. No equipment or items owned by BIK shall ever leave the premises, unless authorized in advance by kitchen administrator. Any violation of these provisions may result in termination of this Agreement and of charges for the cost of changing facility locks and pass codes.
- d. ASSIGNMENT. Tenant may not transfer or assign any privileges under this Agreement to any third party. This includes the disclosure of the Tenant Company's security pass code. The Tenant shall not grant access or allow a third party to operate in the kitchen at any time. Violation of this duty is grounds for immediate termination of the Agreement and the immediate discharge of the Tenant from the kitchen facility.
- e. SIGNS AND ADVERTISING. No signs or advertising matter shall be painted or attached in any way on the BIK premises.

7. HEALTH AND SAFETY RESPONSIBILITIES.

To ensure the safety of all persons associated with the BIK facility, Tenant shall also comply with the following:

- a. WORKER SAFETY. Tenant is exclusively responsible to ensure that Tenant and guests observe proper safety procedures while using the kitchen facility. All Tenant guests must be authorized by kitchen administrator by completing Emergency Contact Form. No children under 16 are allowed in the kitchen, unless approved in advance by kitchen administrator.
- b. RIGHT OF INSPECTION. The staff of BIK retains the right to enter and inspect operation at any time during use. The Pender County Health Department, North Carolina Department of Agriculture and Consumer Services, Food and Drug Administration, and any other regulatory agency shall have the rights to inspect without prior notice at any time deemed necessary by their organization. Tenant agrees to cooperate with inspectors from all aforementioned agencies. In the event that Tenant fails to cooperate with said departments during any inspection, Tenant shall be in default of the terms of this Agreement, and BIK may terminate Tenant's tenancy in accordance with the provisions of this Agreement.

Proof of such insurance must be provided to the BIK before any use of the facility by Tenant Company will be permitted. BIK reserves the right to require Tenant Company to show proof of the required insurance at any time during its tenancy.

8. IMPROVEMENTS AND GENERAL ADMINISTRATION

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

9. EXCUSABLE DELAYS

BIK shall not be liable for any failure of performance of this agreement in accordance with its terms, even if such failure arises out of causes beyond BIK's control or discretion or without fault or negligence of BIK.

10. SURRENDER OF PREMISES

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

11. LIMITATION OF LIABILITY.

Tenant agrees that any and all claims involving BIK are strictly subject to the following limitations:

- a. INDEMNITY CLAUSE. Tenant will further indemnify and hold BIK harmless from and against any and all liabilities, claims, demands, suits, losses, damages, costs, attorney's fees and expenses for bodily injury to, or death of any person, or damage to or destruction of any property, caused by any negligent or intentional act or omission on the part of Tenant or its guests.
- b. LIABILITY. BIK shall not be liable for any damage to either person or property sustained by the tenant or any third party arising in any way out of Tenant's use, operation, occupancy of BIK premises, or sale or distributing of any product manufactured on the premises. Tenant covenants and agrees to indemnify, defend, and hold harmless BIK and its employees from all claims, costs, and liability arising from or in connection with damages, injuries to persons (including death), or property in, upon, or about the BIK premises, or any portions thereof, or resulting from the sale, distribution, and use of any product manufactured by Tenant on the BIK premises.
- c. GUESTS. Tenant shall be solely responsible for its guests' safety and the actions of guests, and it agrees to indemnify and hold harmless BIK from any and all causes of actions arising from the actions and negligence of Tenant's guests.

12. UNLAWFUL USE

Tenant Company shall not use or permit kitchen facility 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 BIK or its tenants. Such behavior shall include, but not be limited to, theft, fighting, consumption of alcohol on the premises, and use of any illegal narcotics or drugs.

13. DEFAULT

Tenant will have three (3) days after receipt of a written notice from BIK to remedy any violation, breach, or failure to keep or perform any conditions of BIK policy of this Agreement. If Tenant fails to correct or cure the problem within three (3) days, BIK may terminate the rights of the Tenant under this agreement. In addition, BIK may remove the Tenant's property 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 BIK policy or this agreement constitutes a health or safety hazard in the option of BIK, the Tenant must act immediately to correct the problem upon receipt of notice thereof, which notice may be oral or written. If Tenant fails to commence immediate corrective action, BIK may also terminate the rights of the Tenant under this agreement. The remedies set forth herein for default shall be in addition to other remedies available to BIK.

14. PUBLIC RECORDS

All of BIK documents and records are subject to the North Carolina Public Records law, and any records provided to BIK by Tenant in accordance with the terms of this Agreement may be subject to the North Carolina Public Records Law.

15. GENERAL

- a. The laws of the State of North Carolina shall govern this agreement.
- b. Any disputes regarding this Agreement shall be resolved in the courts of Pender County, North Carolina, and according to the laws of North Carolina.
- c. BIK makes no representations, warranties, or guarantees, express or implied, including, without limitation, any warranties for the merchantability or fitness for the intended use of the incubator kitchen facilities, other than those contained in this agreement.
- d. Tenant acknowledges that it has read this agreement, understands it, and agrees to be bound by its terms. Further, Tenant agrees that this agreement constitutes the entire agreement between the parties and supersedes all proposals, oral and written, and all negotiations, conversation, or discussion had between the Tenant and BIK related to the subject matter of this agreement.
- e. Tenant further acknowledges that it has inspected the premises and accepts them "as is" for the purposes of the Tenant's use during the term of its lease. If at any time, the facility is no longer sufficient for the requirements of the Tenant, this agreement may be terminated upon written notice to BIK.
- f. This agreement may be terminated without cause by agreement of the parties.
- g. This agreement may also be terminated for cause if either party fails to conform to the covenant of this agreement.
- h. This Agreement shall not be construed to form a partnership or any other business association between the Parties other than independent parties to contract. Tenant and its guests are not employees or agents of BIK.
- i. BIK and the Historic Town of Burgaw Train Depot is a unique facility that is meant to be used and enjoyed by its users. Tenant agrees to respect the rights and property of any other users of the kitchen facility or any other facilities located within the Historic Town of Burgaw Train Depot.

16. AMENDMENTS

This agreement may be amended by mutual consent of BIK and Tenant with such amendment being made in writing and signed by each of the respective parties.

17. NOTICES

All written notices, which may be required under this Agreement, shall be delivered personally, by email, or sent by regular mail, postage prepaid, addressed as indicated on this document.

Written notices and communications from Tenant to BIK should be delivered by email to csuggs@burgawnc.gov or mailed or delivered as follows:

Burgaw Incubator Kitchen
c/o Town of Burgaw
109 N. Walker St.
Burgaw, NC 28425

Notices delivered personally shall be effective when delivered. Notices sent by mail shall be effective when delivered or three (3) calendar days after mailing, whichever occurs first.

Any informal communications between BIK and Tenant for the scheduling of the kitchen facilities or any matter unrelated to this Agreement may be made pursuant any oral or written communication between the parties.

IN TESTIMONY WHEREOF, the parties have executed this Agreement in duplicate originals, one of which is retained by each of the parties, the day and year first above written.

TENANT

Signature of Tenant

Name of Tenant (please print)

BURGAW INCUBATOR KITCHEN

By: _____

Kitchen Administrator