

# Trailer Lease Agreement

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This is a Trailer Lease Agreement (the "Lease") dated as of \_\_\_\_\_, 20\_\_\_\_ between [\_\_\_\_\_] ("Client"), a California nonprofit corporation, and \_\_\_\_\_ ("Business"), a \_\_\_\_\_.

## Background

Client is a nonprofit corporation created for the purpose of encouraging the development of small businesses involved with the preparation and/or processing of food. Client owns mobile concession units and leases them to qualifying small businesses. Business is a small food preparation business and participated in Client's incubation program. Client and Business desire that Business lease from Client the mobile concession unit described on **Exhibit A** (the "Trailer"), on the terms set out in this Lease.

## 1. Terms

**1.1 Lease and Term.** Client leases to Business the Trailer for twenty-four (24) months, starting and ending on the dates set out in **Exhibit A**. This Lease will terminate upon the expiration of this term, unless Client or Business terminates this Lease as provided in Section 7. This Lease is not subject to renewal. Continued use of the Trailer by Business is subject to negotiation and entry into a new lease agreement. Neither Client nor Business will be obligated to negotiate or enter into such a new agreement.

**1.2 Rent and Other Amounts.** Business will pay Client rent for the Trailer, in the amount specified in **Exhibit A**, and any other amounts as specified on **Exhibit A**, on or before the first day of each month, without invoice, demand or offset.

**1.3 Payment.** Business will make rent and other payments in cash, by credit card, or by check delivered to Client at the address specified in **Exhibit A**. If Business does not pay rent or other amounts within three (3) days after the payment is due, Business will pay an additional sum equal to five percent (5%) of the amount overdue as a late charge to compensate Client for costs associated with the late payment. Such sum, in addition to the rent or other payment, will be due ten (10) days after the original payment is due.

**1.4 Security Deposit.** On the day Business signs this Lease, Business will pay Client the amount specified in **Exhibit A** as a security deposit to secure performance of Business's duties under this Lease. If Business breaches this Lease, Client may apply all or any part of this security deposit to rent, to any repair, clean-up, or other amounts Client pays by reason of Business's breach, and to any damages or other amounts to which Client is entitled under this Lease. Client will refund remaining security deposit amounts, without interest, to Business when this Lease terminates. Business waives the provisions of Section 1950.7 of the California Civil Code.

## 1.5 Right to Purchase Trailer

(a) **Notice, Payment, and Transfer.** Business may (but is not obligated to) purchase the Trailer following expiration of this Lease at the price set out in **Exhibit A**. If Business wishes to buy the Trailer, Business must provide Client with a notice to that effect no later than the date specified on **Exhibit A**, and Business must pay Client the entire purchase price, in cash or check, on or before the last day of the term. At time of payment, Client will sign and give to Business the title and other documents necessary to transfer ownership of the Trailer,

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along with any extra keys, owner's manuals, maintenance records, and similar records. Business and Client will cooperate in taking any other actions necessary to complete and document the transfer. Following the purchase, Business will be solely responsible for all registration fees, licensing, permitting, taxes (including transfer taxes), insurance, and other matters and expenses relating to the Trailer.

(b) **Failure to Give Notice or Pay.** If (i) Business fails to deliver the notice contemplated by this Section 1.5, (ii) Business fails to tender full payment in cash or check by the deadline specified in this Section 1.5, or (iii) this Lease terminates by reason of Business's failure to pay rent or other breach or for any reason other than expiration in accordance with its terms, then Business no longer will have the right to purchase the Trailer under this Section 1.5, and Business will return the Trailer to Client as contemplated by Section 7.4. Business in no case will be entitled to any refund, return of rental, or any other amounts it pays to Client.

(c) **Use of Client Intellectual Property After Purchase.** Following a purchase, Business may continue to include on the Trailer a sign, in a form approved by Client, displaying one or more Client Marks (as defined in Section 4.1). Business will use such Client Marks in accordance with Section 4.1. Client may terminate Business's right to use Client Marks at any time by giving Business a written notice to that effect; in that case, Business will immediately remove the sign and stop any use of Client Marks.

## 2. Operations

**2.1 Use.** Business may use the Trailer for the sole purpose of preparing and selling food and/or non-alcoholic beverages. Business will exercise due care in using the Trailer and will operate and maintain the Trailer in compliance with any guidelines and warranty requirements, if any, provided to Business by Client. Business may not allow any other person to operate or occupy the Trailer without the prior written consent of Client.

**2.2 Location.** Business may not operate the Trailer at any location where Business does not have all requisite permits, consents, and approvals for such operation. Business may not transport the Trailer further than one-hundred (100) miles from San Francisco without the prior written consent of Client. Business may move the Trailer using only a vehicle that has valid registration, is covered by the automobile liability insurance set out in Section 6, and is driven by a person with a valid driver's license.

**2.3 Method of Work.** Business will be solely responsible for the planning, management, and carrying out of its operations in the Trailer whether or not it obtains educational or technical support from Client. Business will be responsible for hiring, monitoring, and paying any labor it uses in its operations. Business will be solely responsible for arranging and paying for all utilities, supplies, and other items necessary to properly maintain and operate the Trailer.

**2.4 Permits and Licenses.** Business will maintain all permits, licenses, and other regulatory permissions required to conduct its business and operate the Trailer. Such permits and licenses may include, without limitation, a business license, a seller's permit, or a processed food registration. Business will keep all required Food Safety Manager Certificates and Food Handler Cards on file at the Trailer and will keep such records current.

**2.5 Compliance with Laws.** Business will comply with all applicable federal, state, and local laws and regulations, including, without limitation, those relating to safe handling of food, use of the Trailer, and employment.

**2.6 Maintenance.** Business will be solely responsible for maintenance of the Trailer and will follow guidelines, if any, provided by Client. Business will keep the Trailer in good repair and in a condition equivalent to the state in which it was received, excepting normal wear and

tear resulting from proper use. Business will have the right to obtain any applicable warranty service available for the Trailer. Business will maintain accurate and complete records of any repairs or services to the Trailer, and will provide them to Client upon request.

**2.7 Alterations.** Business will not make any alterations, additions, or improvements to the Trailer without Client's prior written consent. Business may remove any approved alterations, additions, or improvements from the Trailer by the earlier of the expiration or termination of the Lease provided that Business returns the Trailer in the condition it was first delivered to Business, excepting normal wear and tear. Otherwise, all alterations, additions, or improvements will become the property of Client.

**2.8 Storage.** Subject to approval by Client, Business will be responsible for finding and paying for a storage facility unit suitable for keeping the Trailer and will keep the Trailer in such facility. Business must keep Client informed of the storage facility unit location and provide Client with a key to the unit.

**2.9 Liens.** Business understands and agrees that this Lease is not intended to, and does not, give Business any ownership or security interest in the Trailer. Business will not sell, agree to sell, try to sell, or transfer the Trailer to a third party, or grant or try to grant a lien on the Trailer. Business will not represent to any third party that Business has ownership, a security interest, or the ability to grant a lien on the Trailer.

**2.10 Taxes.** Business will be responsible for all tax returns and payments required by any federal, state, or local tax authority in connection with operation of its business and possession and use of the Trailer.

### **3. Notices and Inspection**

**3.1 Notice of Adverse Developments.** Business will notify Client promptly of (i) any change in Business ownership or key personnel; (ii) the change to or loss of any necessary license or permit; (iii) the filing of bankruptcy by Business; or (iv) any breach of this Lease that has not been corrected within ten (10) days of its occurrence. If loss, theft, or damage to the Trailer occurs, Business will notify Client within twenty-four (24) hours of discovery.

**3.2 Inspection of Business's Property.** Client may inspect, for any reason and at any time without notice to Business, the Trailer and its contents. To facilitate inspections, Business will provide and Client will keep a key to any locks used by Business to secure the Trailer. Business will fully cooperate with all inspections of the Trailer. This Section 3.2 does not and will not impose any duty on Client to inspect the Trailer or Business's property, report to Business the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the Trailer and Business's property.

### **4. Marketing**

**4.1 Use of Client's Name and Brand.** Business will not use the trademarks or service marks, trade names, service names, copyrights, or other intellectual property belonging to Client (together, the "Client Marks") on the Trailer or otherwise in connection with its business without first obtaining the prior written consent of Client. The Client Marks that Client permits Business to use are non-exclusive, non-transferable, non-sublicensable, and revocable by Client at any time. Business may only use the Client Marks for the purposes permitted by Client, and will maintain in good repair any signage on the trailer bearing the Client Marks. Business will use the Client Marks only in the form provided to it by Client and will not combine any trademarks included in the Client Marks with any other trademark, work, symbol, letter, design, or mark. Client may object to any proposed or actual use of the Client Marks; Business will terminate this use within ten (10) days after receipt of written notice of disapproval. Business acknowledges that

it has no interest in the Client Marks other than the rights granted under this Lease and that Client will remain the sole and exclusive owner of all right, title, and interest in the Client Marks. Business agrees that any goodwill that arises from its use of the Client Marks will inure solely to the benefit of Client.

**4.2 Signs and Advertising.** Business may not attach signs, advertising, posters, solicitations, help wanted, personal ads, or other display materials of any sort to any portion of the Trailer without prior written consent of Client.

**4.3 Publicity.** Client in its discretion may identify Business as a business with whom Client works, including using its trade name and logo and describing its products and business, in Client's internal and external communications, including on its website and outreach materials.

**4.4 Media Release.** Client may film, tape, photograph, interview, and otherwise document the Business's operations and activities at the Trailer and at related events. All video, photographic, audio, written, and other materials produced by Client in connection with such activities and all copyrights in these materials will be the sole property of Client and may be made available by Client to third parties, on Client's website, in Client publications, or through any other media, in Client's sole discretion. Business is not entitled to inspect or approve versions of any media prior to its use by Client, nor is Business entitled to receive any payment for any such use by Client. Business grants to Client all copyrights and other rights it may have in any media created and distributed by Client under this Section 4.4, including, without limitation, any right to copy, edit, change, or transfer the media. Business waives and releases Client and its representatives from any legal claims including, without limitation, any claims relating to copyright, rights of publicity or privacy, or moral rights it may have in relationship to media created and distributed by Client under this Section 4.4 or to Client's use and ownership of such media.

## **5. Acknowledgments**

**5.1 Trailer As-Is.** The Trailer, including all equipment installed or existing in the Trailer, is provided to Business "as-is." Client makes no express or implied representations, warranties, or guarantees relating to the Trailer, including, without limitation, representations, warranties, or guarantees concerning condition, functionality, safety, quality, merchantability, or fitness for a particular purpose.

**5.2 No Guarantees.** Business acknowledges that Client has not made and is not making any representations, warranties, promises, or guarantees of any kind about Business's success, including, without limitation, representations about Business's sales or profits or public awareness of Business. Business has made its own independent business evaluation in deciding to enter into this Lease and engage in the food business.

**5.3 Relationship.** Business is and will be an independent enterprise. Business and Client are not running a business together. Nothing in this Lease creates an employment, partnership, joint venture, fiduciary, or similar relationship between Business and Client for any purpose. Neither Client nor Business will hold itself out as an agent or representative of, or purport to speak or act on behalf of, the other, and neither will have the power or authority to act for the other or to bind or obligate the other to a third party or commitment, in any manner.

**5.4 Program Assessment.** Client collects, analyzes, and disseminates data about its programs. Such work is intended to help Client evaluate the effectiveness of its programs, assist businesses better, comply with its external reporting obligations, and carry out its internal and external communication efforts. Business consents to Client using Business's information for data analysis and aggregation purposes and incorporating such information in its external reporting and communications activities. Client will disclose information about Business on a no-name basis unless Client has Business's prior approval to disclose Business's name.

## 6. Liability

**6.1 Risk of Loss, Theft, and Damage to Trailer.** Business assumes and will be solely responsible for the entire risk of loss, theft, and damage to the Trailer. Client has no obligation to repair or replace the Trailer. If the Trailer is stolen or destroyed, Business will notify Client within twenty-four (24) hours of discovery and pay Client an amount equivalent to the depreciated value of the Trailer as determined by Client.

**6.2 Responsibility for Claims.** Business will be solely responsible for any claims, liabilities, losses, or damages to either person or property sustained by Business, or any third party, in each case caused by or arising from Business's use, operation, or occupancy of the Trailer, or sale or distribution of any product made or distributed by Business.

**6.3 Waiver and Release.** To the fullest extent allowed by law, Business waives all claims and rights against Client, and Client's directors, officers, employees, affiliates, and assigns (together, the "Client Parties"), including, without limitation, claims arising from any injury, accident, or death of any person or loss or damage to any property on or about the Trailer, caused by or resulting directly or indirectly from the installation, operation, use, or removal of the Trailer, regardless of cause and even if caused by the negligence, active or passive, of any Client Party. Business agrees not to sue Client on the basis of these waived and released claims. Business understands that the releases and waivers in this Lease extend to claims that it does not know of or does not expect to exist at this time, and it waives the protections of Section 1542 of the California Civil Code.

**6.4 Indemnification.** Business will defend, indemnify and hold the Client Parties harmless from and against any and all claims, liabilities, losses, damages, and attorney's fees that may be suffered by any Client Party arising directly or indirectly from (i) a claim by any third party arising from Business's possession, use, or operation of the Trailer or in the related operation of its food business, including, without limitation, claims relating to (x) transportation of the Trailer, (y) sale and consumption of food prepared or processed by Business, or (z) violations of laws or permits relating to the Trailer, whether the claim involves product liability, consumer protection, health and safety, permitting, negligence, or otherwise; (ii) a claim by any third party that any permitted use by Client of Business's name and logo under this Lease infringes the third party's patent, copyright, trademark, or trade secret rights; (iii) a claim by any of Business's customers, employees, suppliers, creditors, tax authorities, regulators, or other persons in a relationship with Business; (iv) any breach of this Lease; or (v) any other act or omission by Business in connection with this Lease, except to the extent the liability is solely caused by the gross negligence or willful misconduct of the relevant Client Party.

**6.5 Limitation of Liability.** Client will not be liable to Business for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or otherwise related to this Lease (including, without limitation, claims for loss of revenue, loss of profits, or loss of use), even if Client has been apprised of the likelihood of such damages. Under no circumstances is Client liable to Business for any failure by Business to meet its own sales or profit expectations. Notwithstanding any other provision of this Lease, Client's total liability for all damages and other amounts under or relating to this Lease will not exceed the amount of rent actually paid by Business to Client.

### 6.6 Insurance

**(a) Liability Insurance.** Business will, at its sole cost and expense, procure and maintain in full force and effect the following insurance coverages:

- (i) general liability insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, independent users, explosions, and products liability (including any of the foregoing affecting, caused by or otherwise relating to the Trailer or its operation);
- (ii) automobile liability insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired automobiles, as applicable, and sudden and accidental pollution;
- (iii) food products liability insurance with limits of not less than \$1,000,000 each incident; and
- (iv) such other insurance as may be required by law in the State of California.

Business will cause Client to be named as an additional insured in such policy or policies. Business will execute a waiver of subrogation in favor of Client. No later than ten (10) days from the day the parties sign this Lease, and prior to using the Trailer, Business will furnish to Client evidence showing compliance with the provisions of this Section 6.6. Business will provide Client the information required by this Section 6.6 as Client may request from time to time.

**(b) Worker's Compensation Insurance.** Business will provide workers' compensation insurance in an amount that complies with statutory limits in the State of California for all employees of Business who work in the Trailer for or on behalf of Business, including a waiver of subrogation in favor of Client. Business will provide Client with the information required by this Section 6.6 as Client may request from time to time. If Business is not required to obtain workers' compensation insurance, at Client's request Business will provide Client with a signed statement stating that Business does not have any employees and is not required to obtain such insurance.

## **7. Termination**

**7.1 Mutual Agreement.** This Lease may be terminated by a writing signed by both Client and Business which states their intent to terminate this Lease and the date upon which such termination will take effect.

**7.2 Termination by Business.** Business may terminate this Lease at any time. Such a termination will be effective thirty (30) days after delivery by Business to Client of a notice to that effect.

**7.3 Termination by Client.** Client may terminate this Lease if within its sole discretion, it reasonably believes or determines that Business has breached this Lease; such a termination will be effective thirty (30) days after Client gives written notice of the breach. Client may terminate this Lease immediately if: (i) Business engages in conduct considered by Client to be dangerous or reckless; (ii) Business dissolves, liquidates, ceases to engage in its operations, commences any proceeding under any bankruptcy or insolvency law, or makes any false statements to Client; (iii) damage or destruction has rendered the Trailer substantially unfit for use by Business as determined by Client; (iv) Client has concluded that Trailer operation or activities under this Lease may have an adverse impact on the tax-exempt status of Client; (v) Client terminates any other contract with Business with which it is a party including, without limitation, a Kitchen Facilities Use Agreement or other agreement relating to the use by Business of Client's kitchen facilities; or (vi) Client ceases operations. Such a termination will be effective immediately upon delivery by Client to Business of a notice to that effect.

**7.4 Consequences of Termination.** Upon termination of this Lease, Business will (i) pay all unpaid amounts owed to Client under this Lease, (ii) remove all of its property, including food, supplies, and equipment, from the Trailer, excepting approved alterations, additions, and improvements as provided by Section 2.7, (iii) return the Trailer to a location specified by Client, in good repair and in a clean, sanitary, and orderly condition equivalent to the state the Trailer was received, excepting normal wear and tear resulting from proper use and any alterations, additions, or improvements allowed under Section 2.7, and (iv) stop using the Client Marks in connection with its business or otherwise. If Business fails to return Trailer in the conditions specified under this Section 7.4, Client may restore it to such conditions and invoice the Business for such costs, and Business will pay the invoice within five (5) days of receipt. For clarity, if this Lease terminates for any reason other than expiration in accordance with its terms, Business will no longer have the right to purchase the Trailer under Section 1.5. Sections 6, 7 and 8 of this Lease will survive termination of this Lease and will remain applicable following a purchase of the Trailer by Business under Section 1.5 or otherwise.

**7.5 Cumulative Remedies.** All Client's rights, powers, and remedies under this Lease, including, without limitation, those set out in Sections 1.5 and 7, are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to Client at law or in equity. The exercise of one or more of these rights or remedies will not impair Client's right to exercise any other right or remedy.

## **8. General Provisions**

**8.1 Entire Agreement.** This Lease, including its Exhibits, is the entire agreement between Business and Client, and supersedes prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing, and communications between Business and Client relating to the same subject matter. Client rejects any term or condition in any letter, e-mail, or other document of Business which conflicts with or adds to this Lease.

**8.2 Amendment.** This Lease may be amended only as stated in a writing signed by both Business and Client that recites that it is an amendment to this Lease.

**8.3 Severability.** If any provision in this Lease is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

**8.4 Assignment.** Business may not assign its rights or delegate its duties under this Lease to anyone else. This Lease will be binding on an inure to the benefit of the parties and their heirs, personal representatives, successors, and permitted assigns.

**8.5 Waiver.** Any waiver under this Lease must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Lease will not be considered a waiver of any later breach or of the right to enforce any provision of this Lease.

**8.6 No Third Party Beneficiaries.** This Lease is for the exclusive benefit of Business and Client and not for the benefit of any third party including, without limitation, any employee, affiliate, or vendor of Business or Client, except as provided in Section 6.

**8.7 Translations Not Binding.** Client may provide Business with a Spanish translation of this Lease and other materials. Client does so as a convenience. Should there be any ambiguity or conflict between the English and Spanish language versions of these documents, the English language versions will control. They, not the Spanish translations, are the official, legally-binding documents.

**8.8 Notices.** Payment, notices, and consents under this Lease must be in writing and personally delivered or delivered by mail, courier, fax, or e-mail to the addresses set out on **Exhibit A**. These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section 8.8 will be considered given immediately when personally delivered, two (2) business days after deposit in the mail, or the first business day after delivery to a courier, delivery by fax, or delivery by e-mail.

**8.9 Governing Law.** This Lease is governed by California law. Business consents to the exclusive jurisdiction of the state and federal courts of [\_\_\_\_\_], California.

**8.10 Counterparts.** This Lease may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

\* \* \* \* \*

This Lease was signed by Business and Client as of the date stated in its first paragraph:

<b>[Client]</b>	<b>[Name of Business]</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**Exhibits:**  
A: Trailer Lease Information



# Trailer Lease Information

## Basic Lease Data:

Trailer description:	
Lease start date:	
Lease end date:	
Client address:	
Business address:	

## Payments:

1. Business will pay Client a security deposit of \$ \_\_\_\_\_ on the day Business signs this Lease.
2. Every month, Business will pay Client the total listed below. Payment is due on or before the first day of every month.

Expense	Cost per Month
Rent	\$
Storage facility (if applicable)	\$
	\$
	\$
<b>Total</b>	\$

## Purchase:

If Business wishes to buy the Trailer under Section 1.5, Business must provide Client with a notice to that effect no later than \_\_\_\_\_ **[date]** \_\_\_\_\_, and pay Client \$ \_\_\_\_\_ on or before the **[Lease end date]**.

## Storage Facility:

Name:	
Address:	
Unit number:	

## Additional Terms:

[insert reference to sub-permit or any other special agreement or understanding with Business]