

TERMS AND CONDITIONS

THIS EQUIPMENT LEASE, made and entered into this ___/___/___ by and between **BKBG ENTERPRISES, INC.**, an Illinois Corporation, hereinafter referred to as "Lessor" and _____/_____

Hereinafter referred to as "**Lessee**".

In consideration of the following covenants and conditions, Lessor hereby agrees to lease to Lessee and Lessee hereby leases from Lessor the aforesaid Equipment subject to the following terms, covenants and conditions.

1. **TERM:**

The term of this lease is for 60 months and commences on the date an authorized employee of Lessor executes and signs this Lease. The term ends on the expiration of the number of months in the initial term after the date which the equipment is delivered to Lessee.

2. **RENT/CONSIDERATION:**

As consideration for Lessor leasing the equipment to Lessee, Lessee hereby agrees during the term of this Lease to purchase exclusively from Lessor all of the "Gyros Cones, Pita Bread, and Tzatziki Sauce" (hereinafter referred to as "Products") used by Lessee in connection with Lessee's business. If it is determined that Lessee is using other Gyro Suppliers, Lessor has the right to remove equipment, after a seven (7) day notice to Lessee, without court order, or the Lessee has the option to purchase the equipment at equipment replacement cost, as specified herein.

3. **LOCATION OF EQUIPMENT:**

The equipment shall be located at Lessee's aforesaid billing address during the entire lease term, and shall not be removed from that location without Lessor's prior written consent.

4. **CARE OF EQUIPMENT:**

Lessee shall use the equipment in a careful and proper manner and shall comply with all laws, ordinances, and regulation relating to the possession, use, cleaning and maintenance of equipment.

5. **OPERATION OF EQUIPMENT:**

Lessee shall provide for the registration and licensing of any equipment wherever required, shall permit the equipment to be operated only by competent, trained and qualified employees, and shall insure that the equipment is not subjected to careless or needlessly rough usage.

6. **IDENTIFICATION OF EQUIPMENT:**

If at any time Lessor supplies Lessee with labels, plates, or other markings stating that the equipment is owned by Lessor, Lessee shall affix and keep such labels, plates, or other markings in a prominent place on the equipment. Lessee shall not alter, disfigure, or cover up any such marks of identification displayed on the equipment.

7. **ALTERATIONS:**

Lessee agrees that it will make no alteration in or to the equipment without obtaining prior written permission from Lessor.

8. **MAINTENANCE AND REPAIR:**

Lessor agrees to keep the equipment in good repair and operating condition, allowing for reasonable wear and tear, except for Lessee's negligence, whereupon, Lessee agrees to pay all expenses of maintaining and repairing the equipment. Expenses of repair shall include labor, material, parts, and similar items. If alterations are made to the equipment, Lessor has the right to remove the equipment **without court order**, or charge Lessee the equipment replacement cost amount, as specified herein.

9. **LESSOR'S RIGHT OF INSPECTION:**

Lessor shall have the right at any time, during Lessee's normal business hours, to enter the premises occupied by the equipment and shall be given free access to and afforded necessary facilities for the purpose of inspecting the equipment.

10. **RETURN OF EQUIPMENT:**

On expiration of the Lease terms specified herein for any particular item of equipment, Lessee, at its own expense, shall deliver such item of equipment in good condition, ordinary wear and tear resulting from proper use alone except, and free and clear of encumbrances, to Lessor, or to such other location as Lessor may designate that does not increase the cost of delivery.

11. **LESSEE'S OPTION TO TERMINATE:**

Lessee, if not in default in any obligation under this Lease, may terminate this Lease with respect to any item of equipment lease at any time after twelve (12) months from the date of delivery of such item on ninety (90) days written notice of such termination to Lessor. If Lessee terminates this Lease with respect to any item of equipment within six (6) months from the date of delivery of such item, then Lessor shall have the right but not the obligation to take possession of the equipment and Lessee shall pay Lessor the sum of FIVE HUNDRED (\$500.00) US DOLLARS for each item of equipment leased under this Agreement as liquidated damages hereunder.

12. **ACCEPTANCE OF EQUIPMENT:**

Lessee shall immediately inspect each item of equipment delivered pursuant to this Lease, and shall notify Lessor in writing of any discrepancies between such item of equipment and the description, statement of condition, and valuation of such item of equipment as stated herein. If Lessor receives no such written notice within five (5) days after delivery of any item of equipment, Lessee will be conclusively presumed to have accepted the equipment as specified herein.

13. **RISK OF LOSS OR DAMAGE:**

Lessee assumes all risks of loss of and damage to the equipment from any cause, and agrees to return it to Lessor in as good condition as when received, normal wear and tear accepted. No loss of or damage to the equipment shall impair any obligation of Lessee under this Lease, and all such obligations shall continue in full force and effect until otherwise discharged.

14. **INDEMNITY OF LESSOR FOR LOSS OR DAMAGE:**

In event of loss of or damage to the equipment, Lessee, at the option of Lessor, shall:

- a. **Place the equipment in good repair;**
- b. **Replace the equipment with like equipment in good repair, which equipment shall become the property of Lessor and subject to this lease; or**
- c. **Pay Lessor thereof or in cash the equipment replacement cost, as specified herein.**

In payment by Lessee of the termination value of lost or damaged equipment, pursuant to Paragraph (c) of this section, this Lease shall terminate with respect to such items of equipment so paid for and Lessee shall become entitled thereto, as owner of such items of equipment.

15. **LIABILITY AND INDEMNITY FOR PERSONAL INJURIES:**

Liability for injury, property damage, disability, and death of workers and other persons caused by operating, handling, transporting of false installation of the equipment by Lessee's employees, Lessor or Lessor's employees or any other qualified or non-qualified individual, hired or dictated by either the Lessor or by the Lessee, during the term of this Lease, shall be assumed by Lessee and Lessee shall indemnify and hold Lessor harmless from and against all such liability.

16. **LESSEE'S DUTY TO INSURE:**

Lessee, at all times shall keep the equipment insured in the amount of at least the equipment replacement cost value of each item of equipment as specified herein for all such risks as Lessor shall require, and Lessee shall further maintain a personal liability insurance policy for the full, undepreciated value/equipment replacement cost, of each item of equipment.

17. **TAXES AND FEES:**

Lessee shall pay all taxes, assessments, and license and registration fees on the equipment during the term of the Lease, and furnish to Lessor satisfactory proof that such payment has been made before such taxes, assessments, or fees become delinquent.

18. DISPOSITION OF INVESTMENT TAX CREDIT AND DEPRECIATION:

Any investment tax credits and depreciation pursuant to the provisions of the Internal Revenue Code, as amended, shall be passed on to and be made available to Lessor, and Lessee shall have no right to claim same under any circumstances.

19. EVENTS CONSTITUTING DEFAULT:

The following events shall constitute default under this Lease:

- a. Lessee purchasing any of the aforesaid Products from anyone other than the Lessor during the term of this Lease;
- b. Lessee's failure to pay for Products purchased from Lessor when said payment is due;
- c. The nonperformance by Lessee of any other covenant or condition of this Lease that is not cured within (5) days after notice from Lessor;
- d. Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating to, debtors;
- e. The filing of any involuntary petition under any bankruptcy statute against Lessee, or the appointment of any receiver or trustee to take possession of the property of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days of the date of filing or appointment; or
- f. The subject of any Lessee's property to any levy, seizure, assignment, application, or sale for or by any creditor or governmental agency.

20. LESSOR'S RIGHT TO PREVENT DEFAULT:

Should Lessee fail to do any act as provided in this Lease, Lessor shall have the right, but not the obligation, without notice to or demand on Lessee, and without releasing Lessee from any obligation, to make or do the same, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien that in the sole judgment of Lessor appears to affect the equipment, and, in exercising any such rights, incur any liability and expend whatever amounts in Lessor's reasonable discretion it may deem necessary. All expenses so incurred by Lessor shall be, without demand, immediately due and payable by Lessee and shall bear interest at the rate of fifteen percent (15%) per annum until paid.

21. LESSOR'S RIGHTS ON DEFAULT:

On the occurrence of any of the events defined in Paragraph Nineteen (19) as constituting default, Lessor may without notice to or demand on Lessee, and **without a court order:**

- a. Take possession of the equipment and lease any portion of it, for such period and such amount, and to such person as Lessor shall elect, and apply the proceeds' of any such leasing, after deducting all costs and expenses incurred in connection with the recovery, repair, storage, and renting of the equipment, in payment of the amounts and other obligations due from Lessee to Lessor under this Lease, Lessee remaining responsible for any deficiency; or
- b. Take possession of the equipment and sell any portion of it at public or private sale, without demand or notice of intention to sell, and apply the proceeds of any such sale, after deducting all costs and expenses incurred in connection with the recovery, repair, storage, and sale of equipment and any amounts and other obligation of Lessee then due, against the equipment replacement cost value of the equipment sold as specified in the schedule or schedules attached. If the proceeds, after the permitted deduction, are less than the equipment replacement cost value so determined, Lessee shall pay Lessor the difference within five (5) days of being notified. All such amounts owing to Lessor shall bear interest at the rate of fifteen percent (15%) per annum until paid.

22. GOVERNING LAW:

This Lease shall be governed by and construed under the laws of the State of Illinois.

23. **STATUS OF EQUIPMENT:**

The equipment leased under this Agreement is, and will at all times remain, personal property, even though it or any part of it may now be, or may become, in any manner attached to, or embedded in, or permanently resting on, real property or improvements thereon.

24. **OWNERSHIP OF EQUIPMENT:**

Title to the equipment shall at all times remain in Lessor unless transferred to Lessee by sale, and Lessee shall have only the right to retain the possession of such equipment pursuant to the conditions of this Lease. Lessee shall give Lessor immediate notice of any claim, levy, lien, or legal process issued against the equipment.

25. **LIMITATION OF EFFECTS OF WAIVERS:**

No delay or omission to exercise any right, power, or remedy accruing to Lessor on any breach or default by Lessor under this Lease will impair such right, power, or remedy of Lessor, nor shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default.

26. **ASSIGNMENT:**

Lessee shall not assign this Lease or any equipment leased under the Lease, or any interest in this Lease or equipment, without Lessor's prior written consent. Lessee shall not sublet the equipment or any item of it, without Lessor's prior written consent. Lessor may assign this Lease or any rights under this Lease without Lessee's consent; but Lessor shall not, because of any such assignment, be excused from performing any of its obligations and duties under this Lease.

27. **LEASE APPLICABLE TO SUCCESSORS AND ASSIGNS:**

The rights and obligations under this Lease shall inure to and be binding on Lessor's and Lessee's respective successors and assigns, subject, however, to the provisions of Paragraph twenty-six (26).

28. **ATTORNEY FEES:**

In the event that any action is filed in relation to this Lease, the unsuccessful party in the action shall pay to the successful party, in addition to all other sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

29. **SEVERABILITY:**

This Lease embodies the entire agreement between the parties. It may not be modified or terminated except as provided herein or by other written agreement. If any provision of this Lease is invalid, such provisions shall be considered deleted from this Lease, and shall not invalidate the remaining provisions.

30. **EXECUTION OF LEASE:**

This Lease shall not be binding on Lessor until a proper officer of Lessor has executed it.

31. **TERMINATION OF LEASE:**

Unless otherwise terminated, this Lease will continue in force until all of the equipment specified herein has been ultimately disposed of by return to Lessor or purchase by Lessee, and until all of the obligations of the parties under this Lease have been discharged.

32. **WARRANTIES:**

Lessor makes no warranties, expressed or implied, as to the equipment leased, and assumes no responsibility for its condition, it being understood and agreed that Lessor is delivering the equipment to Lessee "AS IS".

33. **NOTICES:**

Any notice to be given under this Lease shall be mailed to the party to be notified at the address set forth at the beginning of this Lease, by registered or certified mail with postage prepaid, and shall be deemed given when so mailed.

LESSOR:

BKBG Enterprises Inc.
d/b/a Devanco Foods
440 Mission St.
Carol Stream, IL 60188

X _____
(Lessor's Signature) (Date)

LESSEE:

X _____
(Lessee's Signature) (Date)

X _____
(Print Name)