

LEASE AGREEMENT

This lease agreement (herein the "Lease") is entered into on March 1, 2021, (herein the "Effective Date") by and between the BATTLE CREEK DOWNTOWN DEVELOPMENT AUTHORITY, a Michigan statutory downtown development authority created and operating pursuant to PA 197 of 1975 whose address is c/o City of Battle Creek 10 N. Division Street, Battle Creek, Michigan 49014 (herein the "Landlord"), and SIMPLY SENSATIONAL BERRIES, LLC, a Michigan limited liability company whose address is 7686 B Drive South, Michigan 49015 (herein the "Tenant"), on the following terms and conditions:

1. **PREMISES LEASED:** Landlord leases to Tenant and Tenant rents from Landlord a leasehold in the property and improvements known as Suite No. "B", aka the "Kich(ə)n," containing approximately 675 sq. ft. of retail space and an attached storage area on the first floor of the Michigan Avenue Parking Ramp located at 80 West Michigan Avenue, Battle Creek, Calhoun County, Michigan (herein the "Property").
2. **ORIGINAL TERM:** The original term of this Lease is one (1) year, beginning on the Rent Commencement Date (defined below), and ending 12 months after the Rent Commencement Date, unless terminated earlier as provided herein or renewed as provided in paragraph 19. Tenant shall have the right to possession of the Property as of March 1, 2021, under the terms and conditions of this Lease.
3. **BASE RENT:** The base rent for the original term of this Lease is \$4,500 per year, payable in monthly installments of \$375, payable in advance on the first day of each month beginning with the month of the Rent Commencement Date. If any monthly installment payment of rent is not paid within 10 days after the date it first becomes due, then in addition to the monthly installment payment of rent there will become immediately due and payable from the Tenant a one-time late charge equal to 5% of the monthly installment payment. All rent shall be due on the first day of each month during the term of this Lease, in advance, without any deduction or offset, and paid to the Landlord at the address set forth above. Tenant's obligation to pay rent is independent of any covenants of Landlord in this Lease.
4. **RENT COMMENCEMENT DATE:** Tenant's obligation to pay rent and other charges shall commence on the "Rent Commencement Date" which is defined as March 1, 2021.
5. **CONDITION AND MAINTENANCE OF PROPERTY:** Tenant acknowledges Tenant has inspected the Property and accepts it as is. During the term of this Lease and any renewals, Tenant will maintain and repair and keep in good condition, at Tenant's sole expense, the interior of the Property. Tenant shall repair and replace, as applicable, any plate glass (whether on the interior or exterior of the Property), doors and windows of the Property, electrical wiring, plumbing and plumbing fixtures, heating and cooling units, and all other systems, to the extent any of the foregoing requires such repair and/or replacement due to the actions of Tenant or any of its employees or agents, ordinary wear and tear excepted. Landlord shall be obligated to make repairs for ordinary wear and tear only after Tenant has given written notice of the need for the repair. At the termination of this Lease, Tenant shall deliver the Property to Landlord "broom clean" and in good condition and repair, ordinary wear and tear excepted.
6. **UTILITIES:** From and after the Effective Date, except as set forth below, Landlord will promptly pay all electric, heating, fuel, water, sewage, gas, internet, refuse and trash removal, and other utility bills or charges for services provided to and directly used by the Property, including any deposits required for such services, during the period the Tenant remains or has the right to remain in possession of the Property.

7. **PEST CONTROL SERVICES:** Tenant will contract with a pest control firm to provide pest control services within the Property, if warranted.
8. **TAXES:** Tenant assumes no responsibility for the general real property taxes assessed against the commercial space of 80 W. Michigan Avenue, Suite B, in the Michigan Avenue Parking Ramp.
9. **INSURANCE:** Tenant will procure and keep in force, at Tenant's sole cost and expense, a policy or policies of insurance with an insurance company approved in writing by the Landlord, providing general and premises liability coverage naming the City of Battle Creek as additional insured in an amount not less than \$1 million for injury or death to any single person, \$3 million for injury or death to more than one person, and \$1 million regarding damage to property. Tenant further agrees to defend and hold Landlord harmless from any and all liability or claim for damages that may be asserted against the Landlord arising out of Tenant's use of the Property or by reason of any accident or casualty occurring on or about the Property, including reimbursement to Landlord for any attorneys' fees incurred in defending, settling, or responding to any such claim. Landlord will maintain such casualty insurance coverage on the ramp as Landlord deems appropriate. Tenant is responsible for obtaining such casualty insurance coverage for Tenant's leasehold improvements, contents, business interruption, and interior improvements to the Property as Tenant deems appropriate.
10. **ADDITIONAL RENT:** If Tenant fails to maintain the Property as paragraph 5 requires, pay any charge for pest control services as paragraph 7 requires, pay any real property taxes or installments of special assessments as paragraph 8 requires, or maintain insurance as paragraph 9 requires, in each case subject to the fifteen (15) day notice and cure period under paragraph 18 below, the Landlord may, but has no obligation to, advance funds to pay such costs or fulfill such obligations. The Tenant will immediately reimburse the Landlord for any such amounts the Landlord expends and any amount so expended will bear interest at the lower of 11% per annum or the highest permissible legal rate of interest.
11. **OPERATING RULES AND REGULATIONS:** Tenant will at all times conform with the following operational requirements in the use of the Property:
 - 11.1) All ground floor display windows must be fully lighted from dusk to 10:00 p.m. and partially lighted during all other hours of darkness.
 - 11.2) No space that is visible from the exterior of the Property may be used for storage or office use.
 - 11.3) Tenant will instruct and require Tenant's employees to park only in designated employee parking areas and enforce such requirement. Tenant shall be permitted (at Tenant's expense) two (2) parking spaces in the Michigan Avenue Ramp for exclusive use by Tenant. No additional rights to parking in the Michigan Avenue Ramp are provided under this Lease.
 - 11.4) If Tenant vacates the Property, all signs owned by the Tenant, advertising Tenant's business, services or goods will be removed from the Property by Tenant, at the Tenant's sole cost and expense, upon termination of this Lease. Standardized signage provided by the Landlord will be removed and/or changed at the expense of the Landlord.
 - 11.5) No hand painted signs may be displayed on the exterior of the Property or in the interior of the Property that are visible from the exterior, other than signs advertising specials or sale items that do not remain on display for more than 7 days or professionally painted signs.

Notwithstanding the preceding, all signs located anywhere within or about the Property are subject to Landlord's written approval and to immediate removal in the event Landlord does not approve the sign.

11.6) No portion of the Property will be used as a pool hall, card room, topless dancing business or permit or encourage topless dancing, massage parlor, adult movie theater, adult book store, or adult novelty store.

11.7) Tenant's use and occupancy of the Property is subject to such additional written rules and regulations as Landlord may from time to time deliver to Tenant.

11.8) Tenant will, on a regular basis, deposit all trash and refuse in Tenant's dumpster to be maintained behind Suite A or at such other location on the Michigan Avenue Parking Ramp property as Landlord designates from time to time. No trash or trash containers, other than the dumpsters, may be placed outside Tenant's Property.

12. **USE OF PROPERTY:** Tenant may use the Property for the following stated purpose and for no other purpose without Landlord's prior written consent: the operation of a retail food service business, which may include food production, retail and service operations that enhances the business. Tenant will use the Property in a careful, safe, and proper manner. Tenant will not conduct nor did permit to be conducted on the Property any business or any act which is contrary to or in violation of state, federal, or local law or ordinance, or which would void insurance coverage. Tenant will not permit the use or storage of hazardous or toxic substances on the Property unless Tenant properly and promptly disposes of all such substances at a location off the Property and in accordance with all applicable governmental regulations. All hazardous or toxic substances will at all times remain Tenant's property.

13. **EQUIPMENT, FURNISHINGS AND TRADE FIXTURES:** All equipment, furnishings, and trade fixtures placed on the Property by the Tenant that can be removed without damage to the Property are and will remain the Tenant's property. Tenant will promptly remove all of Tenant's property from the Property upon the termination of this Lease and will repair any damage to the walls, floors, and ceilings resulting from or becoming apparent after the removal of such property. Any personal property not removed by Tenant in accordance with the preceding sentence and which cannot be removed without damage to the Property, or any personal property deemed to be abandoned by Tenant, will become part of the Property and become the Landlord's property.

All equipment and property provided and owned by the Landlord must be cleaned and maintained in full working order by the Tenant while Tenant occupies the space. See Attachment A for list of kitchen equipment owned and provided by Landlord.

14. **WALKS:** Tenant will keep the walks and driveways adjoining the Property free from litter, obstructions, ice, and snow.

15. **ENTRY BY LANDLORD FOR INSPECTION:** Landlord has full access to the Property at all reasonable times for the purpose of completing the Landlord's Work, inspecting the condition of the Property, or, within the last 60 days of the Lease Term if Tenant has not elected to renew the Lease as provide in paragraph 19 below, to show the Property to prospective purchasers or lessees. From and after the Rent Commencement Date, Landlord shall give Tenant 24 hour written notice except in the event of an emergency (for which no prior notice shall be required). Subject to the foregoing, Tenant may, at Tenant's sole discretion, request that Landlord's inspection be conducted in a manner that avoid being a disruption during peak business times.

16. **ASSIGNMENT AND SUBLETTING:** Tenant may not sell, assign, mortgage, pledge, or in any manner transfer this Lease or any rights under this Lease or sublet any portion of the Property without the Landlord's prior written consent. If the Tenant is a partnership or limited liability company, the sale, transfer, or assignment of any equity interest or the admittance of any new partner or member that cumulatively results in a change of a beneficial interest or control of more than 50% of the partnership or limited liability company constitutes an assignment under this paragraph.
17. **DEFAULT:** Each of the following events constitutes an event of default under this Lease:
- 17.1) If the Tenant becomes insolvent in that Tenant cannot or is not paying Tenant's obligations as they become due;
 - 17.2) If Tenant's interest under this Lease is assigned by operation of law;
 - 17.3) If Tenant vacates the Property or ceases business operations from the Property for more than 10 consecutive days;
 - 17.4) If Tenant fails to deliver to Landlord proof of Tenant's insurance maintained pursuant to paragraph 9 within 10 days of Landlord's demand for proof of such insurance;
 - 17.5) If Tenant breaches any of Tenant's obligations under this Lease, including, but not limited to, maintenance of the Property pursuant to paragraph 5 or assignment of the Tenant's interest in violation of paragraph 16;
 - 17.6) If Tenant fails to pay any installment of rent or additional rent within 7 days of Landlord's demand for same.
18. **REMEDIES FOR DEFAULT:** With the exception of the events of default described in subparagraphs 17.4 or 17.6, if any event of default continues for fifteen (15) days after the Landlord's notice of default or Tenant fails in good faith to begin the correction of a breach of any other covenant or condition of this Lease to be performed by Tenant within ten (10) days after notice to Tenant of the nature of such breach, Landlord may elect to terminate this Lease upon 5 days' notice to Tenant. As to the events of default described in subparagraphs 17.4 and 17.6, the Landlord may elect to terminate this Lease immediately upon the expiration of the time periods provided in those subparagraphs. Notwithstanding such termination Tenant will be liable to Landlord for damages for breach of the Tenant's obligations under this Lease as follows:
- 18.1) Landlord may elect to recover from the Tenant the Landlord's actual damages sustained as a result of the Tenant's breach, including, but not limited to, Landlord's lost rent after crediting any rent received for the Property from any other tenant during the remaining term of this Lease, Landlord's expenses incurred in re-renting the Property, and any costs the Landlord incurs in making the Property ready for re-renting.
 - 18.2) If Landlord so elects within 35 days after Tenant vacates the Property, an amount equal to 25% of the sum of the rent that would be due under this Lease for the remainder of the Lease term. The parties agree upon the execution of this Lease this amount represents a reasonable estimate of Landlord's actual damages sustained as a result of any such default.
19. **TENANT'S RIGHT TO RENEW LEASE; RENEWAL RENT:** Tenant has the option to renew this Lease for an additional (1) year term ("Renewal Term"), provided Tenant is not then in default

of any of Tenant's obligations under this Lease, by giving Landlord written notice of intent to renew not later than 60 days before the end of the initial Lease term, as applicable. Any Renewal Term shall be on the same terms and conditions contained in this Lease, provided, that Landlord reserves the right to increase the base rent by no more than \$300 or \$25/month during year two of the lease agreement. In the event the Tenant anticipates transitioning from the space in less than 12 months beyond lease term, the lease may transition to a month to month term after the completion of year one or year two in the event the Tenant provides written notice of intent to move not later than 60 days prior to the end of the Lease.

20. **NOTICE:** Any notice required or permitted to be given under this Lease is properly given if delivered personally to the party or if delivered by certified mail, postage fully prepaid, return receipt requested, addressed to the Landlord or Tenant at their respective addresses set forth above or to such other address as either party may furnish in writing during the term of this Lease. The effective date of any notice will be the date the notice is delivered personally or the day after the notice is mailed by certified mail.
21. **DAMAGE BY FIRE:** If the Property is damaged or destroyed by fire or other catastrophe during the term of this Lease so as to become partially or totally un-tenantable, the damage or destruction occurred through no fault of the Tenant, Tenant's agents, employees, or owners, and the Landlord does not begin to repair or rebuild the Property within 90 days of the occurrence, the Landlord or Tenant may elect to terminate this Lease, with all rent accrued as of the date of the occurrence due and owing, and neither party having any further obligation to the other. If the Landlord elects to begin to repair or rebuild the Property with 90 days of the occurrence, or the parties otherwise do not elect to terminate the Lease as permitted under this paragraph, rent shall be fully abated for the time period that the Property is totally untenable, or if only partially untenable, abated proportionately to the amount of loss of use of the Property suffered by the Tenant. The Property will be deemed "totally untenable" if Tenant cannot reasonably operate any part of its business, and does cease all business operations, at the Property.
22. **ALTERATIONS:** Tenant may make such alterations, additions, physical changes, or improvements to the Property as Tenant deems necessary for Tenant's purposes only with the Landlord's prior written consent. Tenant is responsible for compliance of the Property with the provisions of the Americans with Disabilities Act, except the Landlord is responsible for the compliance with the Act with respect to the public access doorway for the Property.
23. **SUBORDINATION:** Tenant agrees this Lease is and will remain subject and subordinate to all present and future mortgages affecting the Property and Tenant will promptly execute and deliver to the Landlord such certificate in writing as Landlord may request showing the subordination of this Lease to such mortgage or mortgager and in default of Tenant so doing, Landlord will have the authority to execute such certificate on behalf of Tenant.
24. **LICENSES:** Tenant hereby represents and promises that Tenant has and will maintain, or will obtain, any and all licenses or permits that are or may be come required for Tenant's business.
25. **LANDLORD'S LIEN ON TENANT'S PROPERTY:** The Tenant hereby grants to the Landlord and the Landlord has a lien on all of Tenant's property at any time during the term of this Lease used or situated on the Property to secure the payment of rent due under this Lease and the Tenant's performance of all of the Tenant's obligations under this Lease. Tenant's property includes, but is not limited to, any of the following located on the Property at any time during the Lease term: all of Tenant's equipment, furnishings, office equipment, machinery, inventory, trade fixtures, signs, accounts receivable produced from Tenant's business on the Property and all products, proceeds,

and additions thereto (Collateral). If Tenant defaults in any of the Tenant's obligations under this Lease, the Landlord has the right to take possession of and sell or retain all or any portion of the Collateral and apply the proceeds in reduction of Tenant's obligations under this Lease. In addition to the above, the Landlord has all of the rights and remedies available to a secured party under the Uniform Commercial Code as adopted by the State of Michigan. Upon the Landlord's demand, the Tenant will promptly execute and deliver to the Landlord one or more financing statements acceptable to the Landlord evidencing the Landlord's secured interest. If Tenant refuses to sign such a financing statement immediately upon the Landlord's written demand, the Tenant hereby appoints the Landlord the Tenant's authorized representative for purposes of signing a financing statement on the Tenant's behalf. If Tenant fails, within 10 days after Landlord's demand, to execute and deliver to Landlord such financing statement or statements, the Tenant hereby appoints the Landlord as the Tenant's attorney in fact for the purpose of executing such financing statement or statements on Tenant's behalf.

26. **NONWAIVER:** Failure of Landlord to insist on the strict performance of any term or condition of this Lease will not constitute a waiver of Landlord's right to later enforce such term or condition.
27. **HOLDING OVER:** It is expressly agreed and understood between the parties that if Tenant holds over beyond a lease term without an express written renewal or after termination of the Lease, then the tenancy becomes a month-to-month tenancy, subject to all the conditions, provisions and obligations of this Lease insofar as the same can be applied to a month-to-month tenancy. The holding over will not constitute a renewal of this Lease and may be cancelled by either party on 30 days' written notice.
28. **QUIET ENJOYMENT:** Landlord agrees that upon Tenant's prompt payment of the rents and compliance with all provisions and conditions of this Lease, Tenant may peacefully and quietly have, hold and enjoy the Property during the basic term and all additional lease terms.
29. **PROHIBITION AGAINST DISCRIMINATION:** Lessee shall not discriminate against any person because of his or her actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of the obligations not to discriminate shall be a material breach of this lease agreement.
30. **ATTORNEYS FEES:** If either party commences any legal action to enforce this Lease or to obtain any relief for breach of this Lease, then in addition to any other relief available, the prevailing party in such action will be entitled to an award of actual reasonable attorneys' fees incurred.

31. MISCELLANEOUS PROVISIONS:

- 31.1) This Lease constitutes the entire agreement between the parties and may be amended only by a written document executed by all the parties.
- 31.2) This Lease is governed by the laws of Michigan.
- 31.3) This Lease is binding on the parties, their heirs, representatives, assigns and successors.
- 31.4) If any term, condition or covenant of this Lease is, to any extent, invalid or unenforceable, the remaining provisions will not be affected and will continue to be valid and enforceable.


IN WITNESS WHEREOF, Battle Creek Downtown Development Authority, a Michigan statutory downtown development authority created and operating pursuant to PA 197 of 1975 has executed this Lease this 1st day of March 2021.

BATTLE CREEK DOWNTOWN DEVELOPMENT AUTHORITY,
as Landlord

By: 
Paul Conkey
Its: BCDDA Board Chair

IN WITNESS WHEREOF, Simply Sensational Berries, LLC, a Michigan limited liability company, has executed this Lease this 1 day of March 2021.

SIMPLY SENSATIONAL BERRIES, LLC.,
as Tenant

By: 
Markeeta Haddley
Its: Sole Proprietor

31.5) The captions, sections numbers and article numbers are for convenience only and in no way describe, limit or construe the provisions of this Lease.

31.6) The provisions of this Lease will be presumed to have been mutually drafted and negotiated by the parties. No presumption will apply against either party in interpreting this Lease in the event of any ambiguity.

31.7) Any intention to create a joint venture or partnership between the parties is expressly disclaimed.

31.8) Tenant covenants and agrees that with respect to the use and access to the Property that are the subject of this Lease, it shall not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of these obligations as set out in Chapter 214 of Battle Creek ordinances shall be considered a material breach of this contract.

31.9) Time shall be of the essence of this agreement.