

COMMERCIAL LEASE

This COMMERCIAL LEASE (“**Lease**”) is made and entered into as of [month] __, 20__, (the “**Effective Date**”), by and between **LANDLORD NAME** (“**Landlord**”), and BananaSplit, LLC (“**Tenant**”). Landlord and Tenant are sometimes collectively referred to herein as the “**Parties**” and individually as a “**Party**.”

RECITALS

WHEREAS, Landlord owns certain real property, including land and improvements, commonly described as **ADDRESS** (the “**Property**”); and

WHEREAS, Tenant desires to lease the Property from Landlord, and Landlord desires to lease the Property to Tenant, subject to the terms and conditions set forth herein.

NOW THEREFORE, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 AGREEMENT TO LEASE

Landlord hereby agrees to lease to Tenant, and Tenant hereby agrees to lease from Landlord, the Property, subject to the terms and conditions of this Lease.

ARTICLE 2 PREMISES

2.1 Description. Landlord hereby leases to Tenant, on the terms and conditions stated below, the Property, together with all improvements located therein, or to be made thereto by either Landlord or Tenant (collectively the “**Premises**”).

2.2 Permitted Uses. Tenant will use the Premises for communal living purposes in furtherance of which the Tenant shall grant individuals who register as “**Members**” with Tenant a “**License**” to use and occupy certain portions of the Premises for residential purposes only; each Member shall execute a “**License Agreement**” with Tenant pursuant to which the Member shall compensate the Tenant for the License. No other use may be made of the Premises without the prior written approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

2.3 Compliance with Laws and Regulations. Tenant will comply with all applicable laws, ordinances, rules, and regulations of the United States, the State of Arizona, and all other government authorities with jurisdiction over the Premises, including but not limited to, local fire codes, zoning regulations, and occupancy codes. Tenant will promptly provide to Landlord copies of all communications to or from any government entity that relate to Tenant’s noncompliance, or alleged noncompliance, with any laws or other government requirements impacting the Premises.

2.4 Limits on Use. Tenant will not use, nor permit anyone else to use, the Premises in a manner, nor permit anything to be done in the Premises, that creates a condition that may increase the rate of fire insurance for the Premises or the Property or violates any requirements of Tenant’s insurance carrier.

2.5 Condition of Premises / No Warranties. Landlord makes no warranties or representations regarding the condition of the Premises or the Property, including, without limitation, the suitability of the Premises for intended uses or the condition of the improvements. Tenant has inspected and accepts the Premises in its "AS IS" condition upon taking possession. Except as expressly provided for herein, Landlord will have no liability to Tenant, and Tenant will have no claim against Landlord, for any damage, injury, or loss of use caused by the condition of the Premises or the Property. Tenant is solely responsible for thoroughly inspecting the Premises and ensuring that it is in compliance with all laws.

ARTICLE 3 TERM

3.1 Initial Term. The term of this Lease will commence on **START DATE** (the "**Commencement Date**"), and continue for a lease term of five years, expiring on **DATE** ("**Expiration Date**"), unless sooner terminated under the terms of this Lease ("**Initial Lease Term**"). Notwithstanding the foregoing, Tenant agrees that the first six (6) months of the Initial Lease Term, shall be a probation period during which either Party may terminate the Lease in such Party's sole discretion and for any reason upon five (5) days written notice to the other Party. As used herein "**Lease Term**" means the Initial Lease Term and any Extension Term. No Rent will be due from Tenant until possession of the Premises has been delivered to Tenant.

3.2 Extension Option. If the Tenant is not then in Default of this Lease (as defined in Article 12), Tenant will have the option, with mutual approval by Landlord, to extend the Initial Lease Term ("**Extension Option**") in five-year increments for a maximum of 20 years of total Extension Option. An Extension Option may be exercised by written notice given to Landlord not less than 5 days before the expiration of the Initial Lease Term or any Extension Term. Failure to exercise any Extension Option will terminate any subsequent Extension Option(s).

ARTICLE 4 RENT

4.1 Calculation of Rent and Due Date.

(a) The base monthly rent ("**Rent**") for the Initial Lease Term and each Extension Term shall be the Tenant's **Gross Profit**, which is calculated as (i) Total Revenue minus (ii) Total Expenses. **Total Revenue** shall mean Seventy-Eight Percent (78%) of all income received by Tenant from the License Agreement executed with the Members. **Total Expenses** shall mean the sum of all expenses necessary or convenient to operating the Premises as a communal living facility (collectively, the "**Expenses**"), including but not limited to all Tenant obligations required hereunder, insurance, utilities, security, weekly cleaning, pest control, replacement or repairs of any Personal Property and any other costs associated with the Premises. Rent shall be due and payable on the fifteenth (15th) business day of the month for the preceding month. For avoidance of any confusion, Rent is due and payable one month behind the current month to allow Tenant to collect all fees due under the License Agreements and calculate the Gross Profit for the month prior to which the Rent is due. Further, the Parties agree that all Expenses of every nature are to be the sole responsibility of Landlord and shall be paid by Landlord either (i) as part of the Total Expenses, or (ii) if any portion of the Expenses exceeds the amount of readily available funds of Tenant, as determined by the sole discretion of Tenant, by direct payment of such Expenses to Tenant within five (5) days of request for payment from Tenant.

4.2 **Taxes.** Landlord shall be responsible to pay, on or before the date they become due all real property taxes, assessments, special assessments, user fees, and other charges, however named, that, after the Effective Date and before the expiration of this Lease, may become a lien or that may be levied by any state, county, city, district, or other governmental authority on the Premises, any interest of Tenant acquired under this Lease, or any possessory right that Tenant may have in or to the Premises by reason of its occupancy thereof, as well as all taxes, assessments, user fees, or other charges on all property, real or personal, owned or leased by Tenant in or about the Premises (collectively, “**Taxes**”), together with any other charge levied wholly or partly in lieu thereof.

4.3 **Operating Expenses and Utilities.** Tenant will promptly pay any and all charges for gas, electricity, telephone, garbage, Internet, and all other charges for utilities or services that may be furnished directly to the Premises. Landlord has no responsibility to provide any utility services to the Premises that are not already in place. If additional services are required, Tenant will obtain Landlord’s permission for their installation, at Tenant’s initial cost and expense. Landlord will not unreasonably withhold such permission. For the avoidance of any confusion, any costs initially incurred under this Section 4.3 by Tenant shall be paid by Landlord in accordance with Section 4.1.

4.4 **Time and Place of Payments.** Payment of all Rent will be made to Landlord to the address set forth in Section 16.5 or such other place as Landlord may designate in accordance with the requirements of Section 16.5.

ARTICLE 5 TENANT OBLIGATIONS

5.1 **Repairs and Maintenance.** The Tenant will maintain the Property in good condition and will not commit, permit, or suffer any waste of the Property. The Tenant will maintain the Property, improvements, and fixtures on the Property and fences, in as good a condition and repair as they were in at the commencement of this Lease, reasonable wear and tear excepted. During the term of this Lease, the Tenant will regularly monitor the irrigation equipment that is utilized by Tenant. Tenant shall be responsible for the initial cost of any maintenance, repair, replacement or modification of the Property, any equipment or irrigation equipment that services the Property, including landscaping costs, and any Personal Property or replacement thereof. For the avoidance of any confusion, any costs initially incurred under this Section 5.1 by Tenant shall be paid by Landlord in accordance with Section 4.1.

5.2 **Alterations and Improvements.** Tenant, at Tenant’s initial expense, shall have the right following Landlord’s written consent, which shall not to be unreasonably withheld, conditioned or delayed, to make additions, improvements and replacements of and to all or any part of the Property from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials (collectively, the “**Alterations**”). For the avoidance of any confusion, any costs initially incurred under this Section 5.2 by Tenant as Alterations shall be paid by Landlord in accordance with Section 4.1.

5.3 **No Liens.** Tenant agrees to pay, when due, all sums for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment that have been provided or ordered with Tenant’s consent to the Premises. For the avoidance of any confusion, any sum initially paid under this Section 5.3 by Tenant shall be paid by Landlord in accordance with Section 4.1.

5.4 Landlord Access to Premises. Subject to applicable law governing the Permitted Uses, Landlord and its respective agents have the right to enter the Premises for the purposes of: (a) confirming the performance by Tenant of all obligations under this Lease, (b) doing any other act that Landlord may be obligated or have the right to perform under this Lease, and (c) for any other lawful purpose. Such entry will be made on not less than 24 hours' advance notice and during normal business hours, when practical, except in cases of emergency or a suspected violation of this Lease or the law. Tenant waives any claim against Landlord for damages for any injury or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by the entry except to the extent caused by the gross negligence or willful misconduct of Landlord.

ARTICLE 6 INSURANCE REQUIREMENTS

6.1 Insurance Amounts. Insurance requirements set forth below do not in any way limit the amount or scope of liability of Tenant under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage that Landlord is willing to accept to help ensure full performance of all terms and conditions of this Lease. All insurance required of Tenant by this Lease must meet all minimum requirements set forth in this Article 6. For the avoidance of any confusion, any costs initially incurred under this Article 6 by Tenant for insurance coverage shall be paid by Landlord in accordance with Section 4.1.

6.2 Certificates; Notice of Cancellation. Tenant will provide Landlord with certificates of insurance establishing the existence of all insurance policies required under this Lease promptly upon request. Landlord must receive notice of the expiration or renewal of any policy at least 10 days before the expiration or cancellation of any insurance policy. No insurance policy may be canceled, revised, terminated, or allowed to lapse without at least 10 days' prior written notice to Landlord. Insurance must be maintained without any lapse in coverage continuously for the duration of this Lease. Tenant will give Landlord certified copies of Tenant's policies of insurance promptly upon request.

6.3 Additional Insured. Landlord will be named as an additional insured in each required liability policy and, for purposes of damage to the Premises, as a loss payee. The insurance will not be invalidated by any act, neglect, or breach of contract by Tenant. On or before the Commencement Date, Tenant must provide Landlord with a policy endorsement naming Landlord as an additional insured as required by this Lease.

6.4 Primary Coverage and Deductible. The required policies will provide that the coverage is primary and will not seek any contribution from any insurance or self-insurance carried by Landlord.

6.5 Required Insurance. At all times during this Lease, Tenant will provide and maintain the following types of coverage:

- (8) **General Liability Insurance.** Tenant will maintain a commercial general liability policy insuring Tenant against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations or actions of Tenant. All such coverage must name Landlord as an additional insured. All such coverage must be in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage for all coverage specified herein.

(b) **Personal Property Insurance.** Tenant will be responsible to insure all Tenant's own Personal Property (as defined in Section 9.2), improvements, betterments, and trade fixtures, which items will not be covered by Landlord's insurance and for which Landlord and its insurance carriers will have no liability.

6.6. **Waiver of Subrogation.** Tenant and Landlord each waive any right of action that they and/or their respective insurance carriers might have against the other for any loss, cost, damage, or expense (collectively "**Loss**") to the extent that the Loss is covered by any property insurance policy or policies maintained or required to be maintained under this Lease. Tenant and Landlord also waive any right of action they and/or their insurance carriers might have against Landlord or Tenant (including their respective employees, officers, members or agents) for any Loss to the extent the Loss is a property loss covered under any applicable policies required by this Lease. If any of Tenant's or Landlord's insurance policies do not allow the insured to waive the insurer's rights of subrogation before a Loss, each will cause the policies to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section 6.6.

ARTICLE 7 LANDLORD INSURANCE

Landlord will obtain and keep in force a policy or policies of insurance in the name of Landlord, with loss payable to Landlord insuring loss or damage to the Property, Premises, Personal Property and any Landlord-owned improvements located therein.

ARTICLE 8 DAMAGE OR DESTRUCTION

In the event of partial or full damage or destruction to the Premises or the Property, the following will apply:

8.1 Definitions.

(8) "**Partial Damage**" means damage or destruction that will cost 30% or less of the then-applicable pre-damage value of the Premises to repair. Landlord will notify Tenant in writing within 30 days from the date of the damage or destruction about whether the damage is partial or total.

(b) "**Total Destruction**" means damage or destruction that will cost more than 30% of the then-applicable pre-damage value of the Premises to repair. Landlord will notify Tenant in writing within 30 days from the date of the damage or destruction about whether the damage is partial or total.

© "**Insured Loss**" means damage or destruction to improvements on the Premises that was caused by an event required to be covered by Landlord's insurance described in Article 7, irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" means the cost to repair or rebuild the improvements owned by Landlord at the time of the occurrence to their condition existing immediately prior thereto (or to a higher

standard if required by current applicable law), including demolition and debris removal and without deduction for depreciation.

8.2 Partial Damage—Insured Loss. If a Partial Damage that is an Insured Loss occurs, then Landlord will, at Landlord's expense, repair the damage as soon as reasonably possible, and this Lease will continue in full force and effect. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect the repair, Landlord will have the option to (a) promptly contribute the shortage in proceeds as and when required to complete the repair; or (b) have this Lease terminate 30 days thereafter.

8.3 Partial Damage—Uninsured Loss. If a Partial Damage that is not an Insured Loss occurs to the Premises, Landlord may either: (a) repair the damage as soon as reasonably possible at Landlord's expense (either directly or included as a Total Expense and paid in accordance with Section 4.1), in which event this Lease will continue in full force and effect; or (b) terminate this Lease by giving written notice to Tenant within 10 days after receipt by Landlord of knowledge of the occurrence of the damage. The termination will be effective 30 days following the date of the notice.

8.4 Total Destruction. If Total Destruction occurs, this Lease will terminate 10 days following the destruction.

8.5 Waiver of Certain Alternative Rights. To the extent allowed by law, Landlord and Tenant agree that the terms of this Lease will govern the effect of any damage to or destruction of the Premises and Property with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

ARTICLE 9 TERMINATION OF LEASE

Upon termination of this Lease, Tenant will deliver all keys to Landlord and surrender the Premises broom clean, in good condition, ordinary wear and tear excepted; provided, however, Tenant is not liable for any damage to the Premises, which except for the termination, would otherwise be included in Expenses to be paid by Landlord in accordance with Section 4.1.

9.1 Holdover. Tenant has no holdover rights.

9.2 Special Termination Rights. Either Landlord or Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to the other party in the event that any of the following shall occur (each, a "**Termination Event**"): (a) the Permitted Uses become illegal due to any revocation or modification of applicable State or local law; or (b) governmental requirements and/or the enforcement of such governmental requirements change such that Tenant cannot operate its business from the Premises. Upon any termination pursuant to this Section 9.2, (x) Tenant shall immediately vacate and surrender the Premises and (y) this Lease shall terminate and the Parties shall be released hereunder, except for such obligations that expressly survive the expiration or earlier termination of this Lease.

ARTICLE 10 HAZARDOUS SUBSTANCES

TENANT ACKNOWLEDGES AND AGREES THAT IT IS THE SOLE RESPONSIBILITY OF TENANT TO ASCERTAIN AND COMPLY WITH ALL HAZARDOUS SUBSTANCES LAWS IN CONNECTION WITH THE HANDLING AND DISPOSAL OF WASTE, INCLUDING HAZARDOUS SUBSTANCES OR ANY OTHER MATERIAL FROM THE PREMISES.

ARTICLE 11 TENANT DEFAULT

11.1 Events of Default. The following will constitute an “**Event of Default**” if not cured within the applicable cure period as set forth below:

(a) *Default in Rent.* Failure of Tenant to pay any Rent or other charge within 10 days after written notice from Landlord.

(b) *Default in Other Covenants.* Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of Rent or other charges) within 30 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, Tenant will be in compliance with this provision if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

(c) *Insolvency.* An assignment by Tenant for the benefit of creditors; filing by Tenant of a voluntary petition in bankruptcy; adjudication that Tenant is bankrupt or the appointment of receiver of the properties of Tenant; the filing of an involuntary petition of bankruptcy and failure of the Tenant to secure a dismissal of the petition within 90 days after filing; or attachment of or the levying of execution on the leasehold interest and failure of the Tenant to secure discharge of the attachment or release of the levy of execution within 30 days.

11.2 Remedies on Default. If an Event of Default occurs, Landlord, at Landlord’s sole option, may terminate this Lease by notice, in writing, in accordance with Section 16.5. The notice may be given before or within any of the above-referenced cure periods or grace periods for default and may be included in a notice of failure of compliance, but the termination will be effective only on the expiration of the above-referenced cure periods or grace periods. If the Premises is abandoned by Tenant in connection with a default, termination may be automatic and without notice, at Landlord’s sole option.

11.3. Reentry after Termination. If the Lease is terminated or abandoned for any reason, the rights and obligations of the Parties will be as follows: (a) Tenant will vacate the Premises immediately and deliver all keys to Landlord; and (b) Landlord may reenter, take possession of the Premises, and remove any persons by legal action.

11.5 Equitable Relief. Landlord may seek injunctive relief or an order of specific performance from any court of competent jurisdiction requiring that Tenant perform its obligations under this Lease.

11.6 No Waiver of Default. No failure by Landlord to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of partial Rent during the continuance of any breach, will constitute a waiver of the breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or

condition to be performed or complied with by Tenant, and no breach by Tenant, will be waived, altered, or modified except by a written instrument executed by Landlord. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

11.9 Remedies Cumulative and Nonexclusive. Each right and remedy of Landlord contained in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease, or existing at law or in equity, including without limitation suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of any such rights or remedies will not preclude the simultaneous or later exercise by Landlord of any other such rights or remedies. All such rights and remedies are nonexclusive.

ARTICLE 12 LANDLORD DEFAULT

12.1 Breach by Landlord

(a) *Notice of Breach.* Landlord shall be in breach of this Lease if Landlord fails to pay the Expenses or any portion thereof, as required in Article 4 within five (5) days of a request for payment from Tenant.

(b) *Remedies in the Event of a Landlord Default.* If an uncured event of default is committed by Landlord, Tenant will be entitled to any remedies available at law or in equity for breach of lease; however, damages will be limited to Landlord's interest in the Property unless caused by the gross negligence or intentional acts of the Landlord, its employees, agents, contractors or invitees.

ARTICLE 13 INDEMNITIES AND REIMBURSEMENT

13.1 Tenant Indemnity. Landlord agrees to defend (using legal counsel reasonably acceptable to the Tenant, taking into account insurance defense requirements), indemnify, and hold harmless the Tenant from and against any and all actual or alleged claims, damages, expenses, costs, fees (including but not limited to attorney, accountant, paralegal, expert, and escrow fees), fines, liabilities, losses, penalties, proceedings, and/or suits (collectively "**Costs**") that may be imposed on or claimed against Tenant, in whole or in part, directly or indirectly, arising from or in any way connected with the operation of a communal living facility at the Premises, except for any acts of gross negligence or intentional acts by Tenant.

13.3 Survival. This Article 13 will survive the termination of this Lease with respect to all matters arising or occurring before surrender of the Premises by Tenant.

ARTICLE 14 ASSIGNMENT AND ESTOPPELS

14.1 Consent Required. This Lease will not be assigned, subleased, or otherwise transferred except with the consent of Landlord, which consent may not be unreasonably, withheld or delayed. An assignment or sublet to an entity owned or controlled by, or under common ownership with, Tenant shall not be considered a transfer under this Section 14.1.

14.2 Estoppel Certificate. Each Party agrees to execute and deliver to the other, at any time and within 10 days after written request, a statement certifying, among other things: (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (b) the dates to which Rent has been paid; (c) whether the other Party is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (d) whether any event has occurred that, with the giving of notice, the passage of time, or both, would constitute a default and, if so, specifying the nature of each such event. Each Party will also include any other information concerning this Lease as is reasonably requested. The Parties agree that any statement delivered under this Section 14.2 will be deemed a representation and warranty by the Party providing the estoppel that may be relied on by the other Party and by its potential or actual purchasers and lenders, regardless of independent investigation. If either Party fails to provide the statement within 10 days after the written request therefor, and does not request a reasonable extension of time, then that Party will be deemed to have given the statement as presented and will be deemed to have admitted the accuracy of any information contained in the request for the statement.

ARTICLE 15 CONDEMNATION

If the Premises or any interest therein is taken as a result of the exercise of the right of eminent domain or under threat thereof (a **"Taking"**), this Lease will terminate with regard to the portion that is taken. If either Tenant or Landlord determines that the portion of the Property or Premises taken does not feasibly permit the continuation of the operation of the facility by either the Tenant or Landlord, this Lease will terminate. The termination will be effective 10 days from the date of the Taking. Any condemnation award relating to the Property or Premises will be the property of Landlord. Tenant will not be entitled to any proceeds of any such award, except Tenant will be entitled to any compensation attributed by the condemning authority to Tenant's relocation expense, trade fixtures, or loss of business.

ARTICLE 16 GENERAL PROVISIONS

16.1 Covenants, Conditions, and Restrictions. This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, rights of way, and any other matters of record imposed on the Property and to any applicable land use or zoning laws or regulations.

16.2 Nonwaiver. Waiver by either Party of strict performance of any provision of this Lease will not be a waiver of or prejudice the Party's right to require strict performance of the same provision in the future or of any other provision.

16.3 Attorney Fees. If any suit, action, or other proceeding (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing Party will be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. Payment of all such fees also applies to any administrative proceeding, petition for review, trial, and appeal. Whenever this Lease requires one Party to defend the other Party, the defense will be by legal counsel reasonably acceptable

to the Party to be defended, understanding that claims are often covered by insurance with the insurance carrier designating the defense counsel.

16.4 Construction. In construing this Lease, all headings and titles are for the convenience of the Parties only and are not considered a part of this Lease. Whenever required by the context, the singular includes the plural and vice versa.

16.5 Notices. All notices required under this Lease will be deemed to be properly served when actually received or on the third Business Day (defined in Section 16.15) after mailing, if sent by certified mail, return receipt requested, to the last address previously furnished by the Parties hereto in accordance with the requirements of this Section 16.5. Until hereafter changed by the Parties by notice in writing, sent in accordance with this Section 16.5, notices must be sent to the following addresses:

If to Landlord:

[ADD]

If to Tenant:

[ADD]

The addresses to which notices are to be delivered may be changed by giving notice of the change in address in accordance with this Notice provision.

16.6 Governing Law. This Lease is governed by and will be construed according to the laws of the State of Arizona, without regard to its choice-of-law provisions. Any dispute arising out of or related to this Lease shall be resolved by binding arbitration in Maricopa County, in front of a single arbitrator (who must be a member in good standing of the Arizona State Bar with no fewer than 10 years' experience as a licensed attorney), in accordance with such arbitrator's rules.

16.7 Survival. Any covenant or condition set forth in this Lease, the full performance of which is not specifically required before the expiration or earlier termination of this Lease, and any covenant or condition that by its terms is to survive, will survive the expiration or earlier termination of this Lease and will remain fully enforceable thereafter.

16.8 Partial Invalidity. If any provision of this Lease is held to be unenforceable or invalid, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties to the extent possible. In any event, all the other provisions of this Lease will be deemed valid and enforceable to the fullest extent.

16.9 Modification. This Lease may not be modified except by a writing signed by the Parties.

16.10 Successors. The rights, liabilities, and remedies provided in this Lease will extend to the heirs, legal representatives, and, as far as the terms of this Lease permit, successors and assigns of the Parties. The words "Landlord," "Tenant," and their accompanying verbs or pronouns, whenever used in the Lease, apply equally to all persons, firms, or corporations that may be or become parties to this Lease.

16.11 Calculation of Time. Unless referred to in this Lease as Business Days, all periods of time referred to in this Lease include Saturdays, Sundays, and Legal Holidays. However, if the last day of any

period falls on a Saturday, Sunday, or Legal Holiday, then the period extends to include the next day that is not a Saturday, Sunday, or Legal Holiday. "Legal Holiday" means any holiday observed by the federal government. "Business Day" means any day Monday through Friday, excluding Legal Holidays.

16.12 Interpretation of Lease; Status of Parties. This Lease is the result of arms-length negotiations between Landlord and Tenant and will not be construed against either Party by reason of that Party having, in whole or in part, prepared this Lease. Nothing contained in this Lease will be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship, between the Parties hereto.

16.13 No Recordation of Lease. This Lease will not be recorded.

16.14 Force Majeure. The time for performance of any of Tenant's or Landlord's obligations hereunder will be extended for a period equal to any hindrance, delay, or suspension in the performance of that Party's obligations, beyond the Party's reasonable control and directly impacting the Party's ability to perform, caused by any of the following events: unusually severe acts of nature, including floods, earthquakes, hurricanes, and other extraordinary weather conditions; civil riots, war, terrorism, or invasion; major fire or other major unforeseen casualty.

16.15 Nondisturbance. With respect to any loan agreement or other security agreement entered into by Landlord after the execution of this Lease (a "**Subsequent Loan**"), Tenant's subordination of this Lease will be subject to Tenant's receipt of a commercially reasonable nondisturbance agreement from the lender of the Subsequent Loan that provides that Tenant's possession of the Premises, including any options to extend the term hereof, will not be disturbed as long as Tenant is not in default of this lease and attorns to the record owner of the Premises.

16.16 Capacity to Execute; Mutual Representations Landlord and Tenant each warrant and represent to one another that this Lease constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, the individuals executing this Lease each warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

16.17 Entire Agreement. This Lease, together with all exhibits attached hereto and by this reference incorporated herein, constitutes the entire agreement between Landlord and Tenant with respect to the leasing of the Premises.

16.18 Counterparts. This Lease may be executed in one or more counterparts.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Lease to be effective as of the Effective Date.

LANDLORD:

NAME,

an Arizona Limited Liability Company

By: NAME, Member

Date: _____

TENANT:

BANANASPLIT, LLC,

an Arizona Limited Liability Company

By: NAME, Member

Date: _____