

file

LEASE AGREEMENT

THIS LEASE AGREEMENT, is entered into this 5th day of May, 2017, by Farmers & Merchants Bank & Trust as Trustee of the Ruth V. Swisher Trust dated September 21, 1993 (hereinafter "Landlord" and/or "Owner"), whose address for the purpose of this Lease is 221 Jefferson Street, Burlington IA 52601 and CREAM, LLC, an Iowa Limited Liability Company (hereinafter collectively "Tenant") whose address for the purpose of this lease is 223 Pine Street, Cherokee, IA 51012 (hereinafter the Landlord and Tenant will be collectively referred to as the "parties").

1. **PREMISES AND TERM.** The Landlord, in consideration of the rents, agreement and conditions herein contained, lease to Tenant and Tenant leases from Landlord, according to the terms and provisions of this lease, the building and land (hereinafter "the premises") at 121 E. College Street, Iowa City, IA 52240 and is described as East 47' of Lot 2, Block 82, original Town of Iowa City, Iowa, including the first and second floors but excluding the third floor of said building.

The Tenant is leasing the premises for a term of three years beginning on April 1, 2017 and ending on March 31, 2020 upon the condition that the Tenant pays rent thereof, and otherwise performs as is provided in this Lease.

The lease will automatically renew for the property for four (4) additional terms of three (3) years unless the Tenant gives notice not to renew as set forth below. See table below. The fourth term would be April 1, 2029 to December 31, 2031.

In the event the Tenant does not want to renew the lease for an additional term, the Tenant must give notice of intent not to renew to the other party in writing at least sixty (60) days prior to expiration of the term.

2. **RENTAL.** Tenant agrees to pay to Landlord as rent for said term, as follows: twelve thousand five hundred dollars (\$12,500.00) per month on the first (1st) day of each month with the first rent payment becoming due on first (1st) day of April, 2017. The rent shall be set forth in the following table which states the rent amount for each respective year:

| Year - beginning April 1 | Amount of Monthly Rent |
|--------------------------|------------------------|
| 2017 | \$12,500.00 |
| 2018 | \$12,500.00 |
| 2019 | \$12,500.00 |
| 2020 | \$13,250.00 |
| 2021 | \$13,250.00 |
| 2022 | \$13,250.00 |
| 2023 | \$14,000.00 |
| 2024 | \$14,000.00 |
| 2025 | \$14,000.00 |
| 2026 | \$14,750.00 |

| | |
|----------------------|-------------|
| 2027 | \$14,750.00 |
| 2028 | \$14,750.00 |
| 2029 | \$15,500.00 |
| 2030 | \$15,500.00 |
| 2031 ending 12/31/31 | \$15,500.00 |

Payment shall be made to Ruth V. Swisher Trust, c/o Farmers & Merchants Bank & Trust, 221 Jefferson Street, Burlington, IA 52601. Delinquent payments shall draw interest at the rate of twelve percent rate (12%) per annum from the due date, until paid.

3. **POSSESSION.** Tenant is in possession of the real estate and the Tenant is responsible for paying all utilities and complying with all other provisions of this lease. Tenant shall yield possession to the Landlord at the end of the lease term.

4. **USE OF PREMISES.** Tenant covenants and agrees during the term of this lease to use and to occupy the leased premises solely for the sale of food, beverages and entertainment and Tenant agrees to comply with all valid regulations of the Board of Health, city ordinances, the laws of the State of Iowa, and the Federal Government, but this provision shall not be construed as creating any duty by Tenant to the members of the General Public. The Tenant shall comply with all licensing regarding the sale of alcoholic beverages and shall keep all dram-shop insurance in place. No other use of the premises shall be permitted without the prior written approval of the Landlord.

5. **QUIET ENJOYMENT.** Landlord covenants that its estate in the premise is unencumbered and that the Tenant, if not in default, shall peaceably have, hold and enjoy the premises for the term of this lease. Landlord shall have the right to sell or mortgage or assign all of its right, title, interest in said premises at any time without notice, subject to this lease.

Within 15 days after request by Landlord, Tenant shall, without charge, delivery a duly executed and acknowledged instrument to any mortgagee, assignee, or any mortgagee or purchaser, or any other person, firm, or corporation reasonably required by the requesting party, certifying:

- a. That this lease is unmodified and in full force and effect (or if there has been modification, that the lease is in full force and effect as modified and stating the modifications);
- b. Whether there then exists any setoffs, defenses, or counterclaims against the enforcement of any obligation which either party is required to perform or comply with hereunder, and, if so, specifying such setoff and defense;
- c. The date to which any rental or other charges hereunder have been paid in advance;
- d. That prior to the date the required certificate was executed, to the best knowledge of the person executing the same, there has been no violation or breach that would constitute a default under this lease; and
- e. Any other information required in the certification.

Failure of the Tenant to provide the statement will be deemed an acknowledgment of the Tenant to accuracy of the representation in the statement proffered by the Landlord.

6. **ACCESS.** During the Lease term, the Landlord or its Agents shall have reasonable access to the building for purposes of inspection during business hours.

7. **REPAIRS.** During the Lease term, it shall be the Landlord's duty to maintain the structural portion of the exterior walls, foundations, floor supports, existing chimneys, roofs and water and sanitary sewer lead-ins to the leased premises. It shall be the duty of the Tenant to maintain and replace, if necessary all other portions of the leased premises, including the front and to keep the same in good and reasonable state of repair, natural wear and tear only accepted.

It is agreed by the parties hereto that the existing freight elevator in said building shall stay on said premises and not be removed. If the Tenant wishes to use the elevator, Tenant may do so, provided the Tenant accepts it in its present condition, repairs it and maintains it at Tenant's expense. The elevator shall not be used for storage space.

8. **UTILITIES, DUTY OF CARE AND MAINTENANCE.** The Tenant agrees that it will furnish its own utilities and keep all costs and expenses thereof currently paid. Tenant shall maintain and repair all sewer, plumbing, water pipes, electrical wiring and similar fixtures in the building. Tenant shall maintain the heat at a level adequate to prevent damage to the building from freezing. Tenant shall be responsible for plate and ordinary glass in all windows and the replacement thereof in the event of damage or breakage. Tenant further agrees to maintain all sidewalks abutting the leased premises and to keep the same free of snow, ice and debris.

9. **CONDITION OF PREMISES.** Tenant takes the buildings "as is".

10. **ALTERNATIONS AND IMPROVEMENTS.** Tenant, at Tenant's expense, shall have the right, upon obtaining Landlord's consent, to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the of the Leased buildings from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant must keep the Landlord informed of all renovations and periodically update the Landlord on the status of the renovations. Landlord agrees to not unreasonably withhold consent. Tenant shall hire only licensed and insured contractors, subcontractors and tradesmen to perform work on the premises. Tenant shall obtain all required permits before work is performed on the premises and display the permits as required. Tenant shall obtain all lien waivers for work performed and provide copies of all lien waivers to Landlord. Tenant shall have the right to place and install personal property, trade fixtures, equipment, and other temporary installations in and upon the Leased buildings and improvements, and fasten the same to the buildings. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Leased term or placed or installed on the Leased building by Tenant thereafter, shall remain Tenant's property.

11. **SIGNAGE.** Tenant shall have the right and privilege of attaching, affixing, painting or exhibiting signs on the leased premises, provided only that (1) the sign complies with the City Ordinances and the laws of the State of Iowa; (2) such signs do not change the structure of the building; and (3) such signs if and when taken down shall not damage the building.

Landlord during the last ninety (90) days of this lease, or extension, shall have the right to maintain in the window or on the building or on the premises a sign "FOR RENT" and/or "FOR SALE" or "FOR AUCTION" and Tenant will permit, at such time, prospective tenants or buyers to enter and examine the premises.

12. UTILITIES AND SERVICES. Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord.

13. REAL ESTATE TAXES. Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises.

14. INSURANCE. Landlord agrees to insure the structure. Such insurance shall cover losses in the Insurance Services Office Board Form Causes of Loss (formerly fire and extended coverage). Tenant, at its sole expense, agrees to insure all contents, merchandise, improvements, fixtures, equipment and all other personal property owned by Tenant located or installed in the premises.

Liability Insurance. Tenant shall obtain commercial general liability insurance in the amounts of \$1,000,000.00 each occurrence and \$2,000,000.00 annual aggregate per location. Such policy shall include liability arising from premises operations, independent contractors, personal injury, dram shop, products and completed operations and liability assumed under an insured contract. The policy shall be endorsed to include the Landlord as an additional insured.

Certificates of Insurance. Prior to the date of executing this agreement, Tenant will provide the Landlord with a certificate of insurance with these property and liability insurance requirements, such certificates shall include thirty (30) days advance notice of cancellation to the Landlord. A renewal certificate shall be provided prior to expiration of the current policies.

The Tenant also agrees to carry such amount of insurance as will protect the Tenant and Landlord against liability arising under the Dram Shop laws of the State of Iowa and such policies shall be duly endorsed to protect and hold harmless the landlord. A Certificate of Insurance shall be supplied to the Landlord prior to the date of executing this agreement and such Certificate of Insurance shall be endorsed to include the Landlord as an additional insurance.

Acts By Tenant. Tenant will not do or omit doing of any act which would invalidate any insurance, or increase the insurance rates in force on the premises.

Increased Risks or Hazards. Tenant further agrees to be liable for and to promptly pay, as if current rental, any increase in insurance rates on said premises and on the building of which said premises are a part, due to increased risks or hazards resulting from Tenant's use of the premises otherwise than as herein contemplated and agreed.

15. **INDEMNITY.** Tenant will protect, defend and indemnify Landlord from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence, causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claiming through or under Tenant.

16. **DEFAULT.** In the event of a default made by Tenant in the payment of rent due to Landlord or in providing a certificate of insurance, Tenant shall have ten (10) days after receipt of written notice thereof to cure such default. In the event of a default made by Tenant in any of the other covenants or conditions to be kept, observed and performed by Tenant, Tenant shall have thirty (30) days after receipt of written notice thereof. Landlord shall not be required to give Tenant any more than three notices for the same default within any 365 day period.

In the event Tenant has not remedied a default in a timely manner following written notice of default, Landlord may proceed with all available remedies at law or in equity.

In the event Tenant is adjudicated a bankrupt or in the event of a judicial sale or other transfer of Tenant's leasehold interest by reason of any bankruptcy or insolvency proceedings or by other operation of law, but not by death, and such bankruptcy, judicial sale or transfer has not been vacated or set aside within ten (10) days from the giving of notice thereof by Landlord or Tenant, then and in any such events, Landlord may, at its option, immediately terminate this lease, re-enter the premises, upon giving of ten (10) days' written notice by Landlord to Tenant, all to the extent permitted by applicable law.

Acceptance of keys, advertising and re-renting by the Landlord upon the Tenant's default shall be construed only as an effort to mitigate damages by the Landlord, and not as an agreement to terminate this lease.

17. **SUBORDINATION.** Tenant accepts this Lease subject and subordinate to any mortgage, or other lien presently existing or hereafter arising upon the Leased premises, and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time subordinate to such mortgage, or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage or other lien now existing or hereafter placed upon the Leased premises. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

18. **NOTICE.** Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested. The addresses for purposes of notice are as follows:

Landlord:

Ruth V. Swisher Trust
c/o Keili S. Johnson – Trust Office
Farmers & Merchants Bank & Trust
221 Jefferson Street
Burlington, IA 52601

Tenant:

CREAM, LLC
c/o George Wittgraf
223 N. Pine Street
P.O. Box 535
Cherokee, IA 51012

Copy to:
Joseph T. Moreland
120 E. Washington Street
Iowa City, IA 52240

19. SUBLEASING, ASSIGNABILITY AND TRANSFERABILITY. Any assignment of this lease or subletting of the premises or any part thereof, without the Landlord's written permission shall, at the option of the Landlord, make the remainder for the balance of the lease term due and payable at once. Such written permission shall not be unreasonably withheld.

20. FIRE AND CASUALTY. (a) PARTIAL DESTRUCTION OF BUILDING. In the event of a partial destruction or damage of the premises, which is a business interference which prevents the conducting of a normal business operation and which damage is reasonably repairable within one hundred and twenty (120) days after its occurrence, this lease shall not terminate but the rent for the premises shall abate during the time of such business interference. Landlord shall repair the damage within one hundred and twenty (120) days after the occurrence to its prior condition unless it is delayed by actions of God, the elements, or other good causes beyond its control. Prior condition includes the structural walls, floors and ceilings, but does not include the elements unique to the Tenant's space. Landlord shall not be required to spend amounts in excess of the insurance proceeds made available to the Landlord or to restore any improvements made by the Tenant. If any additional changes would be made, Tenant would obtain approval.

(b) **ZONING.** Should the zoning ordinance of the municipality in which this property is located make it impossible for Landlord to repair or rebuild so that Tenant is not able to conduct its business on these premises, then such partial destruction shall be treated as a total destruction as provided in the next paragraph.

(c) **TOTAL DESTRUCTION OF BUSINESS USE.** In the event of a destruction or damage of the leased premises so that Tenant is not able to conduct its business on the premises and which damages cannot be repaired within one hundred and twenty (120) days or some other amount of reasonable time, this lease may be terminated at the option of either the Landlord or

Tenant. Such termination in such event shall be effected by written notice of one party to the other within thirty (30) days after such destruction. Tenant shall surrender possession within ten (10) days after such notice issues and each party shall be released from all future obligations, and Tenant shall pay rent pro rata only to the date of such destruction. In the event of such termination of this lease, Landlord at its option, may rebuild or not, at its discretion.

21. CONDEMNATION. (a) **DISPOSITION OF AWARDS.** Should the whole or any part of the premise be condemned or taken for any public or quasi-public purpose, each party shall be entitled to retain, as its own property, any award payable to it. Or in the event that a single entire award is made on account of the condemnation, each party will then be entitled to take such proportion of said award as may be fair and reasonable.

(b) **DATE OF LEASE TERMINATION.** If the whole of the demised building shall be so condemned or taken, the Landlord shall not be liable to the Tenant.

22. MECHANIC'S LIENS. Neither the Tenant nor anyone claiming by, through, or under the Tenant, shall have the right to file or place any Mechanic's liens or other lien of any kind or character whatsoever, upon the premises or upon any building or improvement, or upon the leasehold interest of the Tenant, and notice is hereby given that no contractor, sub-contractor, or anyone else who may furnish any material, service or labor for any building, improvements, alteration, repairs or any part thereof, shall at any time be or become entitled to any lien on the premises, and for the further security of the Landlord, the Tenant covenants and agrees to give actual notice thereof in advance, to any and all contractors and sub-contractors who may furnish or agree to furnish any such material, service or labor.

Prior to work being performed, Tenant must provide to Landlord the name of all contractors and/or subcontracts performing work on the premises. At the completion of any work performed on the premises by contractors and/or subcontractors, Tenant must provide Landlord with lien waivers signed by each subcontractor and/or contractor. Prior to the Tenant opening for business after remodeling or renovation, the Tenant must provide copies of all the lien waivers signed by the contractor and/or subcontractor to the Landlord.

23. LANDLORD'S LIEN AND SECURITY INTEREST. (a) Landlord shall have, in addition to any lien given by law, a security interest as provided by the Uniform Commercial Code of Iowa, upon all personal property and all substitutions thereof, kept and used on said premises by Tenant. Landlord may proceed at law or in equity with any remedy provided by law or by this lease for the recovery of rent, or for termination of this lease because of Tenant's default in performance.

24. ENVIRONMENTAL.

A. Landlord. To the best of Landlord's knowledge to date:

1. Neither Landlord nor Landlord's former or present tenants are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules and regulations pertaining to air and water quality, the

handling, transportation, storage, treatment, usage, or disposal of hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

2. Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state, and local codes, rules and regulations.

3. No leak, spill release, discharge, emission or disposal of toxic or hazardous substances has occurred on the premises.

4. The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances.

B. Tenant. Tenant expressly represents and agrees:

1. During the lease term, Tenant's use of the property will not include the use of any hazardous substance without Tenant first obtaining the written consent of Landlord. Tenant understands and agrees that Landlord's consent is at Landlord's sole option and complete discretion and that such consent may be withheld or may be granted with any conditions or requirements that Landlord deems appropriate.

2. During the lease term, Tenant shall be fully liable for all costs and expenses related to the use, storage, removal and disposal of hazardous substances used or kept on the property by Tenant, and Tenant shall give immediate notice to Landlord of any violation or potential violation of any environmental regulation, rule, statute, or ordinance relating to the use, storage or disposal of any hazardous substance.

3. Tenant, at its sole cost and expense, agrees to remediate, correct or remove from the premises any contamination of the property caused by hazardous substances which have been used or permitted by Tenant on the premises during any term of this lease. Remediation, correction, or removal shall be in a safe and reasonable manner, and in conformance with all applicable laws, rules and regulations. Tenant reserves all rights allowed by law to seek indemnity or contribution from any person, other than landlord, who is or may be liable for any such cost and expense.

4. Tenant agrees to indemnify and hold Landlord harmless from and against all claims, causes of action, damages, loss, costs, expense, penalties, fines, lawsuits, liabilities, attorney fees, engineering and consulting fees, arising out of or in any manner connected with hazardous substances, which are caused or created by Tenant, including, but not limited to, injury or death to persons or damage to property, and including any diminution of the value of any leased premises which may result from the foregoing. This indemnity shall survive cessation, termination, abandonment or expiration of this lease.

25. **WAIVER.** No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent herein stated. One or more waivers by

Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

26. **HEADINGS.** The headings used in this Lease are for convenience of the parties only and shall not be construed in interpreting the meaning of any provision of this Lease.

27. **SUCCESSORS.** The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

28. **COMPLIANCE WITH LAW.** Tenant and Landlord each shall comply with all laws, orders, ordinance and other public requirements now or hereunder affecting the Leased Premises.

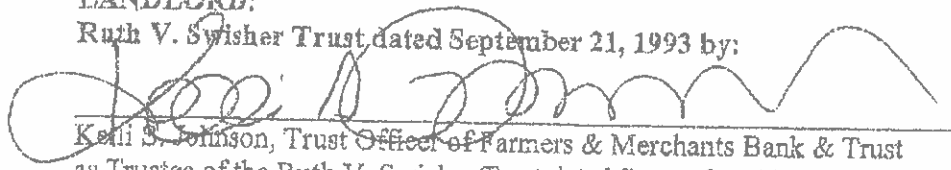
29. **FINAL AGREEMENT.** This Agreement terminates and supersedes all prior understanding or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

30. **CONSTRUCTION.** Words and phrases herein, including acknowledgment hereof, shall be construed as in the singular or plural number and as masculine, feminine or neuter gender according to the context.

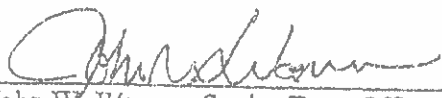
31. **COUNTERPARTS.** This document may be executed in counterparts and a copy of a signature may have the same meaning and effect as an original signature.

LANDLORD:

Ruth V. Swisher Trust dated September 21, 1993 by:



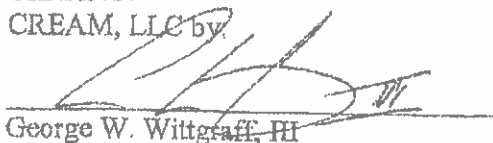
Kelli S. Johnson, Trust Officer of Farmers & Merchants Bank & Trust as Trustee of the Ruth V. Swisher Trust dated September 21, 1993.



John W. Wagner, Senior Trust Officer and Vice-President of Farmers & Merchants Bank & Trust, as Trustee of the Ruth V. Swisher Trust dated September 21, 1993.

TENANT:

CREAM, LLC by:


George W. Wittgraff, III

State of Iowa)
County of Des Moines) ss:

On this 5 day of May, 2017, before me, the undersigned, a Notary in and for the State of Iowa personally appeared Kelli S. Johnson, Trust Officer of Farmers & Merchants Bank & Trust, as Trustee of the Ruth V. Swisher Trust dated September 21, 1993 and John W. Wagner, Senior Trust Officer and Vice-President of Farmers & Merchants Bank & Trust, as Trustee of the Ruth V. Swisher Trust dated September 21, 1993 to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as a voluntary act and deed.

Elizabeth A. Long
Notary Public in and for State of Iowa

State of Iowa)
County of Johansen) ss:



On this 5th day of May, 2017, before me, the undersigned, a Notary in and for the State of Iowa personally appeared George W. Wittgraff, III of CREAM, LLC to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as a voluntary act and deed.

Brooke L. Fishburn
Notary Public in and for State of Iowa

