

CITY OF KINGMAN POWERHOUSE LEASE AGREEMENT

This Lease (this "Lease") is made this by and between the City of Kingman, an Arizona Municipal Corporation ("Lessor"), and Historic Route 66 Association of Arizona an Arizona non-profit corporation, ("Lessee").

Recitals

- A. Lessor is the owner and operator of the Kingman PowerHouse.
- B. Lessee desires to lease the Leased Premises (defined below) from Lessor.

Agreement

In consideration of the conditions and covenants hereafter set forth and for the rents reserved herein, it is mutually agreed as follows:

1. Leased Premises. Lessor hereby leases to Lessee, and Lessee agrees to take and let from Lessor, approximately 1400 square feet of retail space located in the PowersHouse as described on the attached Exhibit "A", incorporated herein (Leased Premises), located at 120 West Andy Devine, Kingman, Arizona 86401.

2. Term. The term of this Lease shall commence on the 1st of April, 2019 (Commencement Date) and shall end at 11:59 p.m. on the 30th of March, 2029 (Initial Term), subject to the right of renewal hereinafter set forth.

3. Renewal. Lessee may renew this Lease for one (1) additional five (5) year term. Provided that Lessee is not in default under this Lease at the time of renewal, this Lease shall automatically be renewed for such Renewal Terms unless either Lessor or Lessee give the other party written notice of their intent not to renew this Lease at least one hundred twenty (120) days prior to expiration of the Initial Term or the then-effective Renewal Term. If either party gives such notice, then this Lease shall be deemed terminated and expired at the end of the last effective term. If this Lease is renewed as provided herein, all terms and conditions of this Lease shall remain in full force and effect during the Renewal Terms, including, without limitation, the annual increase to the Base Rent as set forth in Paragraph 4.

4. Rent. LESSEE agrees to pay to LESSOR as rent for the Leased Premises the following amounts no later than the 15th day of each and every month:

- a. During the Initial Term, the sum of eight-hundred and fifty dollars (\$850.00) per month;
- b. Effective on July 1st of the fifth year and continuing during each Renewal Term thereafter, if exercised, the rent amount shall be adjusted upward by the "Consumer Price Index for All Urban Consumers-Unadjusted" using a June through May calculation period. Said adjusted base rent shall become the new base rent amount for that addition term.
- c. All taxes levied or assessed upon LESSEE'S fixtures, furnishings, equipment or other personal property located in or upon the Leased Premises, including improvements thereto, and all taxes arising out of the use of the Leased Premises, and/or arising out of the operation of this Lease. Such taxes shall include, but not be limited to, personal property taxes, possessory interest taxes, sales taxes and/or any like tax levied, assessed

or imposed by the United States, the State of Arizona, Mohave County, or any political subdivision.

d. LESSEE hereby acknowledges that late payment by LESSEE to LESSOR of the rents due hereunder will cause LESSOR to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any payment of rents or any other sum due from Lessee hereunder shall not be received by LESSOR or LESSOR'S designee on or before the time set forth herein for the payment thereof, then said amount shall be deemed past due, and LESSEE shall pay to LESSOR a late charge equal to Twenty Five Dollars (\$25.00) for each late payment of rent. LESSOR and LESSEE hereby agree that such late charge represents a fair and reasonable estimate of the cost that LESSOR will incur by reason of any such late payment of LESSEE. Acceptance of any such late charge by LESSOR shall in no event constitute a waiver of LESSEE'S default with respect to such overdue amount, nor prevent LESSOR from exercising any of the other rights and remedies granted hereunder.

5. Security deposit. Lessee shall not be required to pay any security deposit to Lessor at the inception of this Lease, provided, however, if Lessee defaults hereunder, as a condition to the cure of any such default Lessor may require Lessee to pay Lessor a security deposit equal to one and one half times the then current monthly rent due under this Lease. If Lessee thereafter defaults with respect to any provision of this Lease, Lessor may apply all or any part of the security deposit for the payment of any sum in default, or for the payment of any other amount which Lessor may spend or become obligated to spend by reason of Lessee's default, or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee's default. Application of the deposit shall not constitute a cure of the default by Lessee to which the application relates. If any portion of the security deposit is so applied, Lessee shall, within five days after written demand therefor, deposit cash with Lessor in an amount sufficient to restore the security deposit to its original amount. Lessor shall not be required to keep the security deposit separate from Lessor's general funds and Lessee shall not be entitled to interest on the deposit. If Lessee shall fully and faithfully perform every provision of this Lease to be performed by Lessee, the security deposit or any balance thereof shall be returned to Lessee promptly following the expiration of the Term.

6. Use of Leased Premises. Lessee may use the Leased Premises as a Retail Store, office space, and for other activities necessarily and directly incidental to the foregoing permitted uses. Any other uses not directly incidental to the uses permitted hereunder are hereby prohibited without the express written consent of Lessor.

7. Improvements. Lessor shall have no obligation whatsoever to construct any improvements on the Leased Premises. Lessee, at its expense, may construct improvements on the Leased Premises other than the Lessee Improvements, with Lessor's prior written consent and provided that all improvements constructed by Lessee shall:

- a. Comply with the requirements of any governmental or quasi-governmental authority having jurisdiction, including without limitation, the City of Kingman and Mohave County, Arizona ordinances and codes; comply with the requirements of Lessor's insurance carriers and with Lessor's safety and access requirements;
- b. Be constructed in good workmanlike manner and conform to complete working drawings approved by Lessor;
- c. Be of a quality that equals or exceeds the current standard for the Leased Premises and comply with all building, fire and safety codes; and

d. Be carried out only during hours approved by Lessor by licensed contractors selected by Lessee and approved by Lessor. Such contractors shall, at Lessor's request, deliver to Lessor proof of workers' compensation and general liability insurance coverage, including coverage for completed operations and contractual liability, in amounts, with companies and in forms reasonably satisfactory to Lessor, which shall remain in effect during the entire period in which the work will be carried out. Lessee shall pay before delinquency all costs for work done or caused to be done by Lessee on the Leased Premises which could result in any lien or encumbrance on Lessor's interest in the Leased Premises. Any and all improvements placed upon the Leased Premises by Lessee shall be made at the sole expense of Lessee. If Lessee fully performs its obligations hereunder, within ninety (90) days after the expiration of this Lease, Lessee, at its expense, may remove the improvements to the Leased Premises constructed by Lessee, provided, however, that within such time period, Lessee shall clean, repair and restore the Leased Premises to its original condition. If this Lease is terminated due to a default by Lessee, for any reason, all permanent improvements to the Leased Premises shall become the property of the City of Kingman. Except as provided herein, permanent improvements and/or alterations to the Leased Premises will hereby be prohibited without the express written consent of Lessor, which consent shall not be unreasonably withheld.

8. The City shall maintain Electrical, Plumbing, HVAC, and Major structural components of the premises.

9. Insurance. Lessee shall acquire and keep in effect adequate bodily injury liability and property damage insurance and all other insurance needed or required for the operations of Lessee as contemplated by this Lease, covering all of Lessee's employees and equipment, and shall indemnify and hold Lessor harmless from any causes of action arising from Lessee's operations hereunder. In all the above policies, Lessor shall be named as additional insured with the Lessee. For the Term of this Lease such policies shall not be for less than the amount of One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage. All such policies shall be placed with a reputable company approved by the Lessor. Copies of all such policies or certificates of insurance shall be delivered to the Lessor within ten (10) days after the execution of this Lease and shall be held for the benefit of the parties as their respective interests may appear. The amount of said insurance shall not be deemed as a limitation of Lessee's agreement to save and hold the Lessor harmless, and if Lessor or Lessee becomes liable for an amount in excess of the insurance, Lessee will save and hold Lessor harmless for the whole thereof. Copies of policies or certificates of insurance of all such policies entered into after the commencement of this Lease shall be delivered to the Lessor within ten (10) days of the commencement of each such policy. In addition to the above-named policies, and under the same obligations to deliver copies of said policies or certificates of insurance to Lessor, Lessee shall obtain fire insurance and other property loss insurance on all improvements placed upon the Leased Premises, in an amount equal to the value of said improvements.

10. Utilities. Lessee shall pay promptly and prior to any delinquency any and all charges which may be incurred for water, gas, electrical power, telephone and any other utilities delivered to or used upon the Leased Premises during the Term, and any renewal or extension thereof, and shall hold Lessor harmless therefrom.

11. Assignment and Sublease. Lessee shall not transfer, assign or sublet this Lease or any privileges granted hereunder without prior written approval of Lessor. Upon any assignment or sublease, this Lease is voidable at the option of the Lessor, which option may be exercised within a reasonable period subsequent to the Lessor obtaining actual knowledge of any assignment or

sublease. In the event of a transfer, assignment or sublease of this Lease, Lessee shall pay to Lessor an amount equal to Lessor's attorneys' fees and costs arising out of such transfer, assignment or sublease; said attorneys' fees and costs shall be no less than the sum of Five Hundred Dollars (\$500.00). Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. Without limiting the foregoing, Lessee shall not sublease, rent or assign any right to occupy the Leased Premises or any portion thereof for the storage of aircraft owned by any third party.

12. Compliance with Laws; Waste and Nuisance Prohibited. During the Term of this Lease, and any renewals or extensions thereof, Lessee shall comply with all applicable laws, statutes, rules, regulations, codes and ordinances (collectively, "Laws") affecting the Leased Premises. Lessee shall not commit, or permit, any waste or nuisance on the Leased Premises.

13. Environmental Laws. Without limiting the foregoing, Lessee shall comply with all present and future federal, state and local laws, ordinances, orders, rules and regulations relating to environmental matters (collectively, "Environmental Law"), and shall defend, indemnify and hold harmless Lessor and Lessor's present and future officers, directors, employees and agents from and against all claims, demands, liabilities, fines, penalties, losses, costs and expenses, including but not limited to costs of compliance, remedial costs, clean-up costs and reasonable attorneys' fees, arising from or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant or hazardous or toxic material, substance or matter (as those terms are defined under any Environmental Law) from, on or at the Leased Premises as a result of any act or omission on the part of Lessee. Lessee's indemnification obligations shall survive the expiration or termination of this Lease.

14. Care of Leased Premises. At Lessee's own expense, Lessee shall keep and maintain the Leased Premises and the immediate surrounding areas clean, neat, safe and orderly at all times. Upon the expiration of this Lease, or at the termination of this Lease for any reason, Lessee shall deliver the Leased Premises in good order and condition, reasonable wear and tear excepted. Lessee hereby acknowledges that Lessee has examined the Leased Premises and accepts the same in its "AS IS" condition as of the commencement date of this Lease without reliance upon any warranty or representation of any kind by Lessor.

15. Inspection of Leased Premises. To the extent necessary to protect the rights and interests of Lessor, Lessor and its agents shall at any reasonable time, by appointment, have the right to inspect the Leased Premises during the Term of this Lease.

6. Waiver of Performance. The waiver by Lessor of, or the failure by Lessor to take action with respect to any breach of any term, covenant or condition herein contained shall not be deemed a waiver of such term, covenant or condition or subsequent breach of same, nor shall the acceptance of rent by Lessor be deemed a waiver of any preceding breach under this Lease.

17. Disputes. Attorneys' Fees. In the event that either party hereto shall institute and prevail in any action or suit for the enforcement of any of its rights hereunder, the prevailing party in said action or suit shall be awarded its reasonable attorneys' fees and costs arising therefrom.

18. Notices. Any notice desired or required to be served by either party upon the other or any notice provided for in this Lease shall be in writing and shall be deemed given upon hand-delivery or, if mailed, three (3) business days after being deposited in the United States mail, certified, return receipt requested, to the party to whom addressed, as set forth hereinbelow:

Lessor: Ron Foggin
City of Kingman
310 N 4th Street
Kingman, AZ 86401

Lessee: NAME
Historic Route 66 Assoc.
ADDRESS
Kingman, AZ 86401

Any party may change the address to which notice shall be delivered or mailed by notice duly given.

19. Breach.

a. (i) If at any time the rental or any money payments hereunder, or any part thereof, shall remain unpaid for a period of fourteen [14] days after the same become due; or (ii) if Lessee is adjudged bankrupt; or (iii) if Lessee abandons and/or discontinues operations at the Leased Premises; or (iv) if Lessee shall fail to fulfill or perform or is in default of any of the other agreements or provisions hereunder [except for the non-payment of rent, which shall be controlled by Subparagraph a.(i) hereinabove] and if Lessee does not cure and completely remedy any said default within ten (10) days after written notice is given, then Lessor may exercise the rights and remedies pursuant to Subparagraphs b. and c. herein.

b. Upon the happening of any of the events mentioned in Subparagraphs a.(i), (ii), (iii) and/or (iv) above, Lessee shall be deemed in default hereunder, and upon such default and at any time thereafter, Lessor may exercise any one or more of the following remedies concurrently or in succession:

(i) Terminate Lessee's right to possession of the Leased Premises by legal process or otherwise, with or without terminating this Lease, and retake exclusive possession of the Leased Premises. If this Lease is terminated by Lessor, Lessor shall be entitled to recover from Lessee and Lessee shall pay on demand, as damages for Lessee's default, an amount equal to the difference between the then-present worth of the aggregate of the basic rent and any other charges to be paid by Lessee hereunder for the unexpired portion of the Term of this Lease (assuming this Lease had not been so terminated), and such rental loss and other damages that Lessee proves that Lessor could have reasonably avoided. In the computation of present worth, a discount at the rate of 8% per annum shall be utilized.

(ii) With or without terminating this Lease and without waiving or affecting Lessor's right to terminate this Lease, from time to time relet all or portions of the Leased Premises, using reasonable efforts to mitigate Lessor's damages. In connection with any reletting, Lessor may relet for a period less than or

extending beyond the term of this Lease and may make alterations or improvements to the Leased Premises without releasing Lessee of any liability.

(iii) From time to time recover accrued and unpaid rent and damages arising from Lessee's breach of this Lease, regardless of whether this Lease has been terminated, together with applicable late charges and interest at the rate of 12% per annum or the highest lawful rate, whichever is less.

(iv) Terminate this Lease.

(v) Enforce the statutory landlord's lien on Lessee's property.

(vi) Recover all reasonable attorneys' fees and other expenses incurred by Lessor in connection with enforcing this Lease, recovering possession and collecting amounts owed.

(vii) Perform any obligation of Lessee hereunder on Lessee's behalf and recover from Lessee, upon demand, the entire amount expended by Lessor plus 12% for handling, supervision and overhead.

(viii) Exercise any other remedies available under applicable Laws.

c. Each and every term, covenant and condition contained in this Paragraph 18. shall be deemed separate and independent, and all remedies herein shall be deemed cumulative to any and all remedies Lessor might have under this Lease or in accordance with law.

20. **Correction of Breach.** Lessor may correct any breach or default by the Lessee of which the Lessee has received written notice by certified mail and failed or neglected to remedy within fifteen (15) days, and the Lessee agrees upon demand to reimburse the Lessor for all expenses incurred by the Lessor in correcting said breach or default.

21. **Holdover.** In the event Lessee holds over beyond the expiration of the Term herein or beyond the date of any such termination, such holding over shall be from month-to-month only, subject to all of the terms and conditions of this Lease, but shall not be a renewal hereof nor a waiver of any breach of conditions or covenant, and the rent to be paid therefor shall be at the rate then prevailing under the terms of this Lease.

22. **Fire Prevention Regulations.** Lessee shall at all times comply with all applicable laws and ordinances pertaining to fire regulations, and shall furnish and keep, at Lessee's sole expense, adequate fire extinguishers in sufficient numbers and in convenient and accessible places upon said Lease Premises, charged and ready for immediate use, as required by said fire regulations and applicable laws or ordinances.

23. **Conduct of Business.** Lessee agrees to conduct its operations using modern and practical techniques and equipment available in order to reduce to a minimum the emanation of fumes, odors and noises.

24. **Security.** Lessee shall be responsible for the security of the Leased Premises and all improvements and personal property located therein and shall comply with all of Lessor's or any other governmental authority's rules and regulations pertaining to security, as may be amended from time to time. Lessor shall have no responsibility to Lessee or any of Lessee's customers, guests and/or invitees for security of any persons and/or property located on the Leased Premises.

25. **Signs.** Lessee agrees not to erect or display, or permit to be erected or displayed, any exterior sign or advertising matter of any kind on the Leased Premises without first obtaining the written consent of Lessor.

26. Permits, Rules and Regulations. Lessee agrees to obtain at Lessee's expense all necessary licenses and permits for the construction and operation of the Leased Premises. Further, with respect to the use of the Leased Premises and/or the public areas of the PowerHouse, Lessee agrees to observe, obey and abide by all applicable laws, field rules and other regulations which are now or may hereafter be imposed or promulgated by Lessor.

27. Continuity. This Lease and each and all of the covenants, obligations and conditions hereof shall inure to the benefit of and bind the Lessor and Lessee respectively, their heirs, personal representatives, executors, administrators, successors and assigns.

28. Paragraph Headings. The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Lease.

29. Applicable Law. This Lease shall be interpreted and enforced according to the laws of the State of Arizona. Any civil actions relating to this Lease shall be brought and maintained in the Superior Court of Mohave County, Arizona.

30. Eminent Domain.

a. If at any time during the term of this Lease the whole of the Leased Premises, or so much thereof as to render the balance unusable for the intended use of Lessee as said use is defined herein, shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain or by conveyance in lieu thereof, then, in such event, when title shall have been taken thereunder of the Leased Premises by the condemning authority, the term hereby granted, and all right of the Lessee hereunder, shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. Lessor reserves to itself, and Lessee assigns to Lessor all rights to awards or damages accruing on account of any such taking or condemnation or by conveyance in lieu thereof, or by reason of any act of any public or quasi-public authority for which awards or damages are payable, except as to such awards or damages as are set forth under Subparagraph b. hereinbelow, provided that they are specifically defined by the condemning or awarding authority.

b. Lessee hereby assigns to Lessor any and all claims which Lessee might otherwise prosecute in its own name and on its behalf, under applicable laws or regulations at the time thereof, for loss or damage sustained by Lessee for the value of leasehold improvements installed by Lessee at Lessee's cost, Lessee's fixtures and equipment, and any removal or relocation expenses resulting from such taking.

c. Lessee agrees to execute such instruments of assignment as may be required by Lessor, to join with Lessor in any petition for the recovery of awards or damages, if so requested by Lessor, and to turn over to Lessor any such awards or damages that may be recovered in any such proceeding.

31. Surrender. At the expiration or termination of this Lease, Lessee shall surrender the Leased Premises to Lessor in clean, neat, and good condition, reasonable wear and tear excepted.

32. This Agreement may be canceled in accordance with A.R.S. §38-511.

33. Arbitration. In the event of a dispute, the Parties agree to use arbitration only to the extent it is required by A.R.S. § 12-1518 or otherwise required by Arizona Rules of Civil Procedure. The Parties shall agree to fully exhaust administrative remedies before filing litigation.

COMMERCIAL LEASE ADDENDUM

The undersigned agrees to observe the following modifications as part of the lease attached hereto:

1. The Lessor agrees to contribute \$10,000 or half of the cost, whichever is less, for the design, construction and installation of a new entry sign for the PowerHouse. The design must be approved by both the Lessor and the Lessee.
2. The Lessor agrees to contribute \$10,000 for the installation of a permanent Route 66 Drive Thru Shield to be located near the PowerHouse. The design must be approved by both the Lessor and the Lessee.

LESSOR:

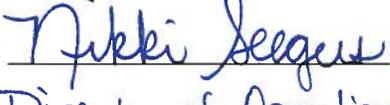
The City of Kingman,
an Arizona Municipal Corporation

By: 

Its: City Manager

LESSEE:

The Historic Route 66 Association of Arizona
a not for profit organization

By: 

Its: Director of Operations