

PARKING LOT LEASE

THIS PARKING LOT LEASE (the “Agreement” or “Lease”) is entered into and effective as of the Commencement Date (as defined herein) by and between the City of Kingman, a Municipal Corporation in the State of Arizona (the “Landlord”), and Fleischmann AZ Investment Corporation (the “Tenant”), an Arizona Corporation, 2701 E. Andy Devine Avenue, Kingman, AZ 86401.

AGREEMENT

1. Premises.

A. Legal description: The property on which the Premises is situated (the “Property”) described as:

KINGMAN, TOWNSITE PLAT ON LINE A & P RR BLK 3 LOT 1,3,5, TOWNSHIP 21 NORTH, RANGE 17 WEST, SECTION 24, GILA AND SALT RIVER MERIDIAN, MOHAVE COUNTY, ARIZONA, EXCEPTING THE SOUTHERNMOST TWENTY-FIVE FEET

B. Street address: Northeast corner of Andy Devine Avenue and Third Street, Kingman, AZ.

C. Site Plan (exhibit A).

2. Term. The term of this Agreement will begin on September 1, 2018 (the “Commencement Date”) and shall end on August 31, 2038 (the “Term”).

3. Rent. Tenant agrees to pay rent to Landlord in the sum of \$100.00 monthly during the first five years of the Term hereof (the “Rent”). The rent shall decrease to \$50.00 monthly on September 1, 2023 or upon full build out, utilization, business license issuance and occupancy of 315 Andy Devine, Kingman, Arizona. The rent will be paid monthly in advance with the first payment due and payable on the Commencement Date and with a like payment due and payable on the 1st day of each month thereafter during the Term.

4. Permitted Uses. The Premises shall be used by Tenant only for purposes of operating a parking lot solely for the use of and by Tenant’s employees, guests and invitees (“Parking Facility”), and for no other use or purpose without the Landlord’s prior written consent, which shall be granted or withheld in Landlord’s sole and subjective discretion. The Tenant will not otherwise hold Parking Facility open for use by the general public nor collect any rate or charge for the parking of a motor vehicle on the Premises. The Tenant shall comply with all federal, state and local laws, ordinances, codes and regulations regarding the Premises and the permitted use upon the Premises, and shall undertake all measures reasonably necessary to ensure to Landlord’s satisfaction that all of Tenant’s employees, guests and invitees using the Parking Facility shall do so in an acceptably safe manner and shall observe the organization of the Parking Facility as depicted on the attached **Exhibit “A”**, including identified entrances and driveways, leaving the same clear at all times for the safe and unimpeded flow of vehicular traffic to

and through the Parking Facility. The Tenant will not maintain or suffer to be maintained any business, conduct, act or thing which will constitute a public or private nuisance or violate any other public ordinance during the Term hereof.

5. Permits. Tenant will apply for, pay for and keep current all permits and licenses required for the lawful operation of the Parking Facility.

6. Acceptance of Premises. Tenant acknowledges that: (a) a full and complete inspection of the Premises has been made and Landlord has fully and adequately disclosed the existence of any defects that would interfere with Tenant's use of the Premises for their intended commercial purpose, and (b) as a result of such inspection and disclosure, Tenant has taken possession of the Premises and accepts the Premises in its "As Is" condition.

7. Signage. Upon obtaining the prior written consent of Landlord, which consent shall not be unreasonably conditioned, delayed or withheld, Tenant shall be entitled to place and install signs, ornaments or other objects upon the Premises or in other appropriately designated areas on the Property, to identify Tenant and the permitted use of the Premises. Any signs installed by Tenant must conform to applicable laws, deed restrictions on the Property, and other applicable municipal code or ordinance requirements. Tenant must remove all signs, decorations and ornaments at the expiration or termination of this Lease and must repair any damage and close any holes caused by the removal.

8. Landlord's Access. Landlord and Landlord's agents will have the right, during normal business hours and upon reasonable advance notice, and without unreasonably interfering with Tenant's business, to enter the Premises to inspect the general condition and state of repair of the Premises.

9. Tenant Indemnity. To the extent allowed by State law, Tenant, its agents, employees, contractors, assigns, guests and invitees shall indemnify, defend, and hold the Landlord, its Council, officers, employees, attorneys, agents and assigns harmless from and against any and all claims, actions, liability, costs, expenses and damages of every kind and nature, including reasonable attorney's fees, arising from (i) the Tenant's use and occupancy of the Premises, (ii) any breach or default by the Tenant under the provisions of this Lease, or (iii) any act, omission, or negligence on or about the Premises by the Tenant, its agents, employees, contractors, assigns, guests and invitees. In case of any action or proceeding brought against the Landlord by reason of such claim, the Tenant at Landlord's option, shall defend such action or proceeding by counsel reasonably satisfactory to Landlord.

10. Exemptions from Liability. Landlord shall not be liable for any damage or injury to the persons, business (or any loss of income), goods, inventory, furnishings, fixtures, equipment, merchandise or other property of Tenant, Tenant's employees, invitees, customers or any other person in or about the Premises, whether the damage or injury is caused by or results from: (a) fire, steam, electricity, water, gas or wind; (b) the breakage,

leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or any other cause; (c) conditions arising on or about the Premises or upon other portions of any building of which the Premises is a part, or from other sources or places; or (d) any act or omission of any other tenant of any building on the Property. Landlord shall not be liable for any damage or injury even though the cause of or the means of repairing the damage or injury are not accessible to Tenant.

11. Tenant Assignment. Tenant shall not assign nor in any manner transfer this Agreement or any interest therein, nor sublet the Premises or any part or parts thereof, nor permit occupancy by anyone, without the prior written consent and authority of Landlord which consent may be granted or withheld at the sole a subjective discretion of Landlord. Any such assignment made with the written permission of Landlord shall not relieve Tenant of any liability hereunder, and Tenant shall remain jointly and severally liable for the performance of all obligations hereunder from and after the date of any such permitted assignment.

12. Insurance. Tenant shall: (i) be self-insured to the extent of; or (ii) shall procure and maintain throughout the Term hereof a policy or policies of insurance, at its sole cost and expense; insuring both Landlord and Tenant against all claims, demand or causes or action arising out of or in connection with Tenant's use or occupancy of the Premises.

Liability limits shall be as follows:

General Liability of \$1,000,000 each occurrence/\$2,000,000 Aggregate (including Premises/Operations, Products/Completed Operations, Personal Injury/Advertising Injury, Contractual Liability, Independent Contractors)
Pollution Liability \$1,000,000 each occurrence

The General Liability Insurance shall be written on an occurrence base form and policy shall not have a deductible greater than \$25,000 per occurrence.

Tenant shall name the Landlord, its departments, officers, and employees as additional insured on the policies, and the policies shall be primary coverage for the Landlord. Upon execution of this Agreement, Tenant shall furnish the Landlord with certificate of insurance and policy endorsements reflecting eh required insurance coverage is enforce.

The Tenant shall also provide the following: (iii) the policies cannot be cancelled, or substantially modified unless thirty (30) days written notice is received by the Landlord; and (iv) the insurance company shall have no recourse against the Landlord for payment of any premium or for assessments under any form of policy. Tenant shall deliver Certificates of Insurance and required endorsements, for the policies of insurance required herein, to the City of Kingman, Attn: Risk Management, 310 N. Fourth Street, Kingman, AZ 86401

The procuring of any policy of insurance shall not be construed to be a limitation upon Tenant's liability or as a full performance on its part of the indemnification provisions of this Agreement, Tenant's obligation being, notwithstanding any said policy of insurance,

for the full and total amount of any damage, injury, or loss caused by the negligence or neglect connected with the operation under this Agreement. Failure to maintain the minimum insurance as state herein shall constitute default of this Agreement.

13. Personal Property Taxes. Tenant shall pay all taxes assessed against trade fixtures, furnishings, equipment, inventory, products, or any other personal property belonging to Tenant. Tenant shall use reasonable efforts to have Tenant's property taxed separately from the Premises. If any of Tenant's property is taxed with the Premises, Tenant shall pay the taxes for its property to Landlord within fifteen (15) days after Tenant receives a written statement from Landlord for the property taxes.

14. Condemnation. If, during the Term or any extension thereof, all or a substantial part of the Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or are conveyed to the condemning authority under threat of condemnation, this Lease will terminate and the monthly installments of Rent will be abated during the unexpired portion of the Term, effective on the date of the taking. If less than a substantial part of the Premises is taken for public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or is conveyed to the condemning authority under threat of condemnation, Landlord, at Landlord's option, may terminate this Lease by delivering a written notice to Tenant. If Landlord does not terminate this Lease, Landlord shall promptly, at Landlord's expense, restore and reconstruct the buildings and improvements (other than leasehold improvements made by Tenant or any assignee, subtenant or other occupant of the Premises) situated on the Premises in order to make the same reasonably suitable for the Permitted Use. The monthly installments of Rent payable under this Lease during the unexpired portion of the Term will be adjusted equitably. Landlord and Tenant will each be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceeding. The termination of this Lease will not affect the rights of the parties to those awards.

15. Environmental Representations and Indemnity.

(a) **Tenant's Compliance with Environmental Laws.** Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of Federal, State, county and municipal authorities pertaining to Tenant's use of the Property and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable Federal, State and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and with any direction of any public officer or officers, pursuant to law, which impose any duty upon Landlord or Tenant with respect to the use or occupancy of the Property.

(b) **Tenant's Indemnification.** Tenant shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the

Property by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord. If the presence of Hazardous Materials on the Property caused or permitted by Tenant results in contamination of the Property or any other property, or if contamination of the Property or any other property by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damage resulting therefrom, then Tenant, to the extent allowed by State law, shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of rentable or unusable space or of any amenity or appurtenance of the Property, damages arising from any adverse impact on marketing of building space or land area, sums paid in settlement of claims, reasonable attorneys' fees, court costs, consultant fees and expert fees) that arise during or after the Term as a result of the contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial work, removal or restoration work required by any Federal, State or local government agency because of Hazardous Materials present in the soil or ground water on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Materials on the Property (or any other property) caused or permitted by Tenant results in any contamination of the Property, Tenant shall promptly take all actions at Tenant's sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Materials, provided that Landlord's approval of such actions is first obtained.

16. Events of Default. The following events shall be deemed to be events of default by Tenant under this Agreement ("Event of Default"):

- (a) Tenant shall have, failed to pay the rent or any other charge provided herein, or any portion, thereof, within ten (10) days after the same shall be due and payable;
- (b) Tenant shall have failed to comply with any other provisions of this agreement and shall not cure such failure within thirty (30) days after Landlord, by written notice, has informed Tenant of such noncompliance;
- (c) Tenant abandons the Premises.

17. Notice of Default. In the event of a default, Landlord may, by serving five (5) days written notice upon Tenant, terminate this Lease. If Landlord gives Tenant notice of Tenant's default and/or delivers to Tenant a Notice of Demand for Payment or Possession pursuant to the applicable statute (either of which shall hereinafter be referred to as a "Notice of Default"), the Notice of Default will not constitute an election to terminate the Lease unless Landlord expressly states in the Notice of Default that it is exercising its right to terminate the Lease.

18. Tenant's Right to Terminate. The Tenant shall have the right to terminate this Agreement upon 12 months prior written notice to the Landlord.

19. Landlord's Right to Terminate. The Landlord shall have the right to terminate this Agreement upon 12 months prior written notice to the Tenant.

20. Condition upon Termination. Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in the same condition as received.

21. Maintenance. Tenant is responsible for maintaining the Premises in the condition necessary for normal parking lot operations.

22. Notice. Any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, FedEx or other overnight messenger service, or by first class certified mail, postage prepaid, return receipt requested. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is delivered to the address required by this Agreement; (b) the date delivered is refused at the address required by this Agreement; or (c) with respect to notices sent by mail, the date as of which the postal service indicates such notice to be undeliverable at the address required by this Agreement. Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as follows:

23. Miscellaneous.

(a) All obligations under this Lease will be performed and payable in Kingman, Arizona. The laws of the State of Arizona and the County of Mohave will govern this Lease.

(b) Any changes or modifications of this Agreement must be in writing, and signed by the parties hereto. This Agreement supersedes any previous understandings or agreements between the parties relating to the Premises.

(c) Paragraph headings are for convenience only, and in no way define or limit the scope and content of this Agreement.

(d) No delay or failure by either party to enforce or exercise any rights or remedies hereunder shall constitute a waiver of such right or remedy, nor shall any single or partial exercise of a right or remedy preclude any other or further exercise of rights and remedies.

(e) This Agreement may be executed in multiple counterparts, and by use of counterpart signature pages, but all such counterparts shall constitute but one and the same agreement. Signature pages bearing facsimile signatures shall be effective for purposes of binding the parties to this Agreement.

(f) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided this paragraph shall not permit any assignment contrary to the provisions of this Agreement.

(g) In the event of any controversy, claim, or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

(h) Tenant certifies that it is not currently engaged in, and agrees for the durations of this Contract that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.01.

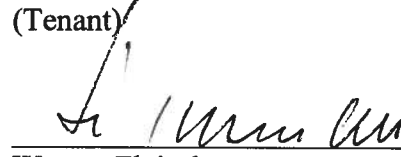
IN WITNESS WHEREOF, the parties hereto hereby execute this Agreement on the date first above written.

City of Kingman
(Owner)



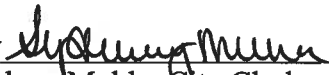
Ronald Foggin
City Manager

Fleischmann AZ Investment Corporation
(Tenant)



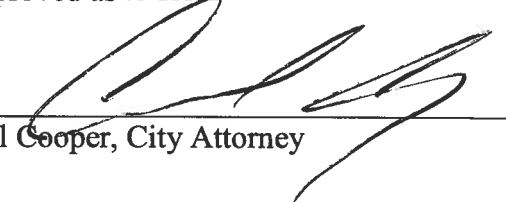
Werner Fleischmann
President/CEO

Attest

By 

Sydney Muhle, City Clerk

Approved as to form

By 

Carl Cooper, City Attorney

