

GROUND LEASE AGREEMENT
City Hall Parking Lot Spaces
Havasu Fitness

This Ground Lease Agreement ("Agreement") by and between Lake Havasu City, an Arizona municipal corporation ("City") and Havasu Fitness ("Lessee"), is entered into on _____ as follows:

RECITALS: City is the owner in fee simple of certain real property described as Assessor's Parcel Number 104-27-041A, Lake Havasu City, Arizona, and further identified and described in the attached Exhibit "A" ("Property"). Lessee desires to lease a 6,600 square foot portion of the Property from City for joint use of approximately twenty (20) non-exclusive paved parking spaces, as described in the attached Exhibit "B" ("Lease Area") for the adjacent business, Havasu Fitness, located on Assessor's Parcel Number 108-27-037. City and Lessee negotiated this Agreement in good faith to provide for the location of parking spaces on Lease Area for the benefit of Lessee.

NOW, THEREFORE, the parties identified above, in consideration of mutual promises, covenants, and obligations set forth below, agree as follows:

- 1. Use.** City agrees that Lessee may jointly use approximately twenty (20) non-exclusive parking spaces for Lessee's patrons and staff within the Lease Area pursuant to the provisions of this Agreement. Lessee shall continue to assume all costs and liability, including construction and maintenance costs and insurance, for any and all pedestrian access improvements to the Lease Area.
- 2. Purpose.** Lessee and City agree that the Lease Area will be used for the sole purpose of providing short-term parking for Lessee's patrons and staff. No improvement of the Lease Area shall be performed. No new vehicular access shall be created. No signage shall be placed on or in the Lease Area, including but not limited to signs reserving parking spaces for the exclusive use of the Lessee, without the approval of the City. No overnight parking of vehicles shall be permitted.
- 3. Term.** The term of this Agreement shall be for sixty months (60) months, commencing on the date first written above.
- 4. Termination.** Either party may terminate this Agreement upon sixty (60) days' written notice to the other party without consequence to either party. Lessee, upon written notice of termination of this Agreement by either party, shall discontinue use of Lease Area at the end of the sixty (60) day notice.
- 5. Default.** In the event of any breach of this Agreement by Lessee, City shall notify the Lessee in writing of such breach, and Lessee shall have thirty (30) days to cure the breach. If Lessee fails to cure the breach, then City, in addition to other rights or remedies, City has the immediate right of re-entry and may remove all persons and vehicles from the Lease Area.

6. Rent.

A. Rent is calculated at 6% of current estimated Lease Area value of \$29,502 (6,600 sq. ft. X \$4.47 X 6%) or \$1,770.12 annually. Lessee shall be invoiced by City at the monthly lease rate of \$147.51 for the term of the Agreement.

B. Rent shall be paid to "Lake Havasu City, Arizona" at 2330 McCulloch Blvd. N., Lake Havasu City, Arizona 86406 and should be delivered to the attention of Accounts Receivable.

7. Maintenance. City is responsible for maintaining the Lease Area. Lessee agrees to reimburse City for any maintenance issues or damages within the Lease Area attributable to Lessee's patrons or staff.

8. Notification. Lessee shall notify City immediately of any spill or leak of hazardous substance including but not limited to substances used to run, maintain or clean vehicles or equipment and shall be responsible for clean-up and notification to regulatory agencies regarding any such spill.

9. Inspection. City shall inspect the Lease Area after evacuation of Lessee to insure that the Lease Area is returned to as good as, or better, condition than existing at the time of execution of this Agreement.

10. Indemnification.

A. City shall not at any time be liable for injury or damage occurring to any person, property, or vehicle from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Lease Area.

B. To the fullest extent permitted by law, Lessee agrees to indemnify, defend, save, and hold harmless the City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees ("Indemnatee") for, from, and against any and all claims, actions, liabilities, damages, costs, losses, or expenses (including, but not limited to, court costs, attorneys' fees, and costs of claim processing, investigation and litigation) to which any Indemnatee may become subject, under any theory of liability ("Claims") by reason of any of the following: (i) any act or omission by Lessee, or its employees, contractors, subcontractors, agents, or representatives, undertaken in fulfillment of Lessee's obligation under this Agreement; (ii) any use or nonuse of, or any condition created by Lessee on the Property or any part thereof; (iii) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Property or any part thereof; (iv) performance of any labor or services of the furnishing of any materials or other property with respect to the Property of any part thereof; (v) any failure on the part of Lessee to comply with the matters set forth in Section 7 of this Agreement, including by not limited to any failure by Lessee to clean up any hazardous materials; and (vi) all Claims relating to or arising from design, construction, and engineering acts or omissions related in any way to, of, or in connection with Lessee's work and improvements to the Property. This Indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation law or arising out of the failure of Lessee to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree.

Lessee agrees it will be responsible for primary loss investigation, defense, and judgement costs where this indemnification is applicable. The amount and type of insurance coverage requirements of this Agreement will in no way be construed as limiting the scope of the indemnity in this Section. Lessee's obligations under this Section survive expiration or earlier termination of this Agreement.

11. Insurance.

A. Lessee shall procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Agreement. The insurance requirements for this Agreement and in no way limit the indemnity covenant contained in this Agreement. The City in no way warrants that the minimum limits contained herein after are sufficient to protect the Lessee from liabilities that might arise out of the performance of the Agreement by the Lessee, its agents, representatives, employees, or subcontractors, and Lessee is free to purchase additional insurance.

B. Minimum Scope and Limits of Insurance: Lessee shall provide coverage with limits of liability not less than those stated below.

i. General Liability – Occurrence Form. Policy should include bodily injury, property damage, personal injury and broad form contractual liability:

General Aggregate	\$2,000,000.00
Each Occurrence	\$1,000,000.00

a. The policy shall be endorsed to include the following additional insured language: "Lake Havasu City, its departments, agencies, boards, commissions, and its officers, agents, volunteers, and employees shall be named as additional insureds with respect to liability arising out of the use or occupancy of the property subject to this Agreement."

b. Policy shall contain a waiver of subrogation against Lake Havasu City, its departments, agencies, boards, commissions, and its officers, officials, agents, volunteers, and employees for losses arising from this Agreement.

C. Lessee's insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by Lessee shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

D. Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage, or in limits without ten (10) working days written notice from the insurer to the City. Such notice shall be mailed directly to the City [Lake Havasu City, Attention City Attorney's Office/Contracts, 2330 McCulloch Blvd. North, Lake Havasu City, 86403] and shall be sent by certified mail, return receipt requested.

E. Insurance coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best's Insurance Rating.

F. Lessee shall furnish to City certificates of insurance as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates shall be mailed directly to City [Lake Havasu City, Attention City Attorney's Office/Contracts, 2330 McCulloch Blvd. North, Lake Havasu City, 86403]. If requested, complete copies of insurance policies shall be provided to City. All certificates and endorsements are to be received and approved by the City within ten (10) business days of the effective date of this Agreement. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the Agreement and must remain in effect for the duration of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to be provide timely evidence of renewal will be considered a material breach of this Agreement.

G. Any modification or variation from the insurance requirements in this Agreement must have prior approval from the City's Risk Management Division, whose decision shall be final. Such action will not require a formal agreement amendment, but may be made by administrative action.

12. Assignment. Lessee may not assign its rights in this Agreement without the written consent of the City; and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

13. Improvements. Lessee shall not construct any improvements to the Lease Area without the prior written consent of City and at the end of the Agreement the title to any improvements automatically vests in City. If requested by City, any improvements installed by Lessee not wanted by the City shall be removed by Lessee upon evacuation of the property. Lessee agrees to keep the Lease Area free and clear of any liens for services, construction, or otherwise.

14. Notice. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

To City:

Lake Havasu City
Attn: Office of the City Attorney
2330 McCulloch Blvd. N.
Lake Havasu City, AZ 86403

To Lessee:

Dale Bailey
Havasut Fitness
92 Acoma Blvd. S
Lake Havasu City, AZ 86403

The parties may change their designees by providing written notice to the addressees above.

15. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

16. Integration. This Agreement and any attachments referenced herein represent the entire Agreement between the parties hereto and supersede any and all prior negotiations or representations, either written or oral. Amendments or modifications to the Agreement shall be in writing, signed by both parties.

17. Governing Law. The laws of the State of Arizona shall be applied in interpreting and construing this Agreement.

18. Waiver of Performance. No failure by City or Lessee to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Lessee or acceptance by City of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Agreement, which shall constitute in full force and effect, nor the respective rights of Lessee or City with respect to any other then existing or subsequent breach.

19. No Partnership; No Third Party Rights. Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Lessee. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party

20. Section Headings. The section headings contained in this Agreement are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, plural as the Agreement may require.

21. Multiple Originals. This Agreement may be signed in duplicate originals for the purpose of providing each party with an executed original.

22. Conflict of Interest. This Agreement may be cancelled in accordance with Arizona Revised Statutes ("A.R.S.") §38-511.

23. Lawful Presence. If applicable, Lessee shall comply with A.R.S. §§ 1-501 and 1-502 with regard to demonstrating lawful presence in the United States when applying to receive a public benefit.

IN WITNESS WHEREOF, the parties hereto have set forth their hands on the day and date first above written.

LAKE HAVASU CITY:

Cal Sheehy, Mayor

ATTEST:

APPROVED AS TO FORM:

Kelly Williams, City Clerk



Kelly Garry, City Attorney

HAVASU FITNESS:



Dale Bailey

STATE OF ARIZONA)

COUNTY OF Mohave) ss.

This instrument was acknowledged before me this 7th day of January, 2019, by
Dale Bailey owner/agent of Havasu Fitness.



Notary Public

(Notary Seal)

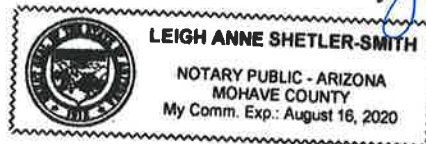


Exhibit "A"
"Property"

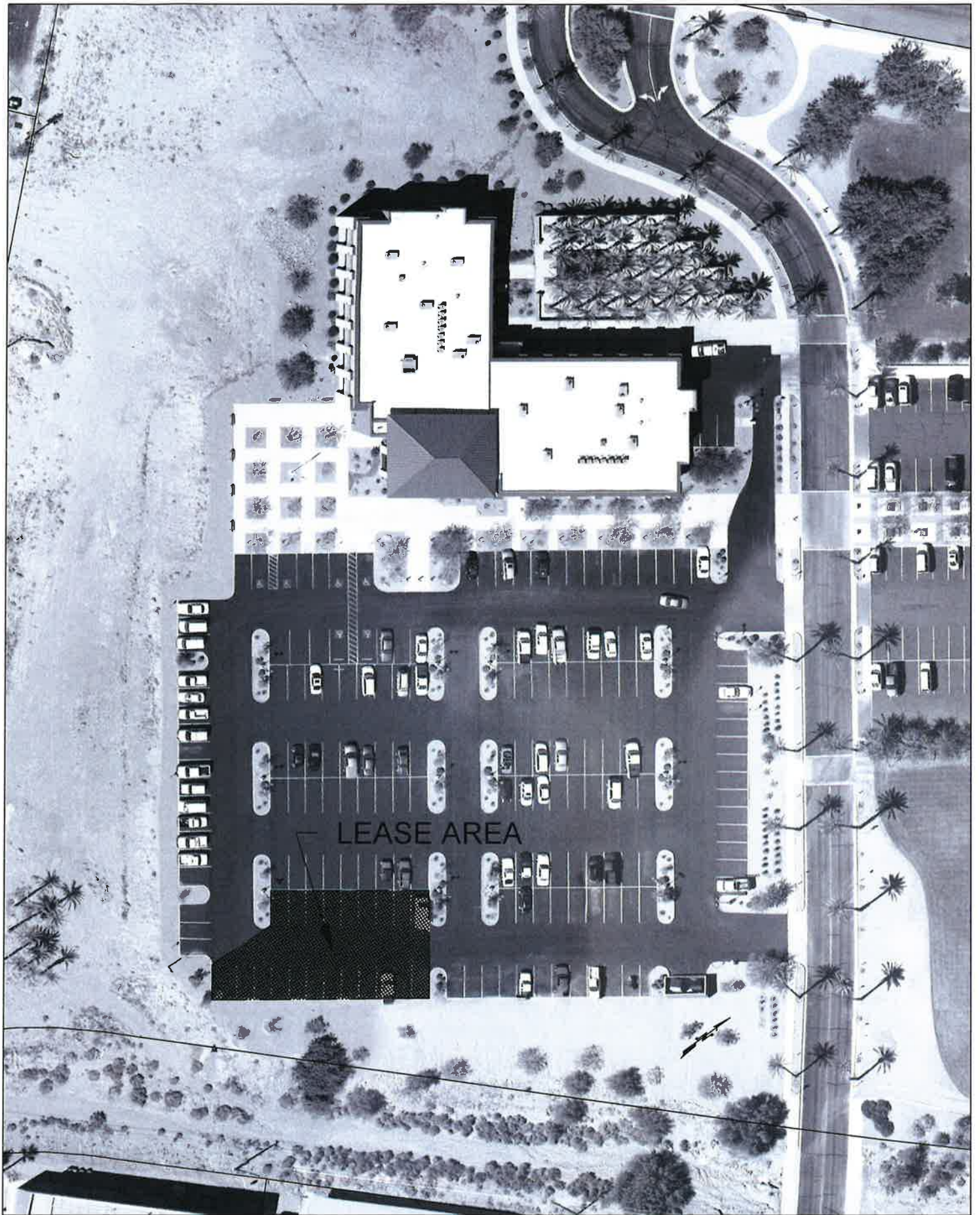


EXHIBIT "A"

Exhibit "B"
"Lease Area"

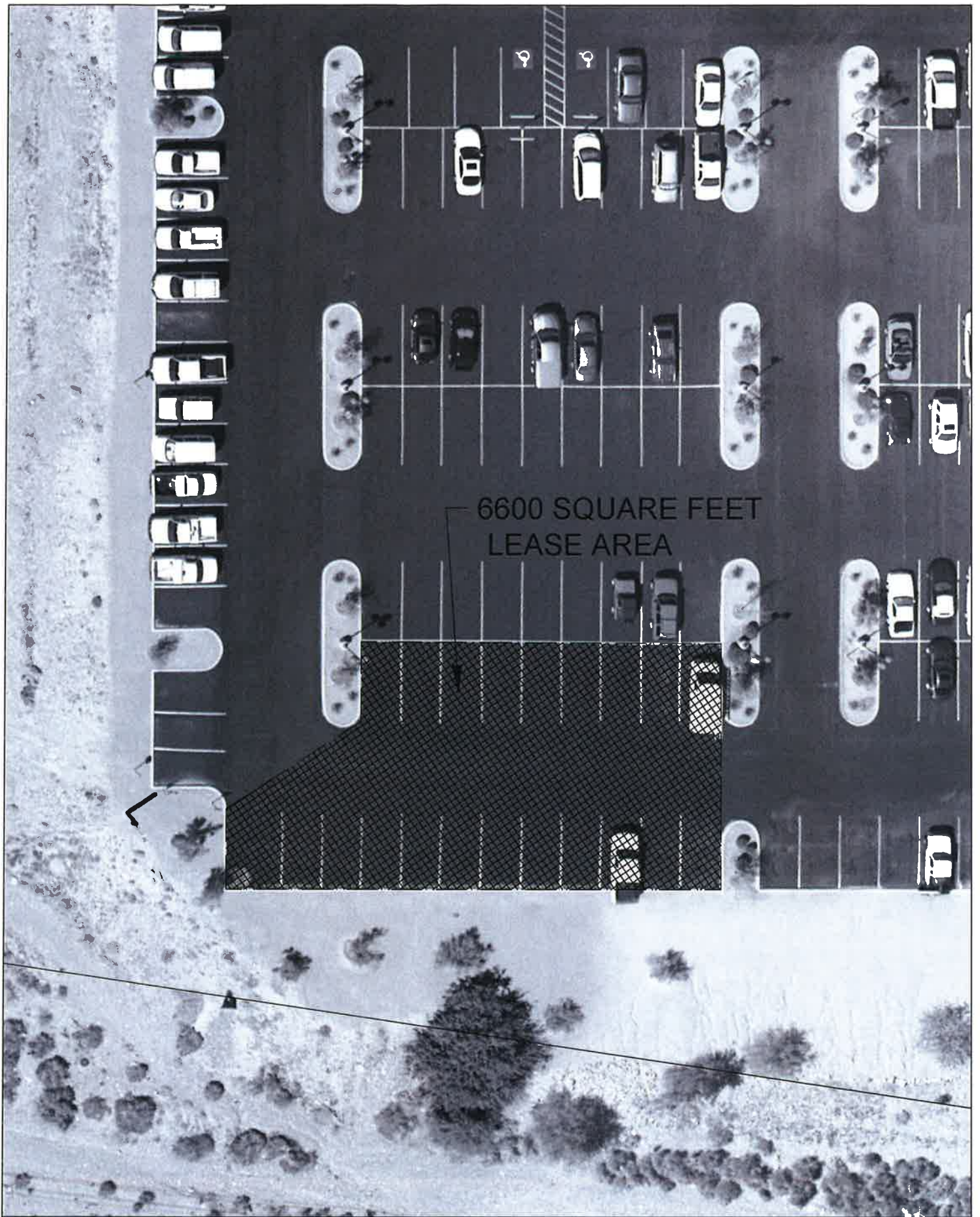


EXHIBIT "B"