

Repl. #5
MAY 23 2013



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MEMORANDUM Downtown Redevelopment - Council Memo DT13-011

DATE: MAY 22, 2013

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PATRICK McDERMOTT, ASSISTANT CITY MANAGER *[Signature]*
 CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR *[Signature]*

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER *[Signature]*

SUBJECT: ZOOLIKINS LLC LEASE OF 51 E BOSTON – REVISED ORDINANCE
 NUMBER

RECOMMENDATION: Staff recommends that City Council approve Ordinance No. 4460 authorizing and approving a lease agreement between Zoolikins LLC and the City of Chandler at 51 E Boston for a term of 5 years, and authorizing the Mayor to sign the lease and related documents upon their approval as to form by the City Attorney.

BACKGROUND/DISCUSSION: ‘
This memo replaces the prior staff memo dated May 13, 2013. The content remains the same, but the Ordinance number has been revised in all documents per the City Clerk’s request.

In January 2013, staff issued a Request for Information (RFI) to solicit a tenant for the City-owned space at 51 E Boston, formerly the Blue Peacock gift shop. The RFI was closed on March 14, 2013 with two respondents. The selection committee reviewed the submitted proposals and selected Zoolikins LLC as the preferred tenant.

Zoolikins will open a retail store that focuses on natural baby products and their unique line of cloth diapers, bibs, and accessories manufactured by their sister company, Bumpkins. Bumpkins holds one of the exclusive licenses to manufacture Dr. Seuss children’s clothing and has been in operation since 1989. This will be a second location for Zoolikins, the other in Downtown Scottsdale. They are an experienced retailer dedicated to bringing unique shopping experiences to downtown environments. They will bring an established customer base that

represents a new non-seasonal demographic and helps build the to the Downtown Chandler shopping experience.

The proposal is for a 5 year lease with no options at a rate in line with current Downtown lease rates. The tenant is responsible for all improvements resulting in no upfront out of pocket costs to the City. The tenant improvements are fairly straightforward and once the lease is in effect, the store could be open in 4-6 weeks. A summary of the significant deal terms included in the lease agreement are included with this memo as a narrative summary for reference purposes.

FINANCIAL IMPLICATIONS: Over the five year period, the City will collect \$134,060 in rent. Potential expenses for the City are any needed repairs to the HVAC systems or the roof. All other maintenance, utility costs, fees, and assessments are the responsibility of the tenant.

PROPOSED MOTION: Move to introduce and tentatively adopt Ordinance No. 4460 authorizing and approving a lease agreement between Zoolikins LLC and the City of Chandler at 51 E Boston for a term of 5 years, and authorizing the Mayor to sign the lease and related documents upon their approval as to form by the City Attorney.

Attachments:

Ordinance No. 4460
Exhibit A to Ordinance (Legal Description)
Exhibit B to Ordinance (Lease)
Narrative Summary

ORDINANCE NO. 4460

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AND APPROVING A LEASE BETWEEN THE CITY OF CHANDLER AND ZOOLIKINS LLC FOR 51 E BOSTON FOR RETAIL PURPOSES.

WHEREAS, the City of Chandler owns the building and land at 51 E Boston and desires to make this space available for general retail purposes; and

WHEREAS, Zoolikins LLC, desires to enter into a lease covering the parcel of property described in Exhibit A, attached hereto and incorporated herein by this reference (the “Leased Premises”); and

WHEREAS, the City of Chandler desires to lease the Leased Premises to Zoolikins LLC, and Zoolikins LLC desires to lease the Leased Premises from the City of Chandler in accordance with the terms and conditions of that certain form of lease set out in Exhibit B, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The City Council of the City of Chandler, Arizona does hereby authorize and approve the lease of the Leased Premises to Zoolikins LLC substantially in accordance with the terms and conditions set out in the form of lease shown in attached Exhibit B.

Section 2. The Mayor of the City of Chandler, Arizona is hereby authorized to execute the lease and the City Manager or a designee is authorized to execute related documents, all upon the approval as to form by the Chandler City Attorney.

INTRODUCED AND TENTATIVELY APPROVED by the City of Chandler, Arizona, this _____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this _____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4460 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on _____ day of _____, 2013, and that a quorum was present thereat.

CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

CITY ATTORNEY *GAB*

EXHIBIT "A"

LOT 42 TOWNSITE OF CHANDLER, ACCORDING TO THE PLAT OF RECORD IN
THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA
IN BOOK 5 OF MAPS, PAGE 34.

EXHIBIT B

ZOOLIKINS, LLC LEASE
51 E Boston Street at Chandler, Arizona

THIS LEASE AGREEMENT (this "Lease") is made and entered into this 24th day of June, 2013, by and between the City of Chandler, an Arizona municipal corporation ("Landlord" or "City") and Zoolikins, LLC ("Tenant"). Landlord and Tenant are referred to herein collectively as the "Parties" and singularly as a "Party."

1. BASIC LEASE PROVISIONS. This Section 1 is for the convenience of the Parties in quickly referencing certain basic provisions of this Lease. It is not intended as a complete summary or statement of this Lease. In the event of any inconsistency between the provisions set out in this Section 1 and an applicable provision found in another section of this Lease, the applicable provision of the other section of this Lease shall prevail and control.

- A. Premises Address: 51 E Boston Street, Chandler, Arizona
- B. Tenant's Address for Notices:
Zoolikins, LLC
5454 E Washington St #2
Phoenix, AZ 85034
- C. Landlord's Address for Notices and Payments of Rent:
City of Chandler, Economic Development
Attn: Downtown Redevelopment Manager
175 S. Arizona Ave., 5th Floor
Chandler, Arizona 85225
- D. Lease Term: 5 years
- E. Lease Commencement Date: July 1, 2013.
- F. Lease Expiration Date: June 30, 2018.
- G. Monthly Base Rental: \$2,437.00 per month plus applicable taxes.
Rent for the twelfth month of each year shall be forgiven if all prior month's rents are current as consideration for tenant improvements made.
The Monthly Base Rent shall be increased annually pursuant to Paragraph 5.3 of this Lease.
- H. Additional Rent:

1. Rental Tax, per Paragraph 5.5.
 2. and Real Property Tax Amount, per Paragraph 5.5.
- I. Security Deposit: \$4,874.00.
- J. Tenant's Permitted Use: General retail.

2. LEASED PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, at the rental, and upon all of the covenants and conditions set forth herein, the premises located at 51 East Boston Street, Chandler, Arizona, which consists of land that is legally described in attached Exhibit "A", together with a commercial building of approximately 1,950 square feet with a rear patio (the "Leased Premises" or "Premises").

2.1. **PARKING.** The Leased Premises is located within Downtown Chandler's historic district. No parking is provided on the Premises. However, both on- and off-street, non-exclusive, uncovered, public parking is made available by City to businesses in Downtown Chandler. All such parking is public parking and may not be reserved specifically for Tenant or any of Tenant's customers. City will consider valet parking in accordance with existing City ordinances.

2.2. **COLONNADE.** The Leased Premises is a zero lot line property with pedestrian access from the abutting walkway on Boston Street. The walkway is covered by a colonnade which attaches to the front of the Premises building. The colonnade is part of the public roadway and belongs to the City of Chandler. It may not be modified, altered or attached to without prior written agreement or consent of City. Any maintenance issues with the Colonnade should be reported to City immediately.

2.3. **SIGNAGE.** The Premises is situated within the City Center District ("CCD"). Tenant may have all signage allowed a commercial business located in the CCD in accordance with the sign code requirements for the CCD as found in City Code Sec. 39-9.18. This includes a colonnade sign, although the Leased Premises is not eligible for a Colonnade Signage grant through City. Tenant may apply to City's Architectural Review Committee ("ARC") if signage outside of the applicable requirements of the sign code is needed.

3. TERM. The term (the "Term") of this Lease shall be for a period of five (5) years beginning on the "Lease Commencement Date", which shall be July 1, 2013, and ending at 11:59 p.m., Arizona time, on June 30, 2018 (the "Lease Expiration Date").

4. POSSESSION. On or before the Lease Commencement Date, Landlord shall deliver possession of the Premises to Tenant AS IS, and without any representation or warranty of any kind whatsoever from Landlord. Taking of possession of the Premises by Tenant shall be deemed conclusively to establish Tenant's acceptance of the foregoing limitation.

5. RENT.

5.1. MONTHLY BASE RENTAL. During the first year of the Term, Tenant shall pay in advance to Landlord a monthly base rental of \$2,437.00 (the "Monthly Base Rental"). Starting with the Lease Commencement Date, the Monthly Base Rental due hereunder shall be payable to Landlord by the first (1st) day of each month during the Term at the address of Landlord stated in Section 1 above or to such other person or at such other place as Landlord may designate from time to time by notice hereunder. From and after the Commencement Date, Tenant further agrees to pay Landlord all transaction privilege, sales, excise, rental and other taxes (except income taxes) imposed now or hereinafter imposed by any governmental authority upon the rentals and all other amounts herein required to be paid by Tenant to Landlord (the "Rental Taxes"). Said payment shall be in addition to and accompany each Monthly Base Rental payment made by Tenant to Landlord. The Monthly Base Rental stated herein is a negotiated figure and shall govern regardless of the whether or not the size of the Premises or the commercial building thereon are as set forth in Section 2 above.

5.2. RENT FORGIVENESS. Rent for the twelfth (12th) month of each year of this Lease shall be forgiven if all prior month's rents are current as consideration for tenant improvements made.

5.3. RENT ADJUSTMENT. On each one (1) year anniversary of the Commencement Date, the Monthly Base Rental shall be increased in accordance with this paragraph. The rent increase shall be determined by multiplying the current annual rent amount by the annual percent change in the Consumer Price Index for all Urban Consumers (CPI-U), as reflected in the U.S. Western Region Average CPI-U for All Items (Base period 1982-1984), for the month which is two (2) months prior to the month of the anniversary of the Rent Commencement Date ("the Adjustment Month") of the current lease year from the CPI-U for the Adjustment Month of the prior year, as those index figures are determined by the United States Department of Labor, Bureau of Labor Statistics. If there is no such CPI-U figure for the Adjustment Month of any year of the Term, then the Adjustment Month figure of the successor or most nearly comparable successor Index shall be used.

- (a) The calculation of the annual rent increase shall be as follows:
 - (1) Determine the current annual rent by multiplying the current monthly rent by 12.
 - (2) Determine the CPI-U index point change by subtracting the previous year's CPI-U index figure for the Adjustment Month from the current year's CPI-U index figure for the Adjustment Month.
 - (3) Determine the CPI-U annual percent change by dividing the index point change by the previous year's CPI-U index figure for the Adjustment Month. This quotient can be expressed as a percentage by multiplying by 100.

- (4) Determine the additional annual rent by multiplying the current annual rent by the annual percent change.
- (5) Determine the new annual rent by adding the additional annual rent to the current annual rent.
- (6) Determine the new monthly rent by dividing the new annual rent by 12.

(b) By way of example only, the following is shown for determining the annual percentage change:

CPI-U for current period	133.0
Less CPI-U for previous period	<u>130.0</u>
Equals Index Point Change	3.0
Divided by previous period CPI-U	<u>130.0</u>
Equals	0.023
Result multiplied by 100	<u>0.023 x 100</u>
Equals percent change	<u>2.3 %</u>

(c) In no event shall the minimum Monthly Base Rental for any year during the Term be less than the minimum Monthly Base Rental for the immediately preceding year.

(d) Such annual rent escalation shall continue throughout the Term of this Lease.

5.4. PAYMENT. The Monthly Base Rental, the Rental Taxes and any other sum due from Tenant under this Lease, shall be paid in lawful money of the United States of America at the address stated herein or to such other person or at such other place as Landlord may designate from time to time by written notice hereunder. Tenant shall have no right to withhold, deduct or offset any amount from the Monthly Base Rental, the Rental Taxes or any other sum due hereunder. Monthly Base Rental for any period during the Term that is for less than one month shall be a pro rata portion of the monthly installment.

5.5. TAXES; ASSESSMENTS. Tenant shall pay before delinquent, as additional rent, all personal property taxes and assessments levied or assessed by any governmental authority against any personal property or fixtures of Tenant in, on or about the Leased Premises, and any real property taxes and assessments levied or assessed against the Leased Premises (the "Real Property Tax Amount").

(a) As used herein, the term "real property tax" includes any form of assessment, fee, levy, penalty or tax (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax or assess, including any city, county, state, or federal government, any school, agricultural, lighting, drainage, water or other improvement district thereof, as against any legal or equitable interest of Landlord in the Leased Premises and which is assessed for any period during the Term of this Lease.

(b) The parties acknowledge that they are aware that the Leased Premises is located currently within an Enhanced Municipal Services District, which makes annual assessments against commercial property in the area of Downtown Chandler.

5.6. **ADDITIONAL RENT.** All other monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to the Rental Tax and the Real Property Tax Amount, shall be deemed to be rent.

5.7. **TRIPLE NET LEASE.** Tenant acknowledges that this is intended as a Triple Net Lease and that Tenant shall do all acts and make all payments connected with or arising out of its use and occupation of the Premises to the end that Landlord shall receive all rent provided for herein free and undiminished by any expenses, charges, fees, taxes and assessments, and Landlord shall not be obligated to perform any acts or be subject to any liabilities or to make any payments, except as otherwise specifically and expressly provided in this lease.

6. **LATE CHARGE.** Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee on or before the fifth (5th) day after such sum is due, Tenant shall pay to Landlord a late charge in the sum of \$100.00. The Parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

7. **SECURITY DEPOSIT.** To secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed including, but not by way of limitation, such covenants and agreements in this Lease which become applicable upon the termination of the same by re-entry or otherwise, Tenant has deposited with Landlord a Security Deposit as in the sum of \$4,874.00 on the understanding that: (a) the Security Deposit or any portion thereof not previously applied, or from time to time, such one or more portions thereof, may be applied to the curing of any default that may then exist, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so the same may be restored to its original amount; (b) if permitted by law, Landlord or its successor shall not be obligated to hold the Security Deposit as a separate fund, but on the contrary may commingle the same with its other funds; (c) if Tenant shall faithfully fulfill, keep, perform and observe all of the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, performed and observed, the sum deposited or the portion thereof not previously applied, shall be returned to Tenant without interest no later than thirty (30) days after the termination of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Premises and surrendered possession thereof to Landlord at the expiration of the Term or any extension or renewal thereof as provided herein, and is not in

default with respect to any other requirement of Tenant required to be observed; (d) in the event that Landlord terminates this Lease or Tenant's right to possession by reason of an Event of Default by Tenant, Landlord may apply the Security Deposit against damages suffered to the date of such termination and/or may retain the Security Deposit to apply against such damages as may be suffered or shall accrue thereafter by reason of Tenant's default; and (e) in the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant, or its successor or assign, the Security Deposit shall be deemed to be applied first to the payment of any Rent due Landlord for all periods prior to the institution of such proceedings, and the balance, if any, of the Security Deposit may be retained or paid to Landlord in partial liquidation of Landlord's damages.

8. USE OF PREMISES.

8.1. **PERMITTED USES.** The Premises shall be used and occupied only for general retail purposes and for no other purpose whatsoever without the prior written consent of Landlord which may be granted, withheld, conditioned or delayed in Landlord's sole, absolute and unfettered discretion.

8.2. **PROHIBITED ACTIVITIES OR USES.** No act shall be done in or about the Premises that is unlawful or that will increase the existing rates of insurance on the Building. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance.

8.3. **COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS.** Tenant shall comply with all governmental laws, statutes, ordinances, rules, regulations or requirements, now in force or which hereafter may be in force, of any lawful governmental body or authority having jurisdiction over the Leased Premises. Tenant shall observe such reasonable rules and regulations as may be adopted and made available to Tenant by Landlord from time to time for the safety, care and cleanliness of the Leased Premises or any part thereof, and for the preservation of good order therein or thereon. Landlord shall not be liable in any way for damage caused by non-observance of the rules. A copy of Landlord's rules is attached hereto as Exhibit "B".

8.4. **SUITABILITY OF PREMISES.** Tenant acknowledges that neither Landlord nor Landlord's agents have made any representation or warranty with respect to the Premises or any other portion of the building thereon, and that no representation has been made or relied upon by Tenant with respect to the suitability of the Premises or of the building for the conduct of Tenant's business.

9. **UTILITIES.** Landlord, at Landlord's sole cost, shall make the following utilities connections available to the Premises on or before the Lease Commencement Date and during the Term of the Lease: power (electricity), gas, water, sewer, trash pickup, HVAC, and telephone. Tenant shall arrange for provision for all such utility services and for payment all utility bills and perform any obligations with respect to the purchase of such utility services, together with any taxes thereon from and after the Lease Commencement Date.

10. TENANT'S IMPROVEMENTS. Tenant, at Tenant's sole cost, shall make such improvements or modifications to the interior of the Leased Premises and the building thereon as may be necessary or desirable for the conduct of Tenant's business; provided, however, that Tenant shall make no improvements or modifications which may impair the structural strength of the building of which the Leased Premises is a part; and provided, further, that Tenant shall first obtain Landlord's consent for such improvements and modifications, which consent shall not be unreasonably withheld or delayed. Because the Premises is a contributing property to Chandler's Historic Commercial District designation, and is located within the City Center District, any external improvements or modifications, including, but not limited to, repainting, also require prior approval of ARC, must meet all applicable City health, safety and building codes and must be performed by a licensed contractor. Landlord shall not be responsible or liable for any loss of or damage to Tenant's improvements or modifications.

11. MAINTENANCE AND REPAIRS.

11.1. **TENANT OBLIGATIONS.** Tenant shall maintain the Leased Premises in good order, condition and repair, including all equipment and fixtures installed therein, which shall include doing all necessary routine maintenance and repairs to the Leased Premises. Any damage caused or permitted by Tenant or Tenant's employees, agents, members, licensees, sub-tenants, or invitees to the Leased Premises shall be repaired by Tenant or, at Lessor's election, Lessor may repair such damage at the expense of Lessee, who shall be separately billed therefore and shall reimburse Lessor for the same as additional rent.

11.2. **LANDLORD OBLIGATIONS.** Landlord, at Landlord's expense, shall maintain the exterior roof of the building on the Premises and the HVAC equipment serving the Premises.

12. QUIET ENJOYMENT. Landlord represents that it has full power and authority to enter into this Lease. So long as Tenant is not in default in the performance of its covenants and agreements in this Lease, Tenant's quiet and peaceable enjoyment of the Premises shall not be disturbed or interfered with by Landlord or by any person claiming by, through, or under Landlord.

13. TENANT'S INSURANCE.

13.1. **PROPERTY INSURANCE.** During the Term of this Lease, Tenant shall, at Tenant's own expense, keep the building, appurtenant structures and other improvements on the Leased Premises insured against loss or damage by fire, vandalism and malicious mischief in an amount of at least One Million Dollars (\$1,000,000.00).

(a) The policy or policies as required above shall name the Landlord as an additional named insured and shall require that the Landlord receive a minimum of thirty (30) days written notice prior to cancellation. A certificate or certificates of insurance evidencing coverage in compliance with terms of this lease shall be delivered prior to the beginning date of

the Term.

(b) Tenant shall not commit or permit any acts or failure to act in or about the Leased Premises which may in any way impair or invalidate such policy or policies of insurance for the building. Tenant shall cooperate with Landlord in connection with the collection of any insurance monies that may be due in the event of loss and shall execute and deliver to Landlord such proofs of loss and other instruments as may be required for the purpose of facilitating the recovery of any such insurance monies.

(c) Tenant shall be responsible for obtaining any fire, flood or extended coverage insurance for personal property improvements of Tenant and for all goods, commodities and materials stored by Tenant in, on or about the Leased Premises.

13.2. **LIABILITY INSURANCE.** During the Term of this Lease, Tenant, at Tenant's expense, shall maintain general public liability insurance to cover claims for injury, wrongful death or property damage occurring upon, in or about the Leased Premises and the appurtenances thereto. Both Landlord and Tenant shall be adequately covered under limits of liability in an amount not less than One Million Dollars (\$1,000,000.00) in the event of one accident, and in an amount not less than One Million Dollars (\$1,000,000.00) in respect to property damage. Such insurance will be obtained and evidence thereof delivered to Landlord prior to the Lease Commencement Date.

14. FIRE OR CASUALTY. In the event a fire or other casualty affecting the Building or the Premises entitles Landlord to terminate the Lease, neither Landlord nor Tenant shall have any further obligations to the other except for obligations of indemnity that expressly survive this Lease. If the damage is minor in nature, the Landlord may offer rent abatement in a proportionate amount to the damage incurred. If the damage is caused by action or negligence of the Tenant, the Landlord may obligate Tenant to repair or restore leasehold improvements or alterations. Tenant shall make any insurance proceeds resulting from the loss which Landlord is obligated to repair or restore available to Landlord and shall permit Landlord to enter the Premises to perform the same, subject to such conditions as Tenant may reasonably impose

15. INDEMNITY. Tenant agrees to indemnify, defend, pay and hold Landlord harmless for, from and against any and all losses, damages, liabilities and expenses which Landlord may incur, arising from the acts or omissions of Tenant. This indemnity shall survive the termination of this Lease.

16. ASSIGNMENT OR SUBLETTING. Tenant shall not (i) assign, convey or mortgage this Lease or any interest under it; (ii) allow any transfer thereof or any lien upon Tenant's interest by operation of law; (iii) further sublet the Premises or any part thereof without Landlord's consent; or (iv) permit the occupancy of the Premises or any part thereof by anyone other than Tenant without Landlord's consent. Any act by or of Tenant in violation of this Section 16 shall be void and of no force or effect.

17. SURRENDER. Upon the expiration of this Lease, or upon the earlier termination of the Lease or of the Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, together with all improvements thereon, to Landlord in good condition and repair, reasonable wear and tear excepted; but conditions existing because of Tenant's failure to perform maintenance, repairs or replacements as required of Tenant under this Lease shall not be deemed "reasonable wear and tear." Said improvements shall include all plumbing, lightening, electrical, heating, cooling and ventilating fixtures and equipment and other articles of personal property used in the operation of the Premises (as distinguished from operations incident to the business of Tenant). Tenant shall surrender to Landlord all keys to the Premises and make known to Landlord the combination of all combination locks which Tenant is permitted to leave on the Premises. All Alterations in or upon the Premises made by Tenant shall become a part of and shall remain upon the Premises upon such termination without compensation, allowance or credit to Tenant; provided, however, that Landlord shall have the right to require Tenant to remove any Alterations made by Tenant, or any portion thereof. Said right shall be exercisable by Landlord's giving written notice thereof to Tenant on or before sixty (60) days prior to such termination or on or before sixty (60) days after such termination. In any such event, Tenant shall restore the Premises to their condition prior to the making of such alternation, repairing any damage occasioned by such removal or restoration. If Landlord requires removal of any Alterations made by Tenant, or any portion thereof, and Tenant does not effect, cause or complete such removal in accordance with this Section, Landlord may remove the same (and repair any damage occasioned thereby), and dispose the same, or at its election, deliver the same to any other place of business of Tenant, or warehouse the same. Tenant shall pay the costs of such removal, repair, delivery and warehousing on demand. As between Landlord and Tenant, Tenant shall not be required to remove any Alterations performed by Landlord prior to the Commencement Date.

18. REMOVABLE TENANT'S PROPERTY. Upon the expiration of this Lease, Tenant, at its sole cost and expense, shall remove Tenant's articles of personal property incident to Tenant's business ("Trade Fixtures"); provided, however, that Tenant shall repair any injury or damage to the Premises which may result from such removal, and shall restore the Premises to the same condition as prior to the installation thereof. If Tenant does not remove Tenant's Trade Fixtures from the Premises prior to the expiration or earlier termination of the Term, Landlord may, at its sole election (and with no requirement of notice), remove the same (and repair any damage occasioned thereby and restore the Premises as aforesaid) and dispose thereof or deliver the same to any other place of business of Tenant, or warehouse the same, and Tenant shall pay the cost of such removal, repair, restoration, delivery or warehousing to Landlord on demand, or Landlord may treat said Trade Fixtures as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment or credit by Landlord to Tenant and Landlord shall have no further liability for such removal, repair, restoration, delivery, warehousing or conveyance.

19. HOLDING OVER. Tenant shall have no right to occupy the Premises or any portion thereof after the expiration of this Lease or earlier termination of this Lease or of Tenant's right to possession in consequence of an Event of Default hereunder. In the event Tenant or any party claiming by, through or under Tenant holds over, Landlord may exercise any and all remedies available to it at law or in equity to recover possession of the Premises, and to recover damages.

For each and every month or partial month that Tenant or any party claiming by, through or under Tenant remains in occupancy of all or any portion of the Premises after the expiration of this Lease or after termination of this Lease or Tenant's right to possession, Tenant shall pay, as liquidated damages, and not as a penalty, monthly rental at a rate equal to the rate of Base Rent payable by Tenant hereunder immediately prior to the expiration or other termination of this Lease or of Tenant's right to possession. The acceptance by Landlord of any lesser sum shall be construed as payment on account and not in satisfaction of damages for such holding over.

20. ENCUMBERING TITLE. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the building or the Property, nor shall the interest or estate of Landlord in and to the Building or the Property, nor shall the interest or estate of Landlord be in any way subject to any claim by way of lien or encumbrance, whether by operation of law by virtue of any express or implied contract by Tenant, or by reason of any other act or omission of Tenant. Any claim to, or lien upon, the Premises, the Building or the Property arising from any act or omission of Tenant shall accrue only against the Leasehold estate of Tenant. Without limiting the generality of the foregoing, Tenant shall not permit the Premises, the Building or the Property to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by, or at the direction or sufferance of, Tenant, provided, however, that Tenant shall have the right to contest in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Tenant shall give to Landlord such security as may be deemed satisfactory to them to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of the Premises, the building or the Property by reason of nonpayment thereof, provided further, however, that on final determination of the lien or claim of lien, Tenant shall immediately pay any judgment rendered, with all property costs and charges, and shall have the lien released and any judgment satisfied.

21. LANDLORD'S RESERVED RIGHTS. Landlord reserves the right, on reasonable prior notice, to inspect the Premises, or to exhibit the Premises to persons having a legitimate interest at any time during the Term.

22. DEFAULTS. Tenant further agrees that any one or more of the following events shall be considered Events of Default as said term is used herein, that is to say, if:

A. Tenant shall default in any payment of Rent (or any other amount) required to be made by Tenant hereunder when due as herein provided and such default shall continue for five (5) calendar days after notice thereof in writing to Tenant; or

B. Tenant shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant.

C. Tenant shall be adjudged an involuntary bankrupt, or a decree or order approving, as properly filed, a petition or answer filed against Tenant asking reorganization of Tenant under the Federal bankruptcy laws as now or hereafter amended, or under the laws of any State, shall

be entered, and any such decree of judgment or order shall not have been vacated or stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

D. Tenant shall file, or admit the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal bankruptcy laws now or hereafter amended, or Tenant shall institute any proceedings for relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; or

E. Tenant shall make any assignment for the benefit of creditors or shall apply for a consent to the appointment of a receiver for Tenant or any of the property of Tenant; or

F. Tenant shall admit in writing its inability to pay its debts as they become due; or

G. The Premises are levied on by any revenue officer or similar officer; or

H. A decree or order appointing a receiver of the property of Tenant shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of entry or granting thereof; or

I. Tenant shall abandon the Premises during the Term hereof; or

J. Tenant shall default in securing insurance or in providing evidence of insurance as set forth in Section 13 of this Lease or shall default with respect to lien claims as set forth in Section 18 of this Lease and either such default shall continue for five (5) days after notice thereof in writing to Tenant; or

23. REMEDIES. Upon the occurrence of any one or more Events of Default, Landlord may exercise any remedy against Tenant which Landlord may exercise for default under the law, including (but not limited to) locking out Tenant, terminating Tenant's rights of possession (without terminating this Lease) or terminating this Lease; but in any event, Landlord shall have the right to recover from Tenant all damages (including but not limited to loss of Rent) arising from or out of such Event of Default.

24. NOTICES AND CONSENTS. All notices, demands, request, consents or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when (i) personally served or delivered; (ii) received or refused if sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next business day if sent by overnight commercial courier service. Notices to Tenant shall be addressed to Tenant at the address specified in Section 1(B) or at such other place as Tenant may from time to time designate by notice in writing to Landlord. Notices to Landlord shall be addressed to Landlord at the address specified in Section 1(C) or at such other place as Landlord may from time to time designate by notice in writing to Tenant.

25. FORCE MAJEURE. Landlord shall not be deemed in default with respect to any of the

terms, covenants and conditions of this Lease on Landlord's part to be performed, if Landlord's failure to timely perform same is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, shortages, accidents, causalities, acts of God, acts of terror (including ecoterrorism and bioterrorism) acts caused directly by Tenant or Tenant's agents, employees and invitees or any other cause beyond the reasonable control of Landlord.

26. NON-DISCRIMINATION. The parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration.

27. CONFLICT OF INTEREST. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511 regarding conflicts of interest.

28. EXECUTION AND DELIVERY. The parties have executed and delivered this Lease the day and year first above written.

Landlord: City of Chandler, an Arizona municipal corporation

By: _____
Name: Jay Tibshraeny
Its: Mayor

Tenant: Zoolikins, LLC

By: _____
Name: Jakki Leiberman
Its: _____

APPROVED AS TO FORM:

CITY ATTORNEY
GAB

EXHIBIT "A"
LEGAL DESCRIPTION OF PREMISES

LOT 42 TOWNSITE OF CHANDLER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA IN BOOK 5 OF MAPS, PAGE 34.

EXHIBIT "B"

RULES AND REGULATIONS

The following rules and regulations shall apply, where applicable, to the Building and to each portion thereof:

1. Sidewalks and doorways shall not be obstructed by tenants or used by any tenant for any purpose other than ingress and egress to and from the leased premises.
2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by a tenant or such tenant's agents, employees or invitees shall be paid by such tenant and Landlord shall not in any case be responsible therefore.
3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other exterior part of the Building unless they are in compliance with City code. No part of the Building shall be defaced by tenants.
4. Tenant shall give to Landlord the explanation of the combination of all locks, if any, in tenant's leased premises, at the expiration or earlier termination of the Lease.
5. Tenants will coordinate any needed repairs to the building roof, HVAC or structure through the Landlord. All work undertaken by the tenant will require building permits and a licensed contractor shall be utilized.
6. Landlord shall be in no way responsible to the tenants, their agents, employees or invitees for any loss of property from the leased premises or for any damages to any property thereon from any cause whatsoever.
7. Tenant shall not make or permit any improper objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with persons having business with them.
8. Nothing shall be swept or thrown into the sidewalks or alleys. No birds or animals shall be brought into or kept in, on or about any tenant's leased premises.
9. No machinery of any kind shall be operated by tenant on its leased area without the prior written consent of Landlord, nor shall any tenant use or keep in the Building any inflammable or explosive fluid or substance except in accordance with the all applicable laws.
10. No portion of any tenant's leased premises shall at any time be used or occupied as sleeping or lodging quarters.
11. Each tenant and its agents, employees and invitees shall park in public parking away from the retail storefronts.

12. Landlord will not be responsible for lost or stolen property, money or jewelry from tenant's leased premises.

13. The Building is a non-smoking building. Smoking is prohibited at all times within the entire Building, including all leased premises, as well as all public/common areas. This prohibition applies during business and non-business hours to restrooms to all areas within the premises leased by Tenants. Unless otherwise prohibit by law, smoking is only permitted a minimum of 20 feet away from the entrances to the Building per State Statute.

14. The Building is a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the building, or parking areas. This prohibition applies to all public areas, including without limitation to all areas within the leased premises of tenants, all surface parking areas and the surrounding.

15. In no event may Tenant engage in, or permit any occupant of the Leased Premises to engage in, any use that causes or is likely to causing unreasonable levels of noise, vibration or other similar disturbances to emanate from the Leased Premises.

**NARRATIVE SUMMARY FOR
ZOOLIKINS, LLC LEASE
51 E Boston Street at Chandler, Arizona**

May 1, 2013

- A. Lease. Lease Agreement to be entered into on June 24, 2013, will be between City of Chandler, as Landlord, and Zoolikins, LLC, as Tenant.
- B. Premises. The Leased Premises is located at 51 E. Boston Street and consists a parcel of land described as Lot 42 of Chandler Townsite (MCR 5/25), together with 1,950 square foot commercial building with a rear patio.
1. *No parking*. No parking is provided on the Premises. Both on-street and off-street public party is available on a non-exclusive, unreserved basis.
 2. *Colonnade*. The colonnade over the pedestrian walkway abutting the Premises does attach to the front of the Premises, but is part of the public roadway (Boston Street), belongs to the City, may not be modified without prior written consent of the City, and will be maintained by the City.
 3. *Signage*. Tenant may have all signage allowed a commercial business within the City's CCD Zoning District. This includes a "colonnade sign," but the Premises is not eligible for a colonnade sign grant through the City. Tenant may apply to the City's Architectural Review Committee ("ARC") if signage outside the applicable requirements of the sign code is needed.
- C. Term. Term of the Lease is 5 years beginning on July 1, 2013, and ending on June 30, 2018.
- D. Possession. Possession of Premises will be delivered to Tenant at or before July1 AS IS.
- E. Rent. Monthly base rental of \$2,437.00 is payable in advance on the first of each month, together with any applicable rental tax.
1. *Forgiveness*. Base rent for the 12th month of each year of the Term shall be forgiven if all prior month's rents are current.
 2. *Adjustment*. There will be an annual increase in the base rental based on the annual percent change in the CPI.
 3. *Payment*. All sums due from Tenant shall be paid in US dollars at the designated address City address. Base rent for any period of less than one month will be prorated. Tenant shall have no right to withhold, deduct or offset any amount.

4. *Taxes.* Tenant shall pay any personal property taxes and assessments, and any real property taxes and assessments levied against the Premises. This includes any assessment levied by any special taxing district, including the Downtown Chandler Enhanced Municipal Services District.
 5. *Additional Rent.* All Tenant's monetary obligations to City under this Lease are deemed to be rent.
 6. *Triple Net Lease.* Tenant acknowledges that this is a Triple Net Lease so that the City shall receive all rent payable under the Lease free and undiminished.
- F. Late Charge. \$100.00 late charge if all sums due are not paid by 5th day after due date.
- G. Security Deposit. Tenant shall provide security deposit of two times the monthly rent, i.e., \$4,874.00, before the Term of the Lease begins.
- H. Use.
1. *Retail.* Premises will be used only for general retail purposes without prior written consent of the City.
 2. *No waste or nuisance.* Tenant shall not cause an act to be done in or about the Premises that is unlawful, constitutes waste, or is a public or private nuisance.
 3. *Compliance with laws and Landlord's rules.* Tenant will comply with all applicable laws, rules and regulations and shall observe Landlord's written rules for the Premises.
- I. Utilities. City will make all applicable utilities available to the Premises. Tenant will contract and pay for all applicable utility services.
- J. Tenant's improvements. Tenant shall make any improvements or modifications to the interior of the Premises and the commercial building thereon as necessary or desirable for the conduct of Tenant's business; *provided that* there is no impairment to the structural strength of the building and that Tenant has first obtained consent of the City, which will not be unreasonably withheld or delayed. External improvements or modifications may require prior approval of ARC, must meet all health, safety and building codes, and must be performed by a licensed contractor.
- K. Maintenance and Repairs. Tenant, at Tenant's cost, shall maintain the Premises in good condition and repair, except that Landlord, at Landlord's cost, shall maintain the exterior roof of the building on the Premises and the HVAC equipment serving the Premises.
- L. Quiet Enjoyment. So long as Tenant is not in default, Tenant's quiet enjoyment of the Premises shall not be disturbed by Landlord or any person acting by, through or under the Landlord.

- M. Tenant's insurance. Tenant shall provide property insurance of at least \$1 million dollars. Tenant shall provide general liability insurance of \$1 million dollars in the event of one accident and \$1 million dollars for property damage.
- N. Fire or casualty. No further obligations by either party in the event of fire or casualty damage. If damage is minor, Landlord may offer to abate rent in proportion to the damage incurred.
- O. Indemnity. Tenant shall indemnify, defend and hold harmless the Landlord from harm arising from acts or omissions of the Tenant. This survives the termination of the Lease.
- P. Assignment or subletting. Tenant may not assign or sublet the Premises without Landlord's consent.
- Q. Surrender. At Lease expiration or early termination, Tenant will surrender Premises in good condition and repair.
- R. Removal of Tenant's property. On Lease expiration or termination, Tenant shall remove Tenant's personal property, including any trade fixtures, but shall repair any damage to the Premises resulting from such removal.
- S. Holding over. Tenant has no right to occupy the Premises after the expiration or termination of the Lease. For every month or part thereof that Tenant holds over, Tenant shall pay Landlord monthly rent at a rate equal to the rate of the monthly base rental then in effect.
- T. No encumbrance. Tenant shall not encumber Landlord's title in and to the Premises of the building thereon.
- U. Reserved rights. Landlord shall have right, on reasonable prior notice, to inspect and/or exhibit premises at any time during Term of the Lease.
- V. Defaults. The following constitute "Events of Default:"
1. Failure to pay rent or other sums when due and such failure continues for 5 days after written notice of such default.
 2. Any non-monetary default that continues for 30 days after written notice of such default.
 3. Tenant adjudged an involuntary bankrupt or a request for reorganization filed.
 4. Tenant voluntarily institutes bankruptcy or any other proceeding for relief under any applicable bankruptcy or insolvency laws or laws relating to relief for debtors, reorganization, etc.

5. Tenant makes an assignment for the benefit of creditors or applies for consent to the appointment of a receiver.
 6. Tenant admits in writing its inability to pay its debts as they become due.
 7. The Premises is levied on by any revenue officer.
 8. A decree or order for appointment of a receiver of Tenant's property is made and not vacated, stayed or set aside within 60 days from date of entry.
 9. Tenant abandons the Premises.
 10. Tenant defaults in securing insurance or providing evidence thereof, or defaults with respect to lien claims and such default continues for 5 days from written notice thereof.
- W. Remedies. Upon occurrence of any event of default, Landlord may exercise any remedies for default authorized under law, and, in any event, Landlord shall have the right to recover all damages arising from or out of the event of default.
- X. Notices and Consents. Delivery shall be to the address of the respective parties stated in the Lease.
- Y. Force Majeure. Landlord not deemed in default if Landlord's failure to perform is result of force majeure/
- Z. Non-Discrimination; Conflict.
1. *Non-discrimination.* Parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination and immigration.
 2. Agreement subject to cancellation per ARS 38-511 regarding conflicts of interest.



Chandler • Arizona
Where Values Make The Difference

#5

MAY 23 2013

MEMORANDUM Downtown Redevelopment - Council Memo DT13-011

DATE: MAY 13, 2013

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PATRICK McDERMOTT, ASSISTANT CITY MANAGER *PK*
 CHRISTINE MACKAY, ECONOMIC DEVELOPMENT DIRECTOR *CM*

FROM: TERI KILLGORE, DOWNTOWN REDEVELOPMENT MANAGER *TK*

SUBJECT: ZOOLIKINS LLC LEASE OF 51 E BOSTON

RECOMMENDATION: Staff recommends that City Council approve Ordinance No. 4660 authorizing and approving a lease agreement between Zoolikins LLC and the City of Chandler at 51 E Boston for a term of 5 years, and authorizing the Mayor to sign the lease and related documents upon their approval as to form by the City Attorney.

BACKGROUND/DISCUSSION: In January 2013, staff issued a Request for Information (RFI) to solicit a tenant for the City-owned space at 51 E Boston, formerly the Blue Peacock gift shop. The RFI was closed on March 14, 2013 with two respondents. The selection committee reviewed the submitted proposals and selected Zoolikins LLC as the preferred tenant.

Zoolikins will open a retail store that focuses on natural baby products and their unique line of cloth diapers, bibs, and accessories manufactured by their sister company, Bumpkins. Bumpkins holds one of the exclusive licenses to manufacture Dr. Seuss children's clothing and has been in operation since 1989. This will be a second location for Zoolikins, the other in Downtown Scottsdale. They are an experienced retailer dedicated to bringing unique shopping experiences to downtown environments. They will bring an established customer base that represents a new non-seasonal demographic and helps build the to the Downtown Chandler shopping experience.

Memo No. DT13-011

May 13, 2013

Page 2

The proposal is for a 5 year lease with no options at a rate in line with current Downtown lease rates. The tenant is responsible for all improvements resulting in no upfront out of pocket costs to the City. The tenant improvements are fairly straightforward and once the lease is in effect, the store could be open in 4-6 weeks. A summary of the significant deal terms included in the lease agreement are included with this memo as a narrative summary for reference purposes.

FINANCIAL IMPLICATIONS: Over the five year period, the City will collect \$134,060 in rent. Potential expenses for the City are any needed repairs to the HVAC systems or the roof. All other maintenance, utility costs, fees, and assessments are the responsibility of the tenant.

PROPOSED MOTION: Move to introduce and tentatively adopt Ordinance No. 4660 authorizing and approving a lease agreement between Zoolikins LLC and the City of Chandler at 51 E Boston for a term of 5 years, and authorizing the Mayor to sign the lease and related documents upon their approval as to form by the City Attorney.

Attachments:

Ordinance No. 4660

Exhibit A to Ordinance (Legal Description)

Exhibit B to Ordinance (Lease)

Narrative Summary

ORDINANCE NO. 4660

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AND APPROVING A LEASE BETWEEN THE CITY OF CHANDLER AND ZOOLIKINS LLC FOR 51 E BOSTON FOR RETAIL PURPOSES.

WHEREAS, the City of Chandler owns the building and land at 51 E Boston and desires to make this space available for general retail purposes; and

WHEREAS, Zoolikins LLC, desires to enter into a lease covering the parcel of property described in Exhibit A, attached hereto and incorporated herein by this reference (the “Leased Premises”); and

WHEREAS, the City of Chandler desires to lease the Leased Premises to Zoolikins LLC, and Zoolikins LLC desires to lease the Leased Premises from the City of Chandler in accordance with the terms and conditions of that certain form of lease set out in Exhibit B, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. The City Council of the City of Chandler, Arizona does hereby authorize and approve the lease of the Leased Premises to Zoolikins LLC substantially in accordance with the terms and conditions set out in the form of lease shown in attached Exhibit B.

Section 2. The Mayor of the City of Chandler, Arizona is hereby authorized to execute the lease and the City Manager or a designee is authorized to execute related documents, all upon the approval as to form by the Chandler City Attorney.

INTRODUCED AND TENTATIVELY APPROVED by the City of Chandler, Arizona, this _____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the Mayor and City Council of the City of Chandler, Arizona, this _____ day of _____, 2013.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4660 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on _____ day of _____, 2013, and that a quorum was present thereat.

CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

CITY ATTORNEY GAJ

EXHIBIT "A"

LOT 42 TOWNSITE OF CHANDLER, ACCORDING TO THE PLAT OF RECORD IN
THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA
IN BOOK 5 OF MAPS, PAGE 34.

EXHIBIT B

ZOOLIKINS, LLC LEASE
51 E Boston Street at Chandler, Arizona

THIS LEASE AGREEMENT (this "Lease") is made and entered into this 24th day of June, 2013, by and between the **City of Chandler**, an Arizona municipal corporation ("Landlord" or "City") and **Zoolikins, LLC** ("Tenant"). Landlord and Tenant are referred to herein collectively as the "Parties" and singularly as a "Party."

1. BASIC LEASE PROVISIONS. This Section 1 is for the convenience of the Parties in quickly referencing certain basic provisions of this Lease. It is not intended as a complete summary or statement of this Lease. In the event of any inconsistency between the provisions set out in this Section 1 and an applicable provision found in another section of this Lease, the applicable provision of the other section of this Lease shall prevail and control.

- A. Premises Address: 51 E Boston Street, Chandler, Arizona
- B. Tenant's Address for Notices:
Zoolikins, LLC
5454 E Washington St #2
Phoenix, AZ 85034
- C. Landlord's Address for Notices and Payments of Rent:
City of Chandler, Economic Development
Attn: Downtown Redevelopment Manager
175 S. Arizona Ave., 5th Floor
Chandler, Arizona 85225
- D. Lease Term: 5 years
- E. Lease Commencement Date: July 1, 2013.
- F. Lease Expiration Date: June 30, 2018.
- G. Monthly Base Rental: \$2,437.00 per month plus applicable taxes.
Rent for the twelfth month of each year shall be forgiven if all prior month's rents are current as consideration for tenant improvements made.
The Monthly Base Rent shall be increased annually pursuant to Paragraph 5.3 of this Lease.
- H. Additional Rent:

1. Rental Tax, per Paragraph 5.5.
 2. and Real Property Tax Amount, per Paragraph 5.5.
- I. Security Deposit: \$4,874.00.
- J. Tenant's Permitted Use: General retail.

2. LEASED PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, at the rental, and upon all of the covenants and conditions set forth herein, the premises located at 51 East Boston Street, Chandler, Arizona, which consists of land that is legally described in attached Exhibit "A", together with a commercial building of approximately 1,950 square feet with a rear patio (the "Leased Premises" or "Premises").

2.1. **PARKING.** The Leased Premises is located within Downtown Chandler's historic district. No parking is provided on the Premises. However, both on- and off-street, non-exclusive, uncovered, public parking is made available by City to businesses in Downtown Chandler. All such parking is public parking and may not be reserved specifically for Tenant or any of Tenant's customers. City will consider valet parking in accordance with existing City ordinances.

2.2. **COLONNADE.** The Leased Premises is a zero lot line property with pedestrian access from the abutting walkway on Boston Street. The walkway is covered by a colonnade which attaches to the front of the Premises building. The colonnade is part of the public roadway and belongs to the City of Chandler. It may not be modified, altered or attached to without prior written agreement or consent of City. Any maintenance issues with the Colonnade should be reported to City immediately.

2.3. **SIGNAGE.** The Premises is situated within the City Center District ("CCD"). Tenant may have all signage allowed a commercial business located in the CCD in accordance with the sign code requirements for the CCD as found in City Code Sec. 39-9.18. This includes a colonnade sign, although the Leased Premises is not eligible for a Colonnade Signage grant through City. Tenant may apply to City's Architectural Review Committee ("ARC") if signage outside of the applicable requirements of the sign code is needed.

3. TERM. The term (the "Term") of this Lease shall be for a period of five (5) years beginning on the "Lease Commencement Date", which shall be July 1, 2013, and ending at 11:59 p.m., Arizona time, on June 30, 2018 (the "Lease Expiration Date").

4. POSSESSION. On or before the Lease Commencement Date, Landlord shall deliver possession of the Premises to Tenant AS IS, and without any representation or warranty of any kind whatsoever from Landlord. Taking of possession of the Premises by Tenant shall be deemed conclusively to establish Tenant's acceptance of the foregoing limitation.

5. RENT.

5.1. MONTHLY BASE RENTAL. During the first year of the Term, Tenant shall pay in advance to Landlord a monthly base rental of \$2,437.00 (the "Monthly Base Rental"). Starting with the Lease Commencement Date, the Monthly Base Rental due hereunder shall be payable to Landlord by the first (1st) day of each month during the Term at the address of Landlord stated in Section 1 above or to such other person or at such other place as Landlord may designate from time to time by notice hereunder. From and after the Commencement Date, Tenant further agrees to pay Landlord all transaction privilege, sales, excise, rental and other taxes (except income taxes) imposed now or hereinafter imposed by any governmental authority upon the rentals and all other amounts herein required to be paid by Tenant to Landlord (the "Rental Taxes"). Said payment shall be in addition to and accompany each Monthly Base Rental payment made by Tenant to Landlord. The Monthly Base Rental stated herein is a negotiated figure and shall govern regardless of the whether or not the size of the Premises or the commercial building thereon are as set forth in Section 2 above.

5.2. RENT FORGIVENESS. Rent for the twelfth (12th) month of each year of this Lease shall be forgiven if all prior month's rents are current as consideration for tenant improvements made.

5.3. RENT ADJUSTMENT. On each one (1) year anniversary of the Commencement Date, the Monthly Base Rental shall be increased in accordance with this paragraph. The rent increase shall be determined by multiplying the current annual rent amount by the annual percent change in the Consumer Price Index for all Urban Consumers (CPI-U), as reflected in the U.S. Western Region Average CPI-U for All Items (Base period 1982-1984), for the month which is two (2) months prior to the month of the anniversary of the Rent Commencement Date ("the Adjustment Month") of the current lease year from the CPI-U for the Adjustment Month of the prior year, as those index figures are determined by the United States Department of Labor, Bureau of Labor Statistics. If there is no such CPI-U figure for the Adjustment Month of any year of the Term, then the Adjustment Month figure of the successor or most nearly comparable successor Index shall be used.

- (a) The calculation of the annual rent increase shall be as follows:
 - (1) Determine the current annual rent by multiplying the current monthly rent by 12.
 - (2) Determine the CPI-U index point change by subtracting the previous year's CPI-U index figure for the Adjustment Month from the current year's CPI-U index figure for the Adjustment Month.
 - (3) Determine the CPI-U annual percent change by dividing the index point change by the previous year's CPI-U index figure for the Adjustment Month. This quotient can be expressed as a percentage by multiplying by 100.

- (4) Determine the additional annual rent by multiplying the current annual rent by the annual percent change.
- (5) Determine the new annual rent by adding the additional annual rent to the current annual rent.
- (6) Determine the new monthly rent by dividing the new annual rent by 12.

(b) By way of example only, the following is shown for determining the annual percentage change:

CPI-U for current period	133.0
Less CPI-U for previous period	<u>130.0</u>
Equals Index Point Change	3.0
Divided by previous period CPI-U	<u>130.0</u>
Equals	0.023
Result multiplied by 100	<u>0.023 x 100</u>
Equals percent change	2.3 %

(c) In no event shall the minimum Monthly Base Rental for any year during the Term be less than the minimum Monthly Base Rental for the immediately preceding year.

(d) Such annual rent escalation shall continue throughout the Term of this Lease.

5.4. PAYMENT. The Monthly Base Rental, the Rental Taxes and any other sum due from Tenant under this Lease, shall be paid in lawful money of the Unites States of America at the address stated herein or to such other person or at such other place as Landlord may designate from time to time by written notice hereunder. Tenant shall have no right to withhold, deduct or offset any amount from the Monthly Base Rental, the Rental Taxes or any other sum due hereunder. Monthly Base Rental for any period during the Term that is for less than one month shall be a pro rata portion of the monthly installment.

5.5. TAXES; ASSESSMENTS. Tenant shall pay before delinquent, as additional rent, all personal property taxes and assessments levied or assessed by any governmental authority against any personal property or fixtures of Tenant in, on or about the Leased Premises, and any real property taxes and assessments levied or assessed against the Leased Premises (the “Real Property Tax Amount”).

(a) As used herein, the term “real property tax” includes any form of assessment, fee, levy, penalty or tax (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax or assess, including any city, county, state, or federal government, any school, agricultural, lighting, drainage, water or other improvement district thereof, as against any legal or equitable interest of Landlord in the Leased Premises and which is assessed for any period during the Term of this Lease.

(b) The parties acknowledge that they are aware that the Leased Premises is located currently within an Enhanced Municipal Services District, which makes annual assessments against commercial property in the area of Downtown Chandler.

5.6. **ADDITIONAL RENT.** All other monetary obligations of Tenant to Landlord under the terms of this Lease, including but not limited to the Rental Tax and the Real Property Tax Amount, shall be deemed to be rent.

5.7. **TRIPLE NET LEASE.** Tenant acknowledges that this is intended as a Triple Net Lease and that Tenant shall do all acts and make all payments connected with or arising out of its use and occupation of the Premises to the end that Landlord shall receive all rent provided for herein free and undiminished by any expenses, charges, fees, taxes and assessments, and Landlord shall not be obligated to perform any acts or be subject to any liabilities or to make any payments, except as otherwise specifically and expressly provided in this lease.

6. **LATE CHARGE.** Tenant acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee on or before the fifth (5th) day after such sum is due, Tenant shall pay to Landlord a late charge in the sum of \$100.00. The Parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

7. **SECURITY DEPOSIT.** To secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, observed and performed including, but not by way of limitation, such covenants and agreements in this Lease which become applicable upon the termination of the same by re-entry or otherwise, Tenant has deposited with Landlord a Security Deposit as in the sum of \$4,874.00 on the understanding that: (a) the Security Deposit or any portion thereof not previously applied, or from time to time, such one or more portions thereof, may be applied to the curing of any default that may then exist, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so the same may be restored to its original amount; (b) if permitted by law, Landlord or its successor shall not be obligated to hold the Security Deposit as a separate fund, but on the contrary may commingle the same with its other funds; (c) if Tenant shall faithfully fulfill, keep, perform and observe all of the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, kept, performed and observed, the sum deposited or the portion thereof not previously applied, shall be returned to Tenant without interest no later than thirty (30) days after the termination of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Premises and surrendered possession thereof to Landlord at the expiration of the Term or any extension or renewal thereof as provided herein, and is not in

default with respect to any other requirement of Tenant required to be observed; (d) in the event that Landlord terminates this Lease or Tenant's right to possession by reason of an Event of Default by Tenant, Landlord may apply the Security Deposit against damages suffered to the date of such termination and/or may retain the Security Deposit to apply against such damages as may be suffered or shall accrue thereafter by reason of Tenant's default; and (e) in the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Tenant, or its successor or assign, the Security Deposit shall be deemed to be applied first to the payment of any Rent due Landlord for all periods prior to the institution of such proceedings, and the balance, if any, of the Security Deposit may be retained or paid to Landlord in partial liquidation of Landlord's damages.

8. USE OF PREMISES.

8.1. **PERMITTED USES.** The Premises shall be used and occupied only for general retail purposes and for no other purpose whatsoever without the prior written consent of Landlord which may be granted, withheld, conditioned or delayed in Landlord's sole, absolute and unfettered discretion.

8.2. **PROHIBITED ACTIVITIES OR USES.** No act shall be done in or about the Premises that is unlawful or that will increase the existing rates of insurance on the Building. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance.

8.3. **COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS.** Tenant shall comply with all governmental laws, statutes, ordinances, rules, regulations or requirements, now in force or which hereafter may be in force, of any lawful governmental body or authority having jurisdiction over the Leased Premises. Tenant shall observe such reasonable rules and regulations as may be adopted and made available to Tenant by Landlord from time to time for the safety, care and cleanliness of the Leased Premises or any part thereof, and for the preservation of good order therein or thereon. Landlord shall not be liable in any way for damage caused by non-observance of the rules. A copy of Landlord's rules is attached hereto as Exhibit "B".

8.4. **SUITABILITY OF PREMISES.** Tenant acknowledges that neither Landlord nor Landlord's agents have made any representation or warranty with respect to the Premises or any other portion of the building thereon, and that no representation has been made or relied upon by Tenant with respect to the suitability of the Premises or of the building for the conduct of Tenant's business.

9. **UTILITIES.** Landlord, at Landlord's sole cost, shall make the following utilities connections available to the Premises on or before the Lease Commencement Date and during the Term of the Lease: power (electricity), gas, water, sewer, trash pickup, HVAC, and telephone. Tenant shall arrange for provision for all such utility services and for payment all utility bills and perform any obligations with respect to the purchase of such utility services, together with any taxes thereon from and after the Lease Commencement Date.

10. TENANT'S IMPROVEMENTS. Tenant, at Tenant's sole cost, shall make such improvements or modifications to the interior of the Leased Premises and the building thereon as may be necessary or desirable for the conduct of Tenant's business; provided, however, that Tenant shall make no improvements or modifications which may impair the structural strength of the building of which the Leased Premises is a part; and provided, further, that Tenant shall first obtain Landlord's consent for such improvements and modifications, which consent shall not be unreasonably withheld or delayed. Because the Premises is a contributing property to Chandler's Historic Commercial District designation, and is located within the City Center District, any external improvements or modifications, including, but not limited to, repainting, also require prior approval of ARC, must meet all applicable City health, safety and building codes and must be performed by a licensed contractor. Landlord shall not be responsible or liable for any loss of or damage to Tenant's improvements or modifications.

11. MAINTENANCE AND REPAIRS.

11.1. **TENANT OBLIGATIONS.** Tenant shall maintain the Leased Premises in good order, condition and repair, including all equipment and fixtures installed therein, which shall include doing all necessary routine maintenance and repairs to the Leased Premises. Any damage caused or permitted by Tenant or Tenant's employees, agents, members, licensees, sub-tenants, or invitees to the Leased Premises shall be repaired by Tenant or, at Lessor's election, Lessor may repair such damage at the expense of Lessee, who shall be separately billed therefore and shall reimburse Lessor for the same as additional rent.

11.2. **LANDLORD OBLIGATIONS.** Landlord, at Landlord's expense, shall maintain the exterior roof of the building on the Premises and the HVAC equipment serving the Premises.

12. QUIET ENJOYMENT. Landlord represents that it has full power and authority to enter into this Lease. So long as Tenant is not in default in the performance of its covenants and agreements in this Lease, Tenant's quiet and peaceable enjoyment of the Premises shall not be disturbed or interfered with by Landlord or by any person claiming by, through, or under Landlord.

13. TENANT'S INSURANCE.

13.1. **PROPERTY INSURANCE.** During the Term of this Lease, Tenant shall, at Tenant's own expense, keep the building, appurtenant structures and other improvements on the Leased Premises insured against loss or damage by fire, vandalism and malicious mischief in an amount of at least One Million Dollars (\$1,000,000.00).

(a) The policy or policies as required above shall name the Landlord as an additional named insured and shall require that the Landlord receive a minimum of thirty (30) days written notice prior to cancellation. A certificate or certificates of insurance evidencing coverage in compliance with terms of this lease shall be delivered prior to the beginning date of

the Term.

(b) Tenant shall not commit or permit any acts or failure to act in or about the Leased Premises which may in any way impair or invalidate such policy or policies of insurance for the building. Tenant shall cooperate with Landlord in connection with the collection of any insurance monies that may be due in the event of loss and shall execute and deliver to Landlord such proofs of loss and other instruments as may be required for the purpose of facilitating the recovery of any such insurance monies.

(c) Tenant shall be responsible for obtaining any fire, flood or extended coverage insurance for personal property improvements of Tenant and for all goods, commodities and materials stored by Tenant in, on or about the Leased Premises.

13.2. **LIABILITY INSURANCE.** During the Term of this Lease, Tenant, at Tenant's expense, shall maintain general public liability insurance to cover claims for injury, wrongful death or property damage occurring upon, in or about the Leased Premises and the appurtenances thereto. Both Landlord and Tenant shall be adequately covered under limits of liability in an amount not less than One Million Dollars (\$1,000,000.00) in the event of one accident, and in an amount not less than One Million Dollars (\$1,000,000.00) in respect to property damage. Such insurance will be obtained and evidence thereof delivered to Landlord prior to the Lease Commencement Date.

14. FIRE OR CASUALTY. In the event a fire or other casualty affecting the Building or the Premises entitles Landlord to terminate the Lease, neither Landlord nor Tenant shall have any further obligations to the other except for obligations of indemnity that expressly survive this Lease. If the damage is minor in nature, the Landlord may offer rent abatement in a proportionate amount to the damage incurred. If the damage is caused by action or negligence of the Tenant, the Landlord may obligate Tenant to repair or restore leasehold improvements or alterations. Tenant shall make any insurance proceeds resulting from the loss which Landlord is obligated to repair or restore available to Landlord and shall permit Landlord to enter the Premises to perform the same, subject to such conditions as Tenant may reasonably impose

15. INDEMNITY. Tenant agrees to indemnify, defend, pay and hold Landlord harmless for, from and against any and all losses, damages, liabilities and expenses which Landlord may incur, arising from the acts or omissions of Tenant. This indemnity shall survive the termination of this Lease.

16. ASSIGNMENT OR SUBLETTING. Tenant shall not (i) assign, convey or mortgage this Lease or any interest under it; (ii) allow any transfer thereof or any lien upon Tenant's interest by operation of law; (iii) further sublet the Premises or any part thereof without Landlord's consent; or (iv) permit the occupancy of the Premises or any part thereof by anyone other than Tenant without Landlord's consent. Any act by or of Tenant in violation of this Section 16 shall be void and of no force or effect.

17. SURRENDER. Upon the expiration of this Lease, or upon the earlier termination of the Lease or of the Tenant's right to possession of the Premises, Tenant will at once surrender and deliver up the Premises, together with all improvements thereon, to Landlord in good condition and repair, reasonable wear and tear excepted; but conditions existing because of Tenant's failure to perform maintenance, repairs or replacements as required of Tenant under this Lease shall not be deemed "reasonable wear and tear." Said improvements shall include all plumbing, lightening, electrical, heating, cooling and ventilating fixtures and equipment and other articles of personal property used in the operation of the Premises (as distinguished from operations incident to the business of Tenant). Tenant shall surrender to Landlord all keys to the Premises and make known to Landlord the combination of all combination locks which Tenant is permitted to leave on the Premises. All Alterations in or upon the Premises made by Tenant shall become a part of and shall remain upon the Premises upon such termination without compensation, allowance or credit to Tenant; provided, however, that Landlord shall have the right to require Tenant to remove any Alterations made by Tenant, or any portion thereof. Said right shall be exercisable by Landlord's giving written notice thereof to Tenant on or before sixty (60) days prior to such termination or on or before sixty (60) days after such termination. In any such event, Tenant shall restore the Premises to their condition prior to the making of such alternation, repairing any damage occasioned by such removal or restoration. If Landlord requires removal of any Alterations made by Tenant, or any portion thereof, and Tenant does not effect, cause or complete such removal in accordance with this Section, Landlord may remove the same (and repair any damage occasioned thereby), and dispose the same, or at its election, deliver the same to any other place of business of Tenant, or warehouse the same. Tenant shall pay the costs of such removal, repair, delivery and warehousing on demand. As between Landlord and Tenant, Tenant shall not be required to remove any Alterations performed by Landlord prior to the Commencement Date.

18. REMOVABLE TENANT'S PROPERTY. Upon the expiration of this Lease, Tenant, at its sole cost and expense, shall remove Tenant's articles of personal property incident to Tenant's business ("Trade Fixtures"); provided, however, that Tenant shall repair any injury or damage to the Premises which may result from such removal, and shall restore the Premises to the same condition as prior to the installation thereof. If Tenant does not remove Tenant's Trade Fixtures from the Premises prior to the expiration or earlier termination of the Term, Landlord may, at its sole election (and with no requirement of notice), remove the same (and repair any damage occasioned thereby and restore the Premises as aforesaid) and dispose thereof or deliver the same to any other place of business of Tenant, or warehouse the same, and Tenant shall pay the cost of such removal, repair, restoration, delivery or warehousing to Landlord on demand, or Landlord may treat said Trade Fixtures as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment or credit by Landlord to Tenant and Landlord shall have no further liability for such removal, repair, restoration, delivery, warehousing or conveyance.

19. HOLDING OVER. Tenant shall have no right to occupy the Premises or any portion thereof after the expiration of this Lease or earlier termination of this Lease or of Tenant's right to possession in consequence of an Event of Default hereunder. In the event Tenant or any party claiming by, through or under Tenant holds over, Landlord may exercise any and all remedies available to it at law or in equity to recover possession of the Premises, and to recover damages.

For each and every month or partial month that Tenant or any party claiming by, through or under Tenant remains in occupancy of all or any portion of the Premises after the expiration of this Lease or after termination of this Lease or Tenant's right to possession, Tenant shall pay, as liquidated damages, and not as a penalty, monthly rental at a rate equal to the rate of Base Rent payable by Tenant hereunder immediately prior to the expiration or other termination of this Lease or of Tenant's right to possession. The acceptance by Landlord of any lesser sum shall be construed as payment on account and not in satisfaction of damages for such holding over.

20. ENCUMBERING TITLE. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the building or the Property, nor shall the interest or estate of Landlord in and to the Building or the Property, nor shall the interest or estate of Landlord be in any way subject to any claim by way of lien or encumbrance, whether by operation of law by virtue of any express or implied contract by Tenant, or by reason of any other act or omission of Tenant. Any claim to, or lien upon, the Premises, the Building or the Property arising from any act or omission of Tenant shall accrue only against the Leasehold estate of Tenant. Without limiting the generality of the foregoing, Tenant shall not permit the Premises, the Building or the Property to become subject to any mechanics', laborers' or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by, or at the direction or sufferance of, Tenant, provided, however, that Tenant shall have the right to contest in good faith and with reasonable diligence, the validity of any such lien or claimed lien if Tenant shall give to Landlord such security as may be deemed satisfactory to them to assure payment thereof and to prevent any sale, foreclosure, or forfeiture of the Premises, the building or the Property by reason of nonpayment thereof, provided further, however, that on final determination of the lien or claim of lien, Tenant shall immediately pay any judgment rendered, with all property costs and charges, and shall have the lien released and any judgment satisfied.

21. LANDLORD'S RESERVED RIGHTS. Landlord reserves the right, on reasonable prior notice, to inspect the Premises, or to exhibit the Premises to persons having a legitimate interest at any time during the Term.

22. DEFAULTS. Tenant further agrees that any one or more of the following events shall be considered Events of Default as said term is used herein, that is to say, if:

A. Tenant shall default in any payment of Rent (or any other amount) required to be made by Tenant hereunder when due as herein provided and such default shall continue for five (5) calendar days after notice thereof in writing to Tenant; or

B. Tenant shall default in any of the other covenants and agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant.

C. Tenant shall be adjudged an involuntary bankrupt, or a decree or order approving, as properly filed, a petition or answer filed against Tenant asking reorganization of Tenant under the Federal bankruptcy laws as now or hereafter amended, or under the laws of any State, shall

be entered, and any such decree of judgment or order shall not have been vacated or stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

D. Tenant shall file, or admit the jurisdiction of the court and the material allegations contained in, any petition in bankruptcy, or any petition pursuant or purporting to be pursuant to the Federal bankruptcy laws now or hereafter amended, or Tenant shall institute any proceedings for relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; or

E. Tenant shall make any assignment for the benefit of creditors or shall apply for a consent to the appointment of a receiver for Tenant or any of the property of Tenant; or

F. Tenant shall admit in writing its inability to pay its debts as they become due; or

G. The Premises are levied on by any revenue officer or similar officer; or

H. A decree or order appointing a receiver of the property of Tenant shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of entry or granting thereof; or

I. Tenant shall abandon the Premises during the Term hereof; or

J. Tenant shall default in securing insurance or in providing evidence of insurance as set forth in Section 13 of this Lease or shall default with respect to lien claims as set forth in Section 18 of this Lease and either such default shall continue for five (5) days after notice thereof in writing to Tenant; or

23. REMEDIES. Upon the occurrence of any one or more Events of Default, Landlord may exercise any remedy against Tenant which Landlord may exercise for default under the law, including (but not limited to) locking out Tenant, terminating Tenant's rights of possession (without terminating this Lease) or terminating this Lease; but in any event, Landlord shall have the right to recover from Tenant all damages (including but not limited to loss of Rent) arising from or out of such Event of Default.

24. NOTICES AND CONSENTS. All notices, demands, request, consents or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given when (i) personally served or delivered; (ii) received or refused if sent by United States registered or certified mail, postage prepaid, return receipt requested; or (iii) on the next business day if sent by overnight commercial courier service. Notices to Tenant shall be addressed to Tenant at the address specified in Section 1(B) or at such other place as Tenant may from time to time designate by notice in writing to Landlord. Notices to Landlord shall be addressed to Landlord at the address specified in Section 1(C) or at such other place as Landlord may from time to time designate by notice in writing to Tenant.

25. FORCE MAJEURE. Landlord shall not be deemed in default with respect to any of the

terms, covenants and conditions of this Lease on Landlord's part to be performed, if Landlord's failure to timely perform same is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, shortages, accidents, causalities, acts of God, acts of terror (including ecoterrorism and bioterrorism) acts caused directly by Tenant or Tenant's agents, employees and invitees or any other cause beyond the reasonable control of Landlord.

26. NON-DISCRIMINATION. The parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination, and immigration.

27. CONFLICT OF INTEREST. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511 regarding conflicts of interest.

28. EXECUTION AND DELIVERY. The parties have executed and delivered this Lease the day and year first above written.

Landlord: City of Chandler, an Arizona municipal corporation

By: _____
Name: Jay Tibshraeny
Its: Mayor

Tenant: Zoolikins, LLC

By: _____
Name: Jakki Leiberman
Its: _____

APPROVED AS TO FORM:

CITY ATTORNEY
GAB

EXHIBIT "A"
LEGAL DESCRIPTION OF PREMISES

LOT 42 TOWNSITE OF CHANDLER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA IN BOOK 5 OF MAPS, PAGE 34.

EXHIBIT "B"

RULES AND REGULATIONS

The following rules and regulations shall apply, where applicable, to the Building and to each portion thereof:

1. Sidewalks and doorways shall not be obstructed by tenants or used by any tenant for any purpose other than ingress and egress to and from the leased premises.

2. Plumbing, fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by a tenant or such tenant's agents, employees or invitees shall be paid by such tenant and Landlord shall not in any case be responsible therefore.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other exterior part of the Building unless they are in compliance with City code. No part of the Building shall be defaced by tenants.

4. Tenant shall give to Landlord the explanation of the combination of all locks, if any, in tenant's leased premises, at the expiration or earlier termination of the Lease.

5. Tenants will coordinate any needed repairs to the building roof, HVAC or structure through the Landlord. All work undertaken by the tenant will require building permits and a licensed contractor shall be utilized.

6. Landlord shall be in no way responsible to the tenants, their agents, employees or invitees for any loss of property from the leased premises or for any damages to any property thereon from any cause whatsoever.

7. Tenant shall not make or permit any improper objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with persons having business with them.

8. Nothing shall be swept or thrown into the sidewalks or alleys. No birds or animals shall be brought into or kept in, on or about any tenant's leased premises.

9. No machinery of any kind shall be operated by tenant on its leased area without the prior written consent of Landlord, nor shall any tenant use or keep in the Building any inflammable or explosive fluid or substance except in accordance with the all applicable laws.

10. No portion of any tenant's leased premises shall at any time be used or occupied as sleeping or lodging quarters.

11. Each tenant and its agents, employees and invitees shall park in public parking away from the retail storefronts.

12. Landlord will not be responsible for lost or stolen property, money or jewelry from tenant's leased premises.

13. The Building is a non-smoking building. Smoking is prohibited at all times within the entire Building, including all leased premises, as well as all public/common areas. This prohibition applies during business and non-business hours to restrooms to all areas within the premises leased by Tenants. Unless otherwise prohibit by law, smoking is only permitted a minimum of 20 feet away from the entrances to the Building per State Statute.

14. The Building is a weapons free environment. No tenant, owner of a tenant, officer or employee of a tenant, visitor of tenant, contractor or subcontractor of tenant, or any other party shall carry weapons (concealed or not) of any kind in the building, or parking areas. This prohibition applies to all public areas, including without limitation to all areas within the leased premises of tenants, all surface parking areas and the surrounding.

15. In no event may Tenant engage in, or permit any occupant of the Leased Premises to engage in, any use that causes or is likely to causing unreasonable levels of noise, vibration or other similar disturbances to emanate from the Leased Premises.

**NARRATIVE SUMMARY FOR
ZOOIKINS, LLC LEASE
51 E Boston Street at Chandler, Arizona**

May 1, 2013

- A. Lease. Lease Agreement to be entered into on June 24, 2013, will be between City of Chandler, as Landlord, and Zoolikins, LLC, as Tenant.
- B. Premises. The Leased Premises is located at 51 E. Boston Street and consists a parcel of land described as Lot 42 of Chandler Townsite (MCR 5/25), together with 1,950 square foot commercial building with a rear patio.
1. *No parking*. No parking is provided on the Premises. Both on-street and off-street public party is available on a non-exclusive, unreserved basis.
 2. *Colonnade*. The colonnade over the pedestrian walkway abutting the Premises does attach to the front of the Premises, but is part of the public roadway (Boston Street), belongs to the City, may not be modified without prior written consent of the City, and will be maintained by the City.
 3. *Signage*. Tenant may have all signage allowed a commercial business within the City's CCD Zoning District. This includes a "colonnade sign," but the Premises is not eligible for a colonnade sign grant through the City. Tenant may apply to the City's Architectural Review Committee ("ARC") if signage outside the applicable requirements of the sign code is needed.
- C. Term. Term of the Lease is 5 years beginning on July 1, 2013, and ending on June 30, 2018.
- D. Possession. Possession of Premises will be delivered to Tenant at or before July1 AS IS.
- E. Rent. Monthly base rental of \$2,437.00 is payable in advance on the first of each month, together with any applicable rental tax.
1. *Forgiveness*. Base rent for the 12th month of each year of the Term shall be forgiven if all prior month's rents are current.
 2. *Adjustment*. There will be an annual increase in the base rental based on the annual percent change in the CPI.
 3. *Payment*. All sums due from Tenant shall be paid in US dollars at the designated address City address. Base rent for any period of less than one month will be prorated. Tenant shall have no right to withhold, deduct or offset any amount.

4. *Taxes.* Tenant shall pay any personal property taxes and assessments, and any real property taxes and assessments levied against the Premises. This includes any assessment levied by any special taxing district, including the Downtown Chandler Enhanced Municipal Services District.
 5. *Additional Rent.* All Tenant's monetary obligations to City under this Lease are deemed to be rent.
 6. *Triple Net Lease.* Tenant acknowledges that this is a Triple Net Lease so that the City shall receive all rent payable under the Lease free and undiminished.
- F. Late Charge. \$100.00 late charge if all sums due are not paid by 5th day after due date.
- G. Security Deposit. Tenant shall provide security deposit of two times the monthly rent, i.e., \$4,874.00, before the Term of the Lease begins.
- H. Use.
1. *Retail.* Premises will be used only for general retail purposes without prior written consent of the City.
 2. *No waste or nuisance.* Tenant shall not cause an act to be done in or about the Premises that is unlawful, constitutes waste, or is a public or private nuisance.
 3. *Compliance with laws and Landlord's rules.* Tenant will comply with all applicable laws, rules and regulations and shall observe Landlord's written rules for the Premises.
- I. Utilities. City will make all applicable utilities available to the Premises. Tenant will contract and pay for all applicable utility services.
- J. Tenant's improvements. Tenant shall make any improvements or modifications to the interior of the Premises and the commercial building thereon as necessary or desirable for the conduct of Tenant's business; *provided that* there is no impairment to the structural strength of the building and that Tenant has first obtained consent of the City, which will not be unreasonably withheld or delayed. External improvements or modifications may require prior approval of ARC, must meet all health, safety and building codes, and must be performed by a licensed contractor.
- K. Maintenance and Repairs. Tenant, at Tenant's cost, shall maintain the Premises in good condition and repair, except that Landlord, at Landlord's cost, shall maintain the exterior roof of the building on the Premises and the HVAC equipment serving the Premises.
- L. Quiet Enjoyment. So long as Tenant is not in default, Tenant's quiet enjoyment of the Premises shall not be disturbed by Landlord or any person acting by, through or under the Landlord.

- M. Tenant's insurance. Tenant shall provide property insurance of at least \$1 million dollars. Tenant shall provide general liability insurance of \$1 million dollars in the event of one accident and \$1 million dollars for property damage.
- N. Fire or casualty. No further obligations by either party in the event of fire or casualty damage. If damage is minor, Landlord may offer to abate rent in proportion to the damage incurred.
- O. Indemnity. Tenant shall indemnify, defend and hold harmless the Landlord from harm arising from acts or omissions of the Tenant. This survives the termination of the Lease.
- P. Assignment or subletting. Tenant may not assign or sublet the Premises without Landlord's consent.
- Q. Surrender. At Lease expiration or early termination, Tenant will surrender Premises in good condition and repair.
- R. Removal of Tenant's property. On Lease expiration or termination, Tenant shall remove Tenant's personal property, including any trade fixtures, but shall repair any damage to the Premises resulting from such removal.
- S. Holding over. Tenant has no right to occupy the Premises after the expiration or termination of the Lease. For every month or part thereof that Tenant holds over, Tenant shall pay Landlord monthly rent at a rate equal to the rate of the monthly base rental then in effect.
- T. No encumbrance. Tenant shall not encumber Landlord's title in and to the Premises of the building thereon.
- U. Reserved rights. Landlord shall have right, on reasonable prior notice, to inspect and/or exhibit premises at any time during Term of the Lease.
- V. Defaults. The following constitute "Events of Default:"
1. Failure to pay rent or other sums when due and such failure continues for 5 days after written notice of such default.
 2. Any non-monetary default that continues for 30 days after written notice of such default.
 3. Tenant adjudged an involuntary bankrupt or a request for reorganization filed.
 4. Tenant voluntarily institutes bankruptcy or any other proceeding for relief under any applicable bankruptcy or insolvency laws or laws relating to relief for debtors, reorganization, etc.

5. Tenant makes an assignment for the benefit of creditors or applies for consent to the appointment of a receiver.
 6. Tenant admits in writing its inability to pay its debts as they become due.
 7. The Premises is levied on by any revenue officer.
 8. A decree or order for appointment of a receiver of Tenant's property is made and not vacated, stayed or set aside within 60 days from date of entry.
 9. Tenant abandons the Premises.
 10. Tenant defaults in securing insurance or providing evidence thereof, or defaults with respect to lien claims and such default continues for 5 days from written notice thereof.
- W. Remedies. Upon occurrence of any event of default, Landlord may exercise any remedies for default authorized under law, and, in any event, Landlord shall have the right to recover all damages arising from or out of the event of default.
- X. Notices and Consents. Delivery shall be to the address of the respective parties stated in the Lease.
- Y. Force Majeure. Landlord not deemed in default if Landlord's failure to perform is result of force majeure/
- Z. Non-Discrimination; Conflict.
1. *Non-discrimination.* Parties shall comply with all applicable state and federal statutes and regulations governing equal employment opportunity, non-discrimination and immigration.
 2. Agreement subject to cancellation per ARS 38-511 regarding conflicts of interest.