

## **FIRST AMENDED AND RESTATED LEASE AGREEMENT**

This First Amended and Restated Lease Agreement (“Lease”) is made and entered into on the last date of execution below by and between the Town of Queen Creek, an Arizona municipal corporation, hereinafter referred to as “Landlord”, and Kathryn L. Brewer, an individual, hereinafter referred to as “Tenant.”

### **RECITALS**

A. The Landlord and Lauri Lock (“Original Tenant”) entered into that certain Lease Agreement dated December 20, 2018 (“Original Lease”) for the Premises. The Original Lease expires on December 19, 2020.

B. Section 9 of the Original Lease requires Landlord’s consent to the assignment of the Original Lease.

C. In an April 30, 2019 letter, the Town consented to the assignment of the Original Lease from Original Tenant to Tenant, subject to the continuation of the tradename and permitted use of the Premises.

D. Town and Tenant desire to amend and restate the Original Lease to update the name of the Tenant, renew the term, and change certain financial provisions as provided herein.

### **AGREEMENT**

NOW, THEREFORE in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Premises and Term; Termination:** In consideration of the obligation of Tenant to pay rent as herein provided, and in consideration of the other terms, provisions and covenants hereof, Landlord hereby demises and leases to Tenant, and tenant hereby takes from Landlord certain premises situated within Maricopa County, Arizona with an address at 22249 S. Ellsworth Road (the “Premises”).

To have and to hold the same for a term of two (2) years commencing on December 20, 2020, (“Commencement Date”) and ending on December 19, 2022. The lease may be renewed upon expiration of this term. If either Tenant or Landlord foresees that the lease will not be renewed upon expiration, each shall give the other ninety (90) days notice before the expiration date. Tenant acknowledges that she has inspected and accepts the Premises, and specifically the buildings and improvements located thereon, in their present condition as suitable for the purpose for which the Premises are leased. By taking of possession of the Premises, Tenant shall be deemed conclusively to establish that said buildings and other improvements are in good and satisfactory condition as of when possession was taken. Tenant further acknowledges that no representations as to the condition or repair of the Premises have been made by Landlord, unless such are expressly set forth in this Lease. Landlord has no obligation to alter, remodel or improve the Premises. The Premises is the 500 square foot building (“Building”) north and east of the larger, 822 square foot building (“Additional Building”), also located at 22249 S. Ellsworth Road.

The covered carport on the shared lot with the additional Building is not for Tenant's use or Tenant's customers' use. Tenant and Tenant's customers may use the uncovered parking spaces in the front or rear of said lot.

2. **Base Rent; Deposit:** Tenant agrees to pay to Landlord rent for the Premises in advance, without demand, deduction or set off, for the entire term hereof at the rate of **\$925.00 per month plus** applicable taxes (**\$25.44**), for the first year (December 20, 2020 to December 19, 2021); and **\$953.00 per month plus** applicable taxes (**\$26.21**), for the second year (December 20, 2021 to December 19, 2022). One such monthly installment shall be due and payable on the Commencement Date and a like monthly installment shall be due and payable on or before the twentieth (20th) day of each calendar month succeeding the Commencement Date during the hereby demised term.

Tenant's previously tendered deposit in the amount of \$775.00 ("Deposit") shall be held as security for Tenant's performances hereunder. If, at the close of the term hereof, Tenant is not in default, the Deposit shall be reasonably promptly returned to Tenant after Landlord inspects the Premises and finds that Tenant has not caused any unrepaired damage thereto and has otherwise abided by the terms of this Lease. If at any time Tenant is in default under this Lease, Landlord may utilize the Deposit or any portion thereof to cure Tenant's default, without waiving Tenant's default. Tenant shall thereupon immediately pay the Landlord the amount of the Deposit so utilized as a condition to any other cure of Tenant's defaults hereunder.

3. **Use:** The Premises shall be used for the purpose of a dog grooming salon by Tenant and for such other lawful purposes as may be incidental thereto. Tenant shall obtain and keep current a Town of Queen Creek Business License and all necessary licenses from the Maricopa County Environmental Services (or similar regulatory body) in order to conduct Tenant's proposed business hereunder. Tenant shall comply with all governmental laws, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Premises, all at Tenant's sole expense. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise or vibrations to emanate from the Premises, nor take any other action which would constitute a nuisance. Tenant shall not permit the Premises to be used for any purpose or in any manner (including without limitation any method of storage) which would render the insurance maintained by Landlord thereon void or the insurance risk more hazardous.

4. **Landlord's Repairs:** Landlord shall at its expense maintain the roof, foundation and the structural soundness of the exterior walls of the building in good repair, reasonable wear and tear excepted. Landlord shall also make all necessary repairs and replacements to downspouts, gutters, heating and air conditioning systems, plumbing work and fixtures. Tenant shall repair and pay for any damage caused by Tenant, or Tenant's agents or invitees, or caused by Tenant's default hereunder. The terms "walls" as used herein shall not include windows, glass, plate glass, or doors. Tenant shall immediately give Landlord written notice of defect or need for repairs, after which Landlord shall have reasonable opportunity to repair the same or cure such defect. Landlord's liability with respect to any defects, repairs, or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance or the curing of such defect.

5. **Tenant's Repairs:** Tenant shall at its own cost and expense keep and maintain all parts of the Premises (except those for which Landlord is expressly responsible under the terms of this Lease) in good condition, promptly making all necessary repairs and replacements, including but not limited to, windows, glass and plate glass, doors, interior walls and finish work, floors and floor covering, termite and pest extermination, regular removal of trash and debris, regular mowing of any grass, trimming, weed removal and general landscape maintenance. Tenant shall not be obligated to repair any damage caused by fire, tornado or other casualty covered by the insurance to be maintained by Landlord pursuant to subparagraph 10 below, except that Tenant shall be obligated to repair all wind damage to glass except with respect to tornado or hurricane damage.

6. **Alteration:** Tenant shall not make any alterations, additions, or improvements to the Premises (including but not limited to roof and wall penetrations) without the prior written consent of Landlord. Tenant shall also apply for a Town building permit before making any structural or other changes to the Building (such tenant improvements and structural changes as set forth in the building permit application being herein called "Tenant's Work"). Once commenced, Tenant's Work shall be promptly pursued to completion in a lien-free and good and worker-like manner in accordance with said building permit and all codes. At the close of the Lease term, Tenant shall remove all personal property from the Premises, shall repair any damage done to the Premises by virtue of such removal, but shall not remove permanent fixtures which are part of Tenant's Work nor any other part of Tenant's Work under said building period without Landlord's consent and/or direction. A list of Tenant's Work and the building permit (if, as and when issued) will be attached as an Exhibit to this Lease and shall become a portion of Tenant's obligations hereunder. Notwithstanding anything in this Lease to the contrary, if Tenant does not obtain the building permit described above prior to the Commencement Date despite having paid the necessary funds and using best efforts to obtain same, Tenant may, upon written notice to Landlord, cancel this Lease, whereupon, so long as Tenant is not otherwise in default hereunder, Tenant shall be entitled to the return of the Deposit and neither party shall have further liability to the other hereunder.

7. **Inspection:** Landlord and Landlord's agents and representative shall have the right to enter and inspect the Premises at any reasonable time during business hours, for the purpose of ascertaining the condition of the Premises or in order to make such repairs as may be required or permitted to be made by Landlord under the terms of this Lease. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall arrange to meet with Landlord for a joint inspection of the Premises prior to vacating. In the event of Tenant's failure to give such notice or arrange such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises to give such notice or arrange such joint inspection, Landlord's inspection at or after tenant's vacating the Premises shall be conclusively deemed correct for purposes of determining tenant's responsibility for repairs and restoration.

8. **Utilities:** Tenant shall provide, at its cost, electricity and telephone service connections, gas, heat, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or from the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto and any maintenance charges for utilities. Tenant shares an electric meter and a water meter with the Adjoining Building. Tenant shall pay one third-of the electric bill and Adjoining Building tenant shall pay two thirds of the electric bill, per their verbal arrangement, when said electric bill is received. Landlord shall pay the water bill in its entirety. Should the tenant of the Adjoining Building vacate the premises, Tenant shall assume all utilities except water in their full amount. Landlord will monitor water usage and notify Tenants if the water usage is deemed excessive.

9. **Assignment and Subletting:** Tenant shall not assign this Lease, or allow same to be assigned by operation of law or otherwise, or sublet the Premises or any part thereof, without Landlord's prior written consent. Landlord shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease, and in the building and property referred to herein; and to the extent that such assignee assumes Landlord's obligations hereunder, Landlord shall by virtue of such assignment be released from such obligations.

10. **Fire and Casualty Damage:** Landlord agrees to maintain standard fire and extended coverage insurance covering the structure upon the Premises; provided however, that nothing herein shall obligate the Landlord for the replacement or repair of any personal property located therein. Tenant shall be solely responsible for securing separate insurance coverage for any personal property located on the Premises.

11. **Liability:** Landlord shall not be liable to Tenant or Tenant's agents or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the negligence or misconduct of Tenant, its agents, servants or employees, or of any other person entering upon the Premises, or caused by the buildings and improvements located on the Premises. Tenant hereby covenants and agrees that he will at all times indemnify and hold safe and harmless the Premises, the Landlord, Landlord's agents and employees from any loss, liability, claims, suits, costs, expenses, including without limitation attorney's fees and damages, both real and alleged, arising out of any such damage or injury. Tenant shall, at all times during the term of this lease, and at his sole cost and expense, maintain, procure and continue in force commercial general liability insurance with respect to the Premises for personal injury, bodily injury (including wrongful death) and damage to property, which policy shall name Landlord as additional insured, having a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence. If requested by Landlord, Tenant shall carry appropriate riders on Tenant's insurance policy dealing with the performance of Tenant's services in the Premises and shall provide to Landlord acceptable contractor's insurance/bonds as a condition to commencement of Tenant's Work.

12. **Holding Over:** Tenant shall, at the termination of this Lease by lapse of time or otherwise, give immediate possession to Landlord. If Landlord agrees in writing that Tenant may hold over after the expiration or termination of this Lease, unless the parties hereto otherwise agree in writing on the terms of such holding over, the hold over tenancy shall be subject to termination by Landlord at any time upon not less than ten (10) days advance written notice, or by Tenant at any time upon not less than thirty (30) days advance written notice, and all of the other terms and provisions of this Lease shall be applicable during that period, except that Tenant shall pay Landlord from time to time upon demand, as rental for the period of any hold over, an amount equal to five (5) times the rent in effect on the termination date, computed on a daily basis for each day of the hold over period. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided. The preceding provisions of this paragraph 12 shall not be construed as Landlord's consent for Tenant to hold over.

13. **Quiet Enjoyment:** Landlord covenants that it now has good title to the Premises. Landlord represents and warrants that it has full right and authority to enter into this Lease and

that Tenant, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Landlord, subject to the terms and provisions of this Lease.

14. **Events of Default:** The following shall be deemed to be events of default by Tenant under this Lease:

- a) Tenant shall fail to pay any installment of the rent herein reserved when due, or any other payment or reimbursement to Landlord required herein when, due, and such failure shall continue for a period of ten (10) days from the date such payment was due.
- b) Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.
- c) To the extent permitted by U.S. Bankruptcy law, Tenant shall file a petition under any section or chapter of bankruptcy law or statute of the United States or any State thereof; or tenant shall be adjudged bankrupt or insolvent in proceedings filed against tenant thereunder.
- d) A receiver or trustee shall be appointed for all or substantially all of the assets of Tenant.
- e) Tenant shall desert or vacate any substantial portion of the Premises.
- f) Tenant shall fail to comply with any term, provision, or covenant of this Lease (other than the foregoing in this Paragraph 14), and shall not cure such failure, within twenty (20) days after written notice thereof to Tenant.

15. **Remedies:** Upon the occurrence of any such events of default described in Paragraph 14 hereof, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- a) Terminate this Lease, in which event tenant shall immediately surrender the Premises to Landlord, and if Tenant fails so to do, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefore; and Tenant agrees to pay the Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise.
- b) Enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying such Premises or any part thereof, by force if necessary without being liable for prosecution or any claim for damages therefore, and relet the Premises and receive the rent therefore; and Tenant agrees

to pay to the Landlord on demand and deficiency that may arise by reason of such reletting. In the event Landlord is successful in reletting the Premises at a rental in excess of that agreed to be paid by Tenant pursuant to the terms of this Lease, Landlord and Tenant each mutually agree that Tenant shall not be entitled, under any circumstances to such excess rental, and Tenant does hereby specifically waive any claim to excess rental.

In the event Tenant fails to pay any installment of rent or any reimbursement, additional rental, or any other payment hereunder as and when such payment is due, to help defray the additional cost to Landlord for processing such late payments Tenant shall pay to Landlord on demand a late charge in an amount equal to five percent (5%) of such installment, reimbursement, additional rental or any other payment and the failure to pay such late charge within ten (10) days after demand thereof shall be an event of default hereunder. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to landlord by reason of the violation of any of the terms, provisions and covenants herein contained. No act or thing done by the Landlord or its agents during the term hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid unless in writing signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, and covenants herein contained. Landlord's acceptance of the payment of rental or other payments hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such or of Landlord's right to enforce any such remedies with respect to such default or any subsequent default. If, on account of any breach or default by Tenant in Tenant's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Landlord to employ or consult with an attorney concerning or to enforce or defend any of Landlord's rights or remedies hereunder, Tenant agrees to pay any reasonable attorney's fees so incurred.

16. **Notices:** All rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address herein below set forth or at such other address as landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such rent and other amounts have been actually received by Landlord. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid. Certified or Registered mail, addressed to the parties hereto at the respective

addresses set out below, or at such other address as they have heretofore specified by written notice delivered in accordance herewith:

**Landlord:**

Town Manager  
Town of Queen Creek  
22350 S. Ellsworth Road  
Queen Creek, AZ 85142

**Tenant:**

Kathryn L. Brewer  
22249 S. Ellsworth Road  
Queen Creek AZ 85142  
[thedoghousepetsalonqcaz@gmail.com](mailto:thedoghousepetsalonqcaz@gmail.com)

**17. Miscellaneous:**


- a) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
- b) The terms, provisions and covenants and conditions contained in this Lease shall apply to, inure the benefit of, and be binding upon, the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as otherwise herein expressly provided.
- c) The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.
- d) This Lease may not be altered, changed, or amended except by an instrument in writing signed by both parties hereto.
- e) If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid, or unenforceable, there be added as a part of this Lease contract a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
- f) All references in this Lease to "the date hereof" or similar references shall be deemed to refer to the last date, in point of time, on which all parties hereto have executed this Lease.
- g) Pursuant to the provisions of A.R.S. 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is at any time while the contract or any extension thereof is in effect an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect the subject matter of the contract.

- h) This terms and provisions of this Lease shall be governed by the laws of the State of Arizona.
- i) The Recitals to this Lease are incorporated into and shall constitute a part of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK




EXECUTED by Landlord, this 2nd day of December, 2020.

  
Gail A. Barney, Mayor

ATTEST:

  
Maria Gonzalez, Town Clerk

APPROVED AS TO FORM:

  
Dickinson Wright, Town Attorneys

EXECUTED by Tenant, this 10<sup>th</sup> day of November, 2020.

  
Kathryn L. Brewer

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

4828-2896-1744 v1 [53749-35]