

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**Paws and Claws Pet Inn, LLC
DEBTOR**

CHAPTER 11

CASE NO. 16-81010

**AMENDED MOTION FOR ENTRY OF AN ORDER
APPROVING BID PROCEDURES**

Debtor Paws and Claws Pet Inn, LLC (“Paws and Claws”) moves the Court to enter an Order in connection with the sale pursuant to 11 U.S.C. § 363 of real property owned by the debtor located at 5725 Normans Road, Rougemont, North Carolina 27572 (the “Real Property”) as well as certain other assets of the Debtor. The Debtor asks that the Court enter an Order substantially in the form attached as **Exhibit A** (the “Bidding Procedures Order”): (1) authorizing and approving bidding procedures substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** in connection with the sale of the Real Property and the assets of the Debtor identified in the list attached to the Bidding Procedures Order as **Exhibit 1** (the “Other Assets”) pursuant to section 363; (2) approving the form and matter of notice of an auction and sale hearing with respect to the sale of the Real Property free and clear of all liens, claims, encumbrances, and interests (the “Sale”); (3) scheduling dates for bid submission and an auction (if necessary); (4) schedule a hearing at which the Court would approve the rejection of the commercial lease agreement between Alissa Smith (the “Current Tenant”), the Debtor and Dean and Patricia Williford dated May 21, 2014 (the “Lease”); and (5) granting certain other relief. In support of this Motion, the Debtor shows the Court the following:

Jurisdiction

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1408.

2. The statutory bases for the relief requested in this motion are 11 U.S.C. §§ 105(a), 363, 365, 505, and 507, and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Background

3. The Debtor filed a voluntary petition under Title 11, Chapter 11 of the United States Code (the “Bankruptcy Code”) on November 14, 2016 (the “Petition Date”).

4. Since the Petition Date, the Debtor has sought to maximize the value of the estate for all stakeholders, which include two secured creditors (KeyStar Capital Fund, L.P. (“KeyStar”) and Self Help Ventures Fund/SBA (“SBA”), the Internal Revenue Service (“IRS”), and the members of the Debtor LLC.

5. Patricia Williford, one of the member/managers of the Debtor, is a real estate broker who has aggressively marketed the Debtors’ property. She has approached prospective buyers and listed the property for sale.

6. The Debtor has also invested thousands of dollars in cleaning, painting and renovating the Real Property.

7. Because of the work that has been done on the property and Ms. Williford’s marketing efforts, the Debtor is confident that multiple bidders will be attracted to a bidding procedure such as the one proposed in this Motion.

8. A principal concern expressed by potential buyers was the ease of ending the current tenancy and whether or not the current tenant would be willing to vacate after a sale.

9. Likewise, the Debtor has been engaged in ongoing negotiations regarding the sale of the Real Property to the Current Tenant, but there are issues that are an impediment to that sale, namely a one year non-compete agreement contained in the Lease and the potential of continued litigation between landlord and tenant.

10. The proposed procedures resolve both of these issues, which, if left unresolved, threaten to chill bidding in what could otherwise promise to be a robust auction.

11. The Current Tenant has made an offer to serve as the exclusive stalking horse bidder in any potential sale of the Real Property. While there were negotiations between the parties, the Current Tenant is unwilling to offer more than a combined price of \$660,000.00 for the Real Property, the Other Assets, resolution of the pending adversary proceeding, and release of the non-compete with the Debtor.

12. The Debtor does not believe that it is in the best interest of the stakeholders (which includes the LLC's members) to accept the Current Tenant's offer to serve as the exclusive stalking horse bidder under the terms set forth in her proposal.

13. Rather, the Debtor proposes this alternative bidding mechanism which it believes will serve to encourage bidding and maximize the value to the estate, and may result in multiple bidders and an increased return for the estate.

14. Ms. Williford will continue to market the Real Property in an effort to maximize interest and potentially secure additional bidders.

15. Selling the Real Property and Other Assets are the crucial step to the Debtor's success; it will lead to a structured dismissal that would eliminate the need for a Chapter 11 plan

and is in the best interest of the Chapter 11 estate and its stakeholders, and the Debtor asks that the Court approve these procedures.

Relief Requested

16. By this Motion, the Debtor-in-Possession seeks entry of the Bidding Procedures Order that:

- a. authorizes and approves bidding procedures for competitive bidding in connection with the sale of the Real Property and Other Assets (the “Bidding Procedures”);
- b. approves the form and manner of notice of the Sale by sealed bid and Auction (defined below), the Sale Hearing (defined below), and related matters, substantially in the form attached as **Exhibit 3** to the Bidding Procedures Order (the “Sale Notice”);
- c. establishes the following dates and deadlines (subject to modification and approval by the Court):
 - i. Sealed Bid Receipt Deadline: July 24, 2017 at 5:00 p.m. will be set as the date upon which Sealed Bids (defined below)(including any credit bids), the deposit, and required documentation must be actually received pursuant to the Bidding Procedures (the “Bid Deadline”);
 - ii. Bid Opening: July 25, 2017 at 10:00 a.m. will be set as the date the Sealed Bids will be opened at the office of Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, North Carolina 27517. The highest Qualifying Bid (as defined below) received shall be declared the Successful Bidder (as defined below). The second highest

Qualifying Bid shall be declared the Backup Bidder (as defined below);

- iii. Auction: If there is a tie among the top bids, there will be an auction on July 26, 2017 at 10:00 a.m. at the office of Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, North Carolina 27517 in which any Qualified Bidder can participate (the “Auction”);
- iv. Filing: As soon as is reasonably practicable after the Sealed Bids are opened and the Auction (if any) is closed, but in any event no later than July 27, 2017 at 5:00p.m., the Debtor shall file the Bid Documents for the Successful Bid and the Backup Bid with the Court;
- v. Sale Objection Deadline: August 2, 2017 at 5:00 p.m. will be set as the deadline to object to the Sale;
- vi. Sale Hearing: August 3, 2017 at 11:00 a.m. as the date and time to approve the Sale and approve the rejection of the Lease.

17. By this Motion, the Debtor also seeks the entry of a Sale Order at the conclusion of the Sale Hearing:

- a. authorizing and approving the Sale on the terms substantially set forth in the Asset Purchase Agreement (“APA”) to the successful bidder arising from the Sealed Bids or the Auction, if any (the “Successful Bidder”); and
- b. authorizing and approving the rejection of the Lease.

The Form Asset Purchase Agreement

18. A copy of the Form Asset Purchase Agreement (“Form APA”) is attached to this Motion as **Exhibit B**.

The Bidding Procedures

19. To efficiently solicit, receive and evaluate bids in a fair and accessible matter, the Debtor proposes the Bidding Procedures (attached to the Bidding Procedures Order as **Exhibit 2**) to govern the Sale.

20. The Bidding Procedures are designed to encourage all potential bidders to participate and to maximize the value to the Debtor’s estate. The key points of the proposed Bidding Procedures are:

- a. Real Property: The Real Property to be sold is the real property owned by the debtor located at 5725 Normans Road, Rougemont, North Carolina 27572;
- b. Other Assets: The Successful Bidder will also purchase the Other Assets of the Debtor identified in the list attached to the Bidding Procedures Order as **Exhibit 1**;
- c. Purchase Price: Each bid must be for the purchase of both the Real Property and Other Assets, and the purchase price must be allocated between the two. The winning bidder will be the bidder with the highest aggregate price, regardless of allocation between the Real Property and the Other Assets;
- d. Credit Bid: Should Key Star and/or SBA submit a bid, they may offer a credit bid which would be applied to the portion of their bid allocated to the Real Property:

- i. Key Star may credit bid up to the amount of its allowed claim, or
\$290,019.16;
 - ii. SBA may credit bid up to the amount of its allowed claim, or
\$122,660.86;
- e. Deposit: Each Bid must be accompanied by a deposit in certified funds equal to five percent (5%) of the total Bid (the “Deposit”). This deposit requirement is waived for Key Star and SBA if they submit credit bids;
- f. Minimum Bid: The Debtor reserves the right to reject any bid that is not equal to or greater than \$660,000.00;
- g. APA: Each Bid must expressly include the Form APA attached as **Exhibit B** along with a redlined copy that notes any changes requested by the Bidder.

Each Bid must be, in the Debtor-in-Possession’s reasonable business judgment, substantially on the same or better terms than the terms of the Form APA;
- h. Demonstrated Financial Capacity; Committed Financing: A Bidder must have, in the Debtor-in-Possession’s reasonable business judgment, the necessary financial capacity to consummate the proposed transaction required by its Bid. Each Bid must include either proof of funds sufficient to close the proposed transaction or a funding commitment that is not subject to any internal approvals or credit committee approvals and does not have covenants or conditions that are not reasonably acceptable to the Debtor. Any proof of funds or funding commitment must include contact information for the

specific person(s) whom the Debtor or Debtor's counsel can contact regarding such proof of funds or financing;

- i. Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) who counsel for the Debtor should contact regarding such Bid;
- j. Contingencies; No Financing or Diligence Provisions: A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in the Debtor's reasonable business judgment, than those set forth in the Form APA;
- k. Irrevocable: A Bidder's Bid shall be irrevocable unless and until the Debtor accepts a higher Qualified Bid and such Bidder is not selected as the Backup Bidder;
- l. Qualified Bidder: To be a Qualified Bidder, a bidder must, in the reasonable business judgment of the Debtor: (1) demonstrate financial credibility by

submitting a cash deposit of 5% of the bid; (2) demonstrate an ability to perform through proof of funds or a financing commitment; and (3) either submit the Form APA, or an APA that is on the same or better terms than the Form APA;

- m. Expenses: Each Bidder presenting a Bid or Bids shall bear its own costs and expenses (including legal fees) in connection with the proposed transaction;
- n. Authorization: Each Bid that is not submitted by an individual must contain evidence that the Bidder has obtained authorization or approval from its Board of Directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid;
- o. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property or Other Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Real Property or Other Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's proposed APA;

p. Online Document Room: The Debtor will offer an online document room on its counsel's website that will contain relevant information for potential bidders, including the Bid Procedure Order, the Form APA, and information that will facilitate potential Bidders' due diligence process.

21. Bid Deadline: Each Bid must be actually received by Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, NC 27517 on or before July 24, 2017 at 5:00 p.m. Each Bid must be in a sealed envelope containing bid information, proof of funds or funding commitment, proposed APA, and deposit in certified funds (the "Sealed Bid").

22. Bid Opening: The Sealed Bids shall be opened at the offices of Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, NC 27517 on July 25, 2017 at 10:00 a.m. The highest Qualifying Bid received shall be declared the Successful Bidder with no further bidding permitted.

23. Conditional Qualification: Bidders shall be conditionally qualified on the day that Sealed Bids are opened, subject to further investigation by the Debtor or Debtor's counsel. Counsel for the Debtor may discuss or seek clarification of any Qualified Bid from the Qualified Bidder, and the Debtor may disqualify a bidder after the Bid Opening based on information that demonstrates that the bidder is in fact not qualified to bid.

24. The Auction: If the amounts of the two highest Qualified Bids are identical, counsel for the Debtor will conduct an Auction in which all Qualified Bidders may participate. There shall be no minimum increment for the amount of Overbids.

25. Backup Bidder: Notwithstanding anything in the Bidding Procedures to the contrary the Qualified Bidder(s) with the next-highest or otherwise second-best Qualified Bid(s), either after the opening of Sealed Bids or at the Auction, as determined by the Debtor in the

exercise of its reasonable business judgment, shall be required to serve as a Backup Bidder. The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder. The Backup Bidder's Deposit shall be held in escrow in the Trust Account of Debtor's counsel until the closing of the transaction with the Successful Bidder.

26. Highest or Otherwise Best Bid: When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtor may, in its sole discretion, consider the following factors in addition to any other factors that the Debtor deems appropriate: (a) the number, type, and nature of any changes to the Form APA requested by the Qualified Bidder; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the tax consequences of such Qualified Bid.

Form and Manner of Sale Notice

27. On or within three (3) business days of entry of the Bidding Procedures Order, the Debtor will cause the Sale Notice to be served by U.S. Mail and email (if available) on: (a) the United States Bankruptcy Administrator; (b) the top 20 unsecured creditors; (c) all parties who have expressed a written interest in the Real Property; (d) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Real Property; (e) the IRS; (f) all applicable state and local taxing authorities; (g) all parties who have filed appearances or requested notices through the Court's CM/ECF system. The Debtor shall also publish an abbreviated version of the Sale Notice in the

News and Observer at least fourteen (14) days prior to the Bid Deadline and on the web site of counsel for the Debtor.

28. The Debtor respectfully submits that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including:(a) the deadline for submitting Sealed Bids; (b) the date, time and place of the opening of the Sealed Bids; (c) the date, time and place of the Auction (if one is held); (d) the Bidding Procedures; (e) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (f) a reasonably specific identification of the Selling Debtors' Real Property and Other Assets; (g) instructions for promptly obtaining a copy or copies of the form APA from the Document Room or Debtor's counsel; (h) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the Sale proceeds; and (i) notice of the proposed rejection of the Lease.

29. The Debtor further submits that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Notice, constitutes good and adequate notice of the Sale in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtor proposes that no other or further notice of the Sale shall be required. Accordingly, the Debtor requests that this Court approve the form and manner of the Sale Notice.

Rejection of the Lease and Provisions for Bidding by the Current Tenant

30. On or about May 15, 2014 the Debtor entered into a turn-key Lease for the Real Property and the Other Assets (the "Lease") with Alissa Smith (the "Current Tenant"), who has run the pet boarding and grooming facility at the Real Property since.

31. It is in the best interest of the Debtor's estate that it sell the Real Property and the Other Assets, and that it sell the property free and clear of liens.

32. It is in the best interest of the Debtor's estate that it be permitted to reject the Lease, since selling the property without a tenant would facilitate the solicitation of bids.

33. Section 363 permits the sale to occur free and clear of a lessee's possessory interest—provided that the lessee is granted adequate protection for its interest.

34. The terms of section 365(h) permit a lessee to remain in possession of estate property notwithstanding the debtor-in-possession's decision to reject the lease. However, courts have found that this section only applies when property is not sold, and the debtor remains in possession but chooses to reject the lease; in that circumstance, section 365(h) comes into play and the lessee retains the right to possess the property. See Precision Indus., Inc. v. Qualitech Steel SBQ, LLC, 327 F.3d 537, 548 (7th Cir. 2003).

35. Both provisions may be given full effect without coming into conflict with one another and without disregarding the rights of the lessee. The property could be sold free and clear of liens to a third party so long as any claim for adequate protection by the Current Tenant is addressed in the Sale Order.

36. In this case, however, the Current Tenant has indicated that she intends to submit a Bid, and she has in fact unsuccessfully negotiated with the Debtor to serve as a stalking horse bidder.

37. The addition of the Current Tenant to the pool of potential bidders raises issues that risk a chilling of bidding. The threat of invoking section 365(h), or even a deliberate failure to maintain the property, could discourage potential bidders other than the Current Tenant. Likewise, the non-compete contained in the Lease creates confusion about whether the Current

Tenant could even take possession of the property. In addition, the Current Tenant has indicated that her ability to obtain financing is contingent on mutual releases with the Debtor and the dismissal of Adversary Proceeding 17-09002 (the “AP”).

38. The proposed Bid Procedures address this potential chilling effect by creating obligations on the part of both the Debtor and the Current Tenant should the Current Tenant or an entity acting on the Current Tenant’s behalf submit a Bid (whether or not that Bid is a Qualifying Bid). As consideration for the Current Tenant’s giving up both her rights under Section 365(h) and her rights to continue to litigate her continued possession, and the Debtor giving up its rights to litigate potential claims against the Current Tenant and its non-compete, the Current Tenant and Debtor, upon the Current Tenant’s submission of a Bid, the Current Tenant and Debtor shall agree to the following:

- a. The Debtor will dismiss the AP with prejudice at the time the Current Tenant’s Bid is submitted;
- b. The Current Tenant, K9 R&R Pet Retreat LLC and any entity submitting a Bid on the Current Tenant’s behalf on the one hand and the Debtor, Dean Williford and Patricia Williford on the other hand, shall execute a mutual release substantially in the form attached as **Exhibit C**;
- c. The Current Tenant agrees to waive any rights she may have under section 363(h) and to vacate the Real Property within 30 days of the Sale Order if she is not the Successful Bidder;
- d. The Current Tenant agrees to properly maintain the Real Property and the Other Assets;
- e. The Debtor agrees to waive any non-compete contained in the Lease.

Basis for Relief

39. Courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. See, e.g., In re E-Z Serve Convenience Stores, Inc., 289 B.R. 45, 55 (Bankr. M.D.N.C. 2003) (bankruptcy courts look to “finality in the bidding process, fairness and equity, and maximization of the value of the assets of the estate”); In re Integrated Resources, Inc., 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”).

40. The proposed Bidding Procedures will allow the Debtor to conduct the Sale in a controlled and fair process that will encourage financially capable bidders to participate and to make their highest and best offer.

41. The proposed bidding procedures will also encourage competitive bidding, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. See E-Z Serve, 289 B.R. at 55.

42. Pursuant to Bankruptcy Rule 2002(a), the Debtor is required to provide creditors with 21 days’ notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in this Motion.

43. As noted above, within three business days of entry of the Bidding Procedures Order, the Debtor will cause the Sale Notice to be served by U.S. Mail and email (if available) on: (a) the United States Bankruptcy Administrator; (b) the top 20 unsecured creditors; (c) all parties who have expressed a written interest in the Real Property; (d) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim,

or other interest in the Real Property; (e) the IRS; (f) all applicable state and local taxing authorities; (g) all parties who have filed appearances or requested notices through the Court's CM/ECF system. The Debtor shall also publish an abbreviated version of the Sale Notice in the News and Observer at least fourteen (14) days prior to the Bid Deadline and on the web site of counsel for the Debtor.

44. Notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Notice, as provided for in this Motion, constitutes good and adequate notice of the Sale in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. Accordingly, the Debtor requests that this Court approve the form and manner of the Sale Notice.

45. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A sale of the debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the proposed transaction.

46. Once the Debtor articulates a valid business justification, the business judgment rule "operates primarily as a rule of evidence or judicial review and creates, first, an initial evidentiary presumption that in making a decision the directors acted with due care (i.e., on an informed basis) and in good faith in the honest belief that their action was in the best interest of the corporation, and second, absent rebuttal of the initial presumption, a powerful substantive presumption that a decision by a loyal and informed board will not be overturned by a court unless it cannot be attributed to any rational business purpose." In re Brokers, Inc., 363 B.R. 458,

473 (Bankr. M.D.N.C. 2007) (quoting State ex rel. Long v. ILA Corp., 132 N.C. App. 587, 602, 513 S.E.2d 812, 821–22 (1999)).

47. As set forth above, the Debtor has a sound business justification for selling the Real Property and the Other Assets at this time. The Debtor expects that a sale of these assets will satisfy 100% of the debts in this Chapter 11 bankruptcy, eliminating the need to propose a plan. The sale of the Real Property and Other Assets will be subject to competing bids, enhancing the Debtor's ability to receive the highest or otherwise best value for the Real Property and Other Assets. Consequently, the ultimately successful bid or bids, after being subject to a "market check" in the form of the Auction, will constitute, in the Debtor's reasonable business judgment, the highest or otherwise best offer for the Debtor's assets and will provide a greater recovery for its estate than any known or practicably available alternative.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, substantially in the form attached as **Exhibit A**:

1. Authorizing and approving the Bidding Procedures attached to the Bidding Procedures Order as **Exhibit 2**.
2. Approving the form and manner of the Sale Notice attached to the Bidding Procedure Order as **Exhibit 3**;
3. Scheduling the Auction and Sale; and
4. Granting such other relief as the Court may deem just and proper; and
5. At the conclusion of the Sale Hearing enter an order (a) authorizing the sale of the Real Property and the Other Assets free and clear of liens; and (b) authorizing the Debtor's rejection of the Lease.

Dated: June 8, 2017

PARRY TYNDALL WHITE

/s/ James C. White

James C. White, N.C. Bar # 31859

Michelle M. Walker, N.C. Bar # 41664

100 Europa Drive, Suite 401

Chapel Hill, NC 27517

jwhite@ptwfirm.com

(919)246-4676

(919) 246-9113 fax

Attorneys for Debtor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by CM/ECF notice upon the following on this date:

Robert Price
Assistant Bankruptcy Administrator

John A. Northen
On behalf of Creditor Key Star Capital Fund

Jason L. Hendren
Rebecca F. Redwine
On behalf of Tenant Alissa Smith

U.S. Mail, postage-prepaid, in an envelope addressed to the following creditors or parties in interest:

Orange County Tax Office
Attn: Managing Agent
PO Box 8181
Hillsborough, NC 27278

Bynum Rudisill
SBA North Carolina District
6302 Fairview Rd. Suite 300
Charlotte, NC 28210

Internal Revenue Service
Attn: Managing Agent
PO Box 7346
Philadelphia, PA 19101

Insolvency Support Services
Internal Revenue Service
Attn: Managing Agent
4905 Koger Blvd. Suite 102
Greensboro, NC 27407

Self-Help Ventures Fund
Attn: Managing Agent
301 W. Main St.
Durham, NC 27701

Paws and Claws Pet Inn, LLC
c/o Patricia Williford, Officer
79 S. Old Lantern Rd.
Timberlake, NC 27583

Dated: June 8, 2017

/s/ James C. White

EXHIBIT “A”

BIDDING PROCEDURES ORDER

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**Paws and Claws Pet Inn, LLC
DEBTOR**

CHAPTER 11

CASE NO. 16-81010

ORDER APPROVING BID PROCEDURES

Upon the Motion of the Debtor Paws and Claws Pet Inn, LLC (“Paws and Claws”) for an Order: (1) authorizing and approving bidding procedures substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** in connection with the sale of the real property owned by the debtor located at 5725 Normans Road, Rougemont, North Carolina 27572 (the “Real Property”) and the assets of the Debtor identified in the list attached to the Bidding Procedures Order as **Exhibit 1** (the “Other Assets”) pursuant to section 363; (2) approving the form and matter of notice of an auction and sale hearing with respect to the sale of the Real Property free and clear of all liens, claims, encumbrances, and interests (the “Sale”); (3) scheduling dates for bid submission and an auction (if necessary); (4) schedule a hearing at which the Court would approve the rejection of the commercial lease agreement between Alissa Smith (the “Current Tenant”), the Debtor and Dean and Patricia Williford dated May 21, 2014 (the “Lease”); and (5) granting certain other relief.; it appearing to the Court that the relief requested is in the best

interest of the Debtor's estate, its creditors, and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing:

THE COURT HEREBY FINDS THAT:

A. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. § 1408.

B. The statutory bases for the relief requested in this motion are 11 U.S.C. §§ 105(a), 363, 365, 505, and 507, and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

C. Notice of the Motion has been given to: (1) the U.S. Bankruptcy Administrator; (2) the secured creditors in this case; (3) the top 20 unsecured creditors; (4) the Internal Revenue Service; and (5) all parties who have filed appearances or requested notice through the Court's CM/ECF system.

D. The findings and conclusions set forth in this Order constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. The Debtor has articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; and (ii) set the Auction and Sale Hearing and approve the manner of notice of the Auction and Sale Hearing.

F. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (a) the deadline for submitting Sealed Bids; (b) the date, time and place of the opening of the Sealed Bids; (c) the date, time and place of the Auction (if one is held); (d) the Bidding Procedures; (e) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (f) a reasonably specific identification of the Selling Debtors' Real Property and Other Assets; (g) instructions for promptly obtaining a copy or copies of the form APA from the Document Room or Debtor's counsel; (h) a description of the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the Sale proceeds; and (i) notice of the proposed rejection of the Lease.

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.
3. Sale Hearing: The Sale Hearing and hearing on the rejection of the Lease shall be held August 3, 2017 at 11:00 a.m. or as soon thereafter as counsel may be heard at the United States Bankruptcy Court, 302 East Pettigrew Street, Suite 280, Durham, North Carolina.

4. Sale Objection Deadline: Objections, if any, to the Sale must be made by August 2, 2017 at 5:00 p.m. Objections must be: (a) in writing; (b) conform to the applicable provisions of the Bankruptcy Rules; (c) state the legal and factual basis for the objection with particularity; and (d) be filed with the Court and served on all interested parties via the Court's CM/ECF system.

5. A party's failure to timely file or make an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the Sale with the Successful Bidder and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the Sale.

6. Sealed Bid Receipt Deadline: July 24, 2017 at 5:00 p.m. is the date upon which Sealed Bids (including any credit bids), the deposit, and required documentation must be actually received pursuant to the Bidding Procedures (the "Bid Deadline").

7. Bid Opening: July 25, 2017 at 10:00 a.m. is the date the Sealed Bids will be opened at the office of Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, North Carolina 27517.

8. Auction: If there is a tie among the top bids, there will be an auction on July 26, 2017 at 10:00 a.m. at the office of Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, North Carolina 27517 in which any Qualified Bidder can participate. The Bidding Procedures, substantially in the form attached as **Exhibit 2**, are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed sale of the Real Property and Other Assets. Any party desiring to bid on the Real Property and Other Assets shall comply with the Bidding Procedures and this Order. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.

9. If counsel for the Debtor does not receive any Qualified Bids, the Debtor may postpone or cancel the Sale.

10. If the two highest Qualifying Bids are identical, the Debtor shall conduct an Auction in which all Qualified Bidders can participate.

11. The Sale Notice in the form attached as **Exhibit 3** is hereby approved. On or within three (3) business days of entry of this Order, the Debtor will cause the Sale Notice to be served by U.S. Mail and email (if available) on: (a) the United States Bankruptcy Administrator; (b) the top 20 unsecured creditors; (c) all parties who have expressed a written interest in the Real Property; (d) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Real Property; (e) the Internal Revenue Service; (f) all applicable state and local taxing authorities; (g) all parties who have filed appearances or requested notices through the Court's CM/ECF system.

12. The Debtor shall also publish an abbreviated version of the Sale Notice in the News and Observer at least fourteen (14) days prior to the Bid Deadline and on the web site of counsel for the Debtor.

13. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

END OF DOCUMENT

EXHIBIT “1”

OTHER ASSETS

PERSONAL PROPERTY

Caterpillar generator- 40 kw

Septic system and specialized drain fields with uphill pumping action

10 by 12' vinyl completely finished shed with electricity, drywall, flooring, light fixtures used for boarding, training, special activities, storage

33 extra tall steel with chain link gate and bowl holders in door with doggie doors, covers, outside/inside runs totaling 4 by 9 feet

3 extra tall runs totaling 5 by 14 feet

Solid stainless steel water bowls designed by mason company to fit into the food bowl holders on the mason sani-kennels

Solid stainless steel caging for dogs with dividers and PVC flooring grates

Almond laminate cat condos - 10 with rollers, resting benches, port holes

Tri-star stainless steel bath tub with ramp

Edemco grooming/bathing cages & accessories

Oster cage dryer, forced air dryer & accessories

Home Depot and Lowe's blowers

Stainless steel cabinet for grooming supplies

Electric table, stationary table, and grooming arm

Lateral file cabinet- 2 drawer- steel

Vertical 4 drawer steel cabinet

Vertical 2 drawer steel cabinet

Lateral file- 2 drawer wood cabinet

Vertical file-2 drawer wood

Wooden office desk and 2 office chairs, reception room bench, table, 2 wicker chairs

Crates of various sizes for boarding animals- plastic

Wire cages of various sizes for boarding animals

Plastic raised kennel decks to put in the kennel runs

Clip on stainless steel water bowls of various sizes

Food vittles vault for pet food storage

Window units for additional cooling – cattery and office

Industrial fans for kennel

Laser printer

Dell all in one office printing, faxing, copying

Cordless phone set

Plastic drawers for Storage-Rubbermaid

Wireless keyboard and mouse

Kennel connection software program

Chrome shelving in supply room for food bins

White vinyl fencing at 40.00 per foot installed

Chain link fencing and gates for 60 individual walking yards at \$500 per walking yard

Whirlpool front loading commercial dryer-gas

Whirlpool stainless steel refrigerator

Required by county in parking lot, gravel, greenery to cover septic system, trees

Custom made and installed- wooden

Hoses for wash down in kennels and sprayer attachments

Hose reels- one in each kennel

Mops, mop buckets, water buckets, squeegees, brooms, dust pans

Grooming cart

Plastic storage bins for supplies-Rubbermaid and Sterilite

Wooden bench and ottoman

Ornamental iron garden decor

Statues and benches

Century link router

Wooden side table in lobby

10 litter boxes, 3 scoopers

2 Corner shelving units- metal and wooden

Dishwasher

Muzzles

Grooming aprons

Bedding- towels, sheets, blankets

Large patio umbrella and stand

INTANGIBLE ASSETS

All of Seller's rights in all intangible assets of the Business, including without limitation, telephone and fax numbers, customer lists, supplier lists, referral lists, contracts, advertising materials and data, together with all books, computer software, files, papers, records and other data of Seller relating to the Assets and/or used by Seller in the operation of the Business.

INTELLECTUAL PROPERTY.

All of Seller's right, title and interest in and to all intellectual property of Seller, including without limitations all inventions, marks, trademark or service mark applications, formulas (patented and unpatented), copyrights, copyright applications, logos, franchises, proprietary knowledge, trade secrets, technical information, quality control data, processes (whether secret or not), methods and other similar know-how or rights used in the conduct of the Business, (the "Intellectual Property"), all goodwill associated therewith and all causes of action associated therewith. Notwithstanding the foregoing, Seller shall not sell the name Paws and Claws Pet Inn.

EXHIBIT “2”

BIDDING PROCEDURES

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:

Paws and Claws Pet Inn, LLC
DEBTOR

CHAPTER 11

CASE NO. 16-81010

BIDDING PROCEDURES FOR THE SALE OF THE
DEBTOR'S REAL PROPERTY AND OTHER ASSETS

On [DATE], this Court entered an Order by which the Court approved the following procedures (the "Bidding Procedures"). These Bidding Procedures set forth the process by which the Debtor is authorized to solicit Sealed Bids and, if necessary, conduct an Auction for the sale of substantially all of the Debtor's assets.

1. **The Assets Being Sold**

- a. Real Property: The Real Property to be sold is the real property owned by the Debtor located at 5725 Normans Road, Rougemont, North Carolina 27572;
- b. Other Assets: The buyer will also purchase the Other Assets of the Debtor identified in the list attached to the Bidding Procedure Order as **Exhibit 1**.

2. **"As Is, Where Is"**

- a. The proposed transfer of the Real Property will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtor's estate. All of the Debtor's right, title, and interest in and to the Real Property will be

transferred free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with section 363(f) of the Bankruptcy Code;

b. Each Bidder will be deemed to acknowledge and represent that it: (i) has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property or Other Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Real Property or the completeness of any information provided in connection with the Sale.

3. Each Bid must be for the purchase of both the Real Property and Other Assets, and the purchase price must be allocated between the two. The winning bidder will be the bidder with the highest aggregate price, regardless of allocation between the Real Property and the Other Assets.

4. Credit Bid: Should KeyStar Capital Fund, L.P. (“KeyStar”) and Self Help Ventures Fund/SBA (“SBA”) submit a bid, they may offer a credit bid pursuant to section 363(k) which would be applied to the portion of their bid allocated to the Real Property:

- i. Key Star may credit bid up to the amount of its allowed claim, or \$290,019.16;
- ii. SBA may credit bid up to the amount of its allows claim, or \$122,660.86.

5. Deposit: Each Bid must be accompanied by a deposit in certified funds equal to five percent (5%) of the total Bid (the “Deposit”). This deposit requirement is waived for Key Star and SBA should they submit credit bids.

6. Minimum Bid: The Debtor reserves the right to reject any bid that is not equal to or greater than \$660,000.00, or to postpone or cancel the Sale if no Qualified Bids are received that are equal to or above \$660,000.00.

7. APA: A form Asset Purchase Agreement (the “Form APA”) is attached to the Bidding Procedures Motion as **Exhibit B**. Each Bid must expressly include the Form APA with a redline clearly marked to show changes requested to the Form APA by the Bidder. Each Bid must be, in the Debtor-in-Possession’s reasonable business judgment, substantially on the same or better terms than the terms of the Form APA.

8. Demonstrated Financial Capacity; Committed Financing: A Bidder must have, in the Debtor-in-Possession’s reasonable business judgment, the necessary financial capacity to consummate the proposed transaction required by its Bid. Each Bid must include either proof of funds sufficient to close the proposed transaction or a funding commitment that is not subject to any internal approvals or credit committee approvals and does not have covenants or conditions that are not reasonably acceptable to the Debtor. Any proof of funds or funding commitment must include contact information for the specific person(s) whom the Debtor or Debtor’s counsel can contact regarding such proof of funds or financing.

9. Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Bidder if such Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) whom counsel for the Debtor should contact regarding such Bid.

10. Contingencies; No Financing or Diligence Provisions: A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall not be more burdensome, in the Debtor's reasonable business judgment, than those set forth in the Form APA.

11. Irrevocable: A Bidder's Bid shall be irrevocable unless and until the Debtor accepts a higher Qualified Bid (as defined below) and such Bidder is not selected as the Backup Bidder (as defined below).

12. Expenses: Each Bidder presenting a Bid or Bids shall bear its own costs and expenses (including legal fees) in connection with the proposed transaction.

13. Authorization: Each Bid that is not submitted by an individual must contain evidence that the Bidder has obtained authorization or approval from its Board of Directors (or a comparable governing body acceptable to the Debtor) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

14. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property or Other Assets in making its Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Real Property or the completeness of any

information provided in connection therewith, except as expressly stated in the Bidder's proposed APA.

15. Online Document Room: The Debtor will offer an online document room on its counsel's website that will contain relevant information for potential bidders, including the Bid Procedure Order, the Form APA, and information that will facilitate potential Bidders' due diligence process. The web address for the online document room will be <http://pawsandclaws.ptwfirm.com>.

16. Qualified Bidders: A Bidder that: (a) demonstrates financial credibility by submitting a cash deposit of 5% of the bid; (b) demonstrates an ability to perform through proof of funds or a lending commitment; and (c) either submits the Form APA, or an APA that is on the same or better terms than the Form APA, satisfying all of the bid requirements as determined in the Debtor's reasonable business judgment, shall be a "Qualified Bidder." Bidders shall be conditionally qualified on the day that Sealed Bids are opened, subject to further investigation by the Debtor or Debtor's counsel. Counsel for the Debtor may discuss or seek clarification of any Qualified Bid from the Qualified Bidder.

17. Bid Deadline: Each Bid must be actually received by Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, NC 27517 on or before July 24, 2017 at 5:00 p.m. Each Bid must be in a sealed envelope containing bid information, proof of funds or funding commitment, proposed APA, and deposit in certified funds.

18. Bid Opening: The Sealed Bids shall be opened at the offices of Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, NC 27517 on July 25, 2017 at 10:00 a.m. The highest Qualifying Bid received shall be declared the Successful Bidder. The second highest Qualifying Bid shall be declared the Backup Bidder (as defined below).

19. The Auction: If the amounts of the two highest Qualified Bids are identical, counsel for the Debtor will conduct an Auction in which all Qualified Bidders may participate. There shall be no minimum increment for the amount of Overbids. The Auction shall continue until counsel for the Debtor determines that there is one highest Qualified Bid.

20. Attendance: Only parties who have submitted Bids and their legal and financial advisors shall be entitled to attend the Sealed Bid Opening, and the Qualified Bidders shall appear in person and through duly-authorized representatives at the Auction. Only Qualified Bidders and their legal and financial advisors shall be entitled to bid at the Auction. Creditors of the Debtor may also attend the Bid Opening and the Auction.

21. Backup Bidder: Notwithstanding anything in the Bidding Procedures to the contrary, the Qualified Bidder(s) with the next-highest or otherwise second-best Qualified Bid(s), either after the opening of Sealed Bids or at the Auction, as determined by the Debtor in the exercise of its reasonable business judgment, shall be required to serve as a Backup Bidder. The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder. The Backup Bidder's Deposit shall be held in escrow in the Trust Account of Debtor's counsel until the closing of the transaction with the Successful Bidder.

22. Highest or Otherwise Best Bid: When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtor may, in its sole discretion, consider the following factors in addition to any other factors that the Debtor deems appropriate:

(a) the number, type, and nature of any changes to the Form APA requested by the Qualified

Bidder; (b) the amount and nature of the total consideration; and (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof.

23. Filing: As soon as is reasonably practicable after the Sealed Bids are opened and/or the Auction is closed, but in any event no later than July 27, 2017 at 5:00p.m., the Debtor shall file the Bid Documents for the Successful Bid and the Backup Bid with the Court.

24. Certification: Each Qualified Bidder participating in the Sale may be required to confirm on the record that: (a) it has not engaged in any collusion with respect to the bidding; and (b) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed transaction if it is selected as the Successful Bidder.

25. The Debtor reserves the right to ask the Court to modify these Bidding Procedures, in any manner in its reasonable business judgment will best promote the goals of the bidding process, or to seek extension of the deadlines imposed in these Bidding Procedures or cancellation of the Sale or Auction.

26. By submitting their bids, all Qualified Bidders shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

27. If Alissa Smith, the current tenant in the Real Property (the "Current Tenant") or an entity acting on the Current Tenant's behalf submits a Bid (whether or not that Bid is a Qualifying Bid):

- a. The Debtor will dismiss Adversary Proceeding 17-09002 with prejudice at the time the Current Tenant's Bid is submitted;

- b. The Current Tenant, K9 R&R, Inc., and any entity submitting a Bid on the Current Tenant's behalf on the one hand and the Debtor, Dean Williford and Patricia Williford on the other hand, shall execute a mutual release substantially in the form attached to the Motion for Bid Procedures as **Exhibit C**;
- c. The Current Tenant agrees to waive any rights she may have under section 365(h) and to immediately vacate the Real Property if she is not the Successful Bidder;
- d. The Current Tenant agrees to properly maintain the Real Property and the Other Assets pending the Sale;
- e. The Debtor agrees to waive any non-compete contained in the Lease.

28. A hearing to consider approval of the Sale is presently scheduled to be held on August 3, 2017 at 11:00 a.m. or as soon thereafter as counsel may be heard at the United States Bankruptcy Court, 302 East Pettigrew Street, Suite 280, Durham, North Carolina. At the hearing the Debtor will present the Successful Bid to the Court for approval.

29. The Successful Bidder's Deposit shall be held, pending Sale, in the trust account of counsel for the Debtor and shall be applied to the purchase price of such transaction at closing. If a Successful Bidder fails to consummate a proposed transaction the Debtor will not have any obligation to return the Deposit deposited by such Successful Bidder, which may be retained by the Debtor as damages, without limiting any and all rights, remedies, and/or causes of action that may be available to the Debtor, and the Debtor shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

30. The Backup Bidder's Deposit shall be held, pending Sale, in the trust account of counsel for the Debtor. The Backup Bidder's Deposit shall be returned at the Successful Bidder's closing. If a Successful Bidder fails to consummate a proposed transaction the Debtor shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court. If the Backup Bidder fails to consummate a proposed transaction the Debtor will not have any obligation to return the Deposit deposited by such Backup Bidder, which may be retained by the Debtor as damages, without limiting any and all rights, remedies, and/or causes of action that may be available to the Debtor.

31. All deposits, other than those of the Successful Bidder and Backup Bidder(s), shall be returned after the opening of the Sealed Bids, or the Auction if one is held.

32. The deposits of the Successful Bidder and Backup Bidder shall be returned if they are unable to consummate their respective transactions because Court fails to approve sale of the Debtor's Real Property and Other Assets to them.

Dated: June 8, 2017

PARRY TYNDALL WHITE

/s/ James C. White

James C. White, N.C. Bar # 31859

Michelle M. Walker, N.C. Bar # 41664

100 Europa Drive, Ste 401

Chapel Hill, NC 27517

jwhite@ptwfirm.com

(919)246-4676

(919) 246-9113 fax

Attorneys for Debtor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by:

CM/ECF notice upon the following on this date:

Robert Price
Assistant Bankruptcy Administrator

John A. Northen
On behalf of Creditor Key Star Capital Fund

Jason L. Hendren
Rebecca F. Redwine
On behalf of Defendant Alissa Smith

U.S. Mail, postage-prepaid, in an envelope addressed to the following creditors or parties in interest:

Orange County Tax Office
Attn: Managing Agent
PO Box 8181
Hillsborough, NC 27278

Bynum Rudisill
SBA North Carolina District
6302 Fairview Rd. Suite 300
Charlotte, NC 28210

Internal Revenue Service
Attn: Managing Agent
PO Box 7346
Philadelphia, PA 19101

Insolvency Support Services
Internal Revenue Service
Attn: Managing Agent
4905 Koger Blvd. Suite 102
Greensboro, NC 27407

Self-Help Ventures Fund
Attn: Managing Agent
301 W. Main St.
Durham, NC 27701

Paws and Claws Pet Inn, LLC
c/o Patricia Williford, Officer
79 S. Old Lantern Rd.
Timberlake, NC 27583

Dated: June 8, 2017

/s/ James C. White

EXHIBIT “3”

SALE NOTICE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:

**Paws and Claws Pet Inn, LLC
DEBTOR**

CHAPTER 11

CASE NO. 16-81010

**NOTICE OF SALE OF THE DEBTOR'S
REAL PROPERTY AND OTHER ASSETS**

PLEASE TAKE NOTICE that on June 6, 2017 Paws and Claws Pet Inn LLC (the “Debtor”), filed the *Motion for an Order Approving Bid Procedures* [Docket No. [•]] (the “Sale Motion”) with the United States Bankruptcy Court for the Middle District of North Carolina (the “Court”) seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of all of the Selling Debtor’s real property (the “Real Property”) and other assets (the “Other Assets”) free and clear of liens, claims, interests, and encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds; and (b) authorizing the rejection of an unexpired non-residential lease (the “Lease”).

PLEASE TAKE FURTHER NOTICE that the Debtor is soliciting offers for the purchase of the Real Property and Other Assets consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court by entry of an order on [_____] [Docket No. [•]](the “Bidding Procedures Order”). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any

inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that qualified Sealed Bids (as described in the Bidding Procedures Order) must be received by counsel for the Debtor, Parry Tyndall White, 100 Europa Drive, Suite 401, Chapel Hill, North Carolina 27517 (“Counsel’s Office”) no later than **5:00 p.m. on July 24, 2017**. All such bids will be opened by counsel for the Debtor on **July 25, 2017 at 10:00 a.m.** at Counsel’s Office, and the highest qualified bid at the opening shall be the purchaser of the Real Property and the Other Assets.

PLEASE TAKE FURTHER NOTICE that if the Debtor receives two or more identical highest Qualified Sealed Bids within the requirements and time frame specified by the Bidding Procedures, counsel will conduct an auction (the “Auction”) of the Debtor’s Real Property and Other Assets on **July 27, 2017 at 10:00 a.m.** at Counsel’s Office.

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing scheduled to commence on **August 3, 2017 at 11:00 a.m.** (the “Sales Hearing”) at the United States Bankruptcy Court, 302 East Pettigrew Street, Suite 280, Durham, North Carolina.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order, objections, if any, to the relief requested in the Sale Motion **must**: (1) be in writing; (2) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (3) state with particularity the legal and factual basis for the objection; and (4) be filed with the Court no later than **August 2, 2017 at 5:00 p.m.** and served via the Court’s CM/ECF system.

CONSEQUENCES OF FAILING TO MAKE A TIMELY OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO MAKE A TIMELY OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THIS NOTICE SHALL BE FOREVER BARRED FROM ASSERTING ANY

OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR'S REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, and any exhibits, including the Bidding Procedures Order, Bidding Procedures, and the Form APA are available:

(a) upon request to Parry Tyndall White (counsel for the Debtor) by calling (919) 246-4676; (b) by visiting the online document room maintained by counsel for the Debtor at

<http://pawsandclaws.ptwfirm.com>; or (c) for a fee via PACER by visiting

<https://ecf.ncmb.uscourts.gov/>.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the Real Property and Other Assets at <http://pawsandclaws.ptwfirm.com>.

Dated: June 8, 2017

PARRY TYNDALL WHITE

/s/ James C. White

James C. White, N.C. Bar # 31859

Michelle M. Walker, N.C. Bar # 41664

100 Europa Drive, Ste 401

Chapel Hill, NC 27517

jwhite@ptwfirm.com

(919)246-4676

(919) 246-9113 fax

Attorneys for Debtor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by:

CM/ECF notice upon the following on this date:

Robert Price
Assistant Bankruptcy Administrator

John A. Northen
On behalf of Creditor Key Star Capital Fund

Jason L. Hendren
Rebecca F. Redwine
On behalf of Defendant Alissa Smith

U.S. Mail, postage-prepaid, in an envelope addressed to the following creditors or parties in interest:

Orange County Tax Office
Attn: Managing Agent
PO Box 8181
Hillsborough, NC 27278

Bynum Rudisill
SBA North Carolina District
6302 Fairview Rd. Suite 300
Charlotte, NC 28210

Internal Revenue Service
Attn: Managing Agent
PO Box 7346
Philadelphia, PA 19101

Insolvency Support Services
Internal Revenue Service
Attn: Managing Agent
4905 Koger Blvd. Suite 102
Greensboro, NC 27407

Self-Help Ventures Fund
Attn: Managing Agent
301 W. Main St.
Durham, NC 27701

Paws and Claws Pet Inn, LLC
c/o Patricia Williford, Officer
79 S. Old Lantern Rd.
Timberlake, NC 27583

Dated: June 8, 2017

/s/ James C. White

EXHIBIT “B”

FORM ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into on this [__] day of [____], 2017 by and between [____] (the "Purchaser") and **Paws and Claws Pet Inn, LLC**, a North Carolina limited liability company with its registered address at 5725 Normans Road, Rougemont, NC 27572 (the "Seller").

WHEREAS, Seller has filed a voluntary petition under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of North Carolina (Case No. 16-81010) on November 14, 2016 (the "Petition Date"); and

WHEREAS, Seller is the legal and equitable owner of certain assets used in pet grooming and boarding services (the "Other Assets"); and

WHEREAS, Seller is the legal and equitable owner of those certain lots, pieces or parcels of real property and all improvements and fixtures thereon and appurtenances belonging thereto, commonly known as 5725 Normans Road, Rougemont, NC 27572 (the "Real Property"); and

WHEREAS, Purchaser desires to purchase the Other Assets (as defined below) and the Real Property on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Seller desires to sell, assign, convey, and transfer the Other Assets and Real Property to Purchaser on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the Parties intend to effectuate the transactions contemplated by the Agreement through a sale pursuant to Section 363 of the Bankruptcy Code; and

NOW, THEREFORE, in consideration of the foregoing recitals incorporated into and made a part hereof, of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Purchase and Sale of Assets. At the Closing (as defined below), Seller shall sell, transfer, convey, assign and deliver to Purchaser and Purchaser shall purchase and accept delivery of the assets of Seller set forth on Exhibit "A" (the "Real Property") and Exhibit "B" (the "Other Assets").

2. Purchase and Sale of Real Property.

a. Purchase and Sale of Real Property. Seller agrees to sell and Purchaser agrees to purchase the Real Property, as more fully described on Exhibit A to this Agreement (the "Real Property").

b. Purchase and Sale of Other Assets. Seller agrees to sell and Purchaser agrees to purchase the Other Assets, as more fully described on Exhibit B to this Agreement (the "Other Assets").

c. Purchase Price. The purchase price for the Real Property and Other Assets (collectively "Assets") shall be [_____] (the "Purchase Price").

3. Excluded Liabilities. Except for the Assumed Obligations (defined below), Purchaser shall not assume, satisfy, discharge or otherwise be responsible for any amount payable, liability, debt or commitment of Seller of any kind or nature whatsoever, (the "Excluded Liabilities"); and (ii) all of the Excluded Liabilities shall remain the sole, exclusive and absolute responsibility of Seller.

4. Assumed Obligations. Purchaser hereby agrees to assume, satisfy and discharge, only the liabilities and obligations with respect to the real property and personal property assets (the "Assumed Obligations") which arise from and after the Closing Date.

5. Consideration; Allocation. As consideration for the Assets (the "Consideration"), Purchaser shall execute and deliver to Seller:

a. Cash Deposit. Purchaser shall deposit with counsel for the Debtor an initial deposit equal to 5% of the Purchase Price in the amount of [_____] (the "Deposit"). The Deposit shall become refundable only if the Purchaser is not ultimately the highest bidder in accordance with the Bid Procedure Order, or if the Court declines to approve the sale for any reason, in which case the full Deposit shall be refunded to Seller.

b. Cash or Immediately Available Funds. [_____] in cash or immediately available funds shall be paid at Closing.

c. Allocation. The Consideration shall be allocated among the Assets in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder. The allocation of the Consideration shall be:

i. [_____] for the Real Property and

ii. [_____] for the Other Assets.

Seller and Purchaser agree to file timely all returns required under Code Section 1060 and the regulations promulgated thereunder based on the allocations set forth herein and further agree that they will not take any position inconsistent therewith on any return or other document of any kind or in the course of any audit, examination or other proceeding by any federal, state, local or other taxing authority (or other governmental agency), court or tribunal.

6. Closing.

a. Closing Date. The closing of the transactions contemplated hereunder (the “Closing”) shall take place at the offices of Purchaser’s closing attorney, on or before [____] days following the Bankruptcy Court’s entry of a final order approving the Sale (the “Sale Order”), or at such other place and time as the Parties may agree.

b. Deliveries. The following fully executed documents shall be delivered at or prior to the Closing by the respective Parties:

i. Bill of Sale conveying the Other Assets to the Purchaser, the form of which is attached as Exhibit B ;

ii. Special Warranty Deed from Seller conveying the Real Property to Purchaser;

iii. Affidavit regarding liens from Seller to the applicable title insurance company.

7. Representations and Warranties of Seller. In order to consummate the transaction, Seller does hereby represent and warrant as follows:

a. Title. Seller will, subject to Bankruptcy Court approval, deliver good and marketable title to all Assets, and the Assets will be free and clear of all liens, claims encumbrances and interests of any kind, whatsoever, at the time of Closing.

b. Authority. Seller has all requisite power and authority required to enter into this Agreement and perform their obligations hereunder, subject to Bankruptcy Court approval.

c. As Is Where Is. The proposed transfer of the Real Property and Other Assets are on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Seller.

d. Taxes. Seller has properly completed, duly and timely filed in correct form with the appropriate United States, state and local governmental agencies and with the appropriate foreign countries and political subdivisions thereof, all tax returns, reports and declarations of estimated tax (the “Tax Returns”) required to be filed before the Closing Date. All United States, state and local income, profits, franchise, sales, use, business personal property,

occupancy, property, severance, excise, value added, withholding, ad valorem and other taxes, and all taxes owing to any foreign countries and political subdivisions thereof (including interest, penalties and any additions to tax) (the "Taxes") due from or claimed to be due by each taxing authority in respect of Seller, for all periods through the date of this Agreement, have been, and for all periods through the Closing Date will be, fully paid or adequately provided for in the financial statements of Seller. Seller has timely made and will timely make all withholdings of tax required to be made under all applicable United States, state and local tax regulations, and such withholdings have either been paid or will be paid to the respective governmental agencies or set aside in accounts for such purpose or accrued, reserved against and entered upon the books of Seller.

e. Chapter 11 Bankruptcy. Seller has filed for protection under Chapter 11 of the United States Bankruptcy Code. The sale and purchase contemplated hereby shall be subject to the approval of the United States Bankruptcy Court for the Middle District of North Carolina. All Parties agree that they will cooperate in all reasonable respects in securing such approval and will direct all attorneys and agents to carry out the provisions of this Agreement.

8. Representations and Warranties of Purchaser.

a. Purchaser has, or will have at the Closing, sufficient funds as necessary to meet its obligations under this Agreement;

b. Purchaser has had an opportunity to conduct any and all due diligence regarding the Real Property prior to making its offer;

c. Purchaser has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Real Property or Other Assets in making its Bid; and

d. Purchaser did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Real Property or the completeness of any information provided in connection therewith.

9. Lease Rejection At Closing. Seller rejects the Lease and the Purchaser shall purchase the Real Property free and clear of any interest created by the Lease.

10. Conditions Precedent. All rights and obligations of the Parties under this Agreement are subject to the fulfillment or satisfaction of each of the following conditions precedent:

a. Documents. All documents set forth in Section 8 shall be fully executed and delivered.

b. Performance. All of the covenants and obligations that the Parties are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

11. Entire Agreement. This Agreement, together with the exhibits and schedules attached hereto, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings, agreements, arrangements and understandings, both oral and written, among the Parties with respect to such subject matter.

12. Amendment. This Agreement may not be amended or modified in any respect, except by the mutual written agreement of the Parties.

13. Waivers and Remedies. The waiver by any Party of any other Party's prompt and complete performance, or breach or violation, of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach or violation, and the waiver by any Party of the right to exercise any right or remedy that it may possess hereunder shall not operate nor be construed as a bar to the exercise of such right or remedy by such Party upon the occurrence of any subsequent breach or violation.

14. Severability. The invalidity of any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part hereof, all of which are inserted conditionally on their being valid in law, and in the event that any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Agreement shall be declared invalid by a court or competent jurisdiction, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, section or sections, or subsection or subsections had not been inserted.

15. Notices. Any notice or communication under this Agreement shall be in writing and delivered (by hand or overnight delivery courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as follows:

To Purchaser:

[_____] }

To Seller:

Patricia Williford
Rory Williford
Paws and Claws Pet Inn LLC
79 S. Old Lantern Rd.

Timberlake, NC 27583

With a copy to:

James C. White, Esq.
Parry Tyndall White
100 Europa Drive, Ste 401
Chapel Hill, NC 27517

Notice by United States mail shall be deemed given on the third day after its deposit. Notice by hand delivery or overnight delivery courier shall be deemed given on the first business day when received. A Party may from time to time specify as its address for purposes of this Agreement any other address upon the giving of ten (10) days' notice thereof to other Parties in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

16. Representations. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Parties hereto, and their successors and assigns, and they shall not be construed as conferring any rights on any other persons.

17. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, successors and assigns. Except as provided herein, this Agreement may not be assigned by any Party hereto without the prior written consent of the other Parties.

18. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the state of North Carolina without applying conflict of law principles.

19. Attorneys' Fees. If any legal action is brought for the enforcement of any of the provisions of this Agreement, the prevailing Party shall be entitled to recover from the other Party, upon final judgment on the merits, reasonable attorneys' fees incurred in bringing such action.

20. Brokers and Agents. The Parties acknowledge that no brokers were used in this transaction.

21. Counterparts; Electronic Transmission. This Agreement may be executed in two or more counterparts which taken together shall constitute one and the same agreement, even though no one counterpart bears the signature of every Party to the Agreement. Any counterpart or composite of counterparts executed by all Parties shall constitute prima facie legal proof of the existence and enforceability of this Agreement generally. Any Party may execute and deliver a counterpart of this Agreement to another Party via Electronic Signature which includes (i) a

telephonic facsimile, (ii) an electronically scanned signature inserted in the electronic copy of the Agreement, or (iii) an email or other written electronic communication clearly evidencing acceptance and intent to be legally bound. The transmitting Party's Electronic Signature shall have the same force and effect as an original physical signature on a physical counterpart delivered to the other Party. Pursuant to the North Carolina Uniform Electronic Transactions Act, the Parties also consent and agree that this Agreement shall be stored in electronic format.

22. Further Assurances. The Parties shall each perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

Purchaser:

Seller:

[PURCHASER]

Paws and Claws Pet Inn, LLC

By:_____

By:_____
Patricia R. Williford, Member/Manager

By:_____
Rory Dean Williford
Member/Manager

EXHIBIT A
Legal Description

BEING ALL of Tract 1-A, containing 5.76 acres, more or less, according to that plat of survey entitled "Recombination – Property Surveyed for Patricia Williford" by ENT Land Surveyors, Inc., as recorded in Plat Book 92, Page 108, Orange County Registry, to which reference is hereby made for a more particular description of same.

PIN: 0808-21-8709

EXHIBIT B

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that **Paws and Claws Pet Inn, LLC**, a North Carolina limited liability company (the “Seller”), in consideration of the sum of Ten Dollars and No Cents (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, transferred and delivered to [_____] (“Purchaser”), all of their right, title and interest in and to the assets (the “Assets”) to be conveyed to Purchaser pursuant to that certain Asset Purchase Agreement between Seller, Purchaser, and others, dated as of____, 2017 (the “Agreement”).

To have and to hold unto Purchaser, its heirs, successors and assigns forever.

Seller covenants and warrants to and with Purchaser that it is the sole owner of the Assets and that there are no liens, security interests or other encumbrances attached to or otherwise affecting the Assets.

On or after the date hereof and without further consideration, Seller will, from time to time at Purchaser's reasonable request, execute and deliver such further instruments of conveyance, assignment and transfer and shall take, or cause to be taken, such other action as Purchaser may reasonably request for the more effective conveyance, assignment and transfer to Purchaser of any of the Assets; and will lend all reasonable assistance to Purchaser in the exercise of rights with respect thereto and otherwise in the carrying out of the interests and purposes of the Agreement.

To have and to hold all such right, title and interest in and to the Assets which are hereby sold, transferred and assigned to Purchaser, its successors and assigns, and for its and their use and benefit forever.

IN WITNESS WHEREOF, the undersigned have caused this Bill of Sale to be duly executed effective on [____], 2017.

SELLER:

Paws and Claws Pet Inn, LLC,

By: _____
Patricia R. Williford, Member

By: _____
Rory Dean Williford, Member

EXHIBIT “C”

**MUTUAL RELEASE AND SETTLEMENT AGREEMENT
BETWEEN LANDLORD AND TENANT**

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement (the “Agreement”) is made and entered into as of the last day set forth on the signature page (“Effective Date”) by and between **K9 R&R Pet Retreat, LLC**, a North Carolina limited liability company with its registered address at 5725 Normans Road, Rougemont, NC 27572 (“K9 R&R”), **SARA ALISSA YEONG SMITH** (“Smith” or “Tenant”), **Paws and Claws Pet Inn, LLC**, a North Carolina limited liability company with its registered address at 5725 Normans Road, Rougemont, NC 27572 (the “Seller”) and **RORY DEAN WILLIFORD and PATRICIA R. WILLIFORD** (the “Willifords”) (Seller, K9 R&R, the Willifords and Smith are collectively referred to as “Parties”).

RECITALS

This Agreement is entered into with reference to the following facts which are true to the best of the Parties’ knowledge and belief, and are expressly made part of this Agreement:

- A. On or about November 14, 2016, the Seller filed a Chapter 11 petition in the United States Bankruptcy Court for the Middle District of North Carolina (Case No. 16-81010) (the “Bankruptcy Case”); and
- B. The Debtor filed a Motion to Approve Bid Procedures for the Sale of its Assets [Docket No. ____] in the Bankruptcy Case on June 7, 2017; and
- C. Seller, the Willifords and Smith are parties to a Commercial Lease Agreement, Lease Amendment, Special Stipulations and any and all other addendums or amendments (the “Lease”), which the Debtor intends to reject as part of the process of selling its assets, and they execute this Agreement for the purpose of waiving any right or interest in and to the non-compete provision contained in the Lease, to waive any rights in the tenancy the Tenant may have under 11 U.S.C. § 365(h), and to permit the Tenant or her assigns to bid on the sale of the Debtor’s Real and Personal Property Assets; and
- D. The Seller and Smith are parties to that certain Adversary Proceeding pending in the United States Bankruptcy Court for the Middle District of North Carolina (Case No. 17-09002) (the “Adversary Proceeding”); and
- E. The Parties agree that it is in their mutual interests to avoid the cost, delay and uncertainty of further litigation by reaching a settlement and accommodation of this dispute, including all claims which exist or which may exist between and among them, arising out of the facts, matters and events set forth in the Action and the above Recitals, without any admission of law or fact by either Party.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

TERMS AND RELEASES

1. **Recitals:** The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by reference with the same force and effect as if set forth herein as agreements of the Parties.

2. **Consideration:** The Parties have agreed to enter into this Agreement as a condition to Tenant or an entity acting on the Tenant's behalf submitting a Bid for the Seller's Real Property and Other Assets (as defined in the Bid Procedure Order filed with the Court as Docket #____). The Parties agree that the Bid and other covenants between the Parties constitute good and valuable consideration for this Agreement.

3. **Release by Seller and the Willifords:** Except for claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement, Rory Dean Williford and Patricia R. Williford, for and on behalf of himself/herself and his/her present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, agents, attorneys, insurers, executors, administrators, and/or estate, or any and all other persons who could claim through him/her, and the Seller and each of its past, present and future directors, officers (whether acting in such capacity or individually), members, owners, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and assigns, or any agent acting or purporting to act for them or on their behalf hereby unconditionally and irrevocably remise, release, and forever discharge Smith and K9 R&R and all entities related to Smith and her present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, agents, attorneys, insurers, executors, administrators, and/or estate, or any and all other persons who could claim through her and K9 R&R and each of its past, present and future directors, officers (whether acting in such capacity or individually), members, owners, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and assigns, or any agent acting or purporting to act for them or on their behalf from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated or capable of being known up until the Effective Date, including without limitation any and all claimed or unclaimed compensatory damages, consequential damages, punitive damages, interest, costs, expenses and fees (including attorneys' fees) that were or could have been raised in, arise out of, relate to, or in any way involve the Action. It is the intention and effect of this release to discharge all claims that Seller and the Willifords have against Smith and K9 R&R up until and including the date of the execution of this Agreement.

4. **Release by Smith and K9 R&R:** Except for claims arising out of the failure of either Party to perform in conformity with the terms of this Agreement, Sara Alissa Yeong Smith, for and on behalf of herself and her present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, agents, attorneys, insurers, executors, administrators, and/or estate, or any and all other persons who could claim through her, and the K9 R&R and each of its past, present and future directors, officers (whether acting in such

capacity or individually), members, owners, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and assigns, or any agent acting or purporting to act for them or on their behalf hereby unconditionally and irrevocably remise, release, and forever discharge the Willifords and Seller and all entities related to the Willifords and their present and future spouses (and common law spouses), children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, agents, attorneys, insurers, executors, administrators, and/or estate, or any and all other persons who could claim through them and Seller and each of its past, present and future directors, officers (whether acting in such capacity or individually), members, owners, partners, joint venturers, principals, trustees, creditors, attorneys, insurers, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, and assigns, or any agent acting or purporting to act for them or on their behalf from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated or capable of being known up until the Effective Date, including without limitation any and all claimed or unclaimed compensatory damages, consequential damages, punitive damages, interest, costs, expenses and fees (including attorneys' fees) that were or could have been raised in, arise out of, relate to, or in any way involve the Action. It is the intention and effect of this release to discharge all claims that Smith and K9 R&R have against Seller and the Willifords up until and including the date of the execution of this Agreement.

5. Representations by the Seller and the Willifords: The Seller and the Willifords make the following representations:

- a. Seller will dismiss Adversary Proceeding 17-09002 with prejudice within five (5) days of execution of this Agreement;
- b. Seller and the Willifords will waive any non-compete provisions contained in the Lease.

6. Representations by the Tenant: The Tenant makes the following representations:

- a. The Tenant agrees to waive any rights she may have under section 365(h) of the Bankruptcy Code and to vacate the Real Property within thirty (30) days of the entry of the Sale Order if she is not the Successful Bidder;
- b. The Tenant agrees to properly maintain the Real Property and the Other Assets pending the Sale.

7. Acknowledgments: Each of the Parties acknowledge and agree that:

- a. This Agreement is entered into and executed voluntarily by each of the Parties and without any duress or undue influence on the part of, or on behalf of, any such Party.

- b. Each of the Parties has been represented by counsel of its/their own choice, or has had the opportunity to be represented by counsel. All parties who are representing themselves are warned to obtain the advice of an attorney before signing this Agreement.
- c. This Agreement is enforceable regardless of its tax consequences.

8. Compromise of Disputed Claims: It is understood and agreed that this Agreement is the compromise of disputed claims, and that the terms of settlement contained herein and the releases executed are not intended to be and shall not be construed as admissions of any liability or responsibility whatsoever and each released Party expressly denies any liability or responsibility whatsoever.

9. Severability: If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected.

10. Binding Effect: This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their respective administrators, representatives, successors, and assigns.

11. Counterparts: This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

12. Integration Clause: This Agreement contains the entire agreement between and among the Parties hereto, and supercedes all prior and contemporaneous discussions relating to the subject matter of this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the Parties.

13. Additional Instruments: The Parties agree that they will execute and deliver such other and further notices, releases, acquittances, and other documents as may be necessary to fully implement the terms and provisions of this Agreement.

14. Governing Law: The validity, construction, interpretation, and administration of this Agreement will be governed by the laws of the State of North Carolina, without regard to its conflict of law provisions.

[THE REMAINDER OF THIS PAGE IS DELIBERATELY LEFT BLANK]

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date set forth opposite his, her, or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.**

Dated: _____

Patricia R. Williford

Dated: _____

Rory Dean Williford

Dated: _____

Sara Alissa Yeong Smith

PAWS AND CLAWS PET INN, LLC

Dated: _____

By: _____

Name: _____

Title: _____

K9 R&R PET RETREAT, LLC

Dated: _____

By: _____

Name: _____

Title: _____