

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
INDEPENDENT PET PARTNERS)	
HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 23-10153 (LSS)
)	
Debtors.)	(Jointly Administered)
)	

MOTION OF DEBTORS FOR ENTRY OF ORDER (A) APPROVING THE PRIVATE SALE OF CERTAIN OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, WITH SUCH INTERESTS TO ATTACH TO THE PROCEEDS, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES TO BUYER, AND (C) GRANTING RELATED RELIEF (PSP STORES, LLC D/B/A PET SUPPLIES PLUS)

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”): (a) approving the private sale of certain of the Debtors’ assets, including the Leases (as defined herein) to be assumed and assigned as part of the sale transaction, all as set forth in greater detail herein (the “Designated Assets”) free and clear of liens, claims, and encumbrances, with such interests to attach to the proceeds, on the terms of the Proposed Order and that certain *Letter of Intent* by and between the Debtors and PSP Stores, LLC (d/b/a Pet

¹ The Debtors in these chapter 11 cases, along with their federal tax identification numbers, are: Independent Pet Partners Holdings, LLC (5913), Independent Pet Partners Intermediate Holdings I, LLC (4827), Independent Pet Partners Intermediate Holdings II, LLC (7550), Independent Pet Partners Employer Holdings, LLC (6785), Independent Pet Partners Employer, LLC (7531), Independent Pet Partners Intermediate Holdings, LLC (8793), IPP - Stores, LLC (6147), IPP Stores Employer, LLC (0847), Especially For Pets, LLC (6801), Pet Life, LLC (3420), Whole Pet Central, LLC (7833), Natural Pawz, LLC (5615), and Pet Source, LLC (1905). The corporate headquarters and the mailing address for the Debtors is 8450 City Centre Dr., Woodbury, MN 55125.

Supplies Plus) (“Buyer”), a copy of which is attached hereto as **Exhibit 1** to the Proposed Order (including the accompanying proposed term sheet and any and all amendments, addenda, exhibits, and assignments thereto, the “Letter of Intent”), and an asset purchase agreement to be filed and served as soon as finalized prior to the hearing (the “Purchase Agreement,” and, together with the Letter of Intent, the “Purchase Documents”), (b) authorizing the assumption and assignment by the Debtors to Buyer of certain unexpired leases of nonresidential real property (the “Leases”) listed on **Exhibit 2** attached to the Proposed Order or otherwise identified by the Debtors prior to the hearing on the Motion, and (c) granting related relief. In support of this Motion, the Debtors rely on and incorporate by reference *Declaration of Stephen Coulombe in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) [Docket No. 2].² In further support of this Motion, the Debtors state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these chapter 11 cases (the “Chapter 11 Cases”), the Debtors and their estates and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the First Day Declaration or the Letter of Intent, as applicable.

3. Venue of these Chapter 11 Cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

Background

5. On February 5, 2023 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting the Debtors' Chapter 11 Cases are set forth in greater detail in the First Day Declaration.

6. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee or examiner or statutory committee has been appointed in these Chapter 11 Cases.

Relief Requested

7. By this Motion, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and Local Rule 6004-1, the Debtors request that the Court: (a) approve the private sale of the Designated Assets to the Buyer, free and clear of liens, claims, and encumbrances, (b) authorize the assumption by the Debtors and assignment to Buyer of the Leases, and (c) grant related relief.

Pre-Petition Marketing and Sale Process

8. As discussed in the First Day Declaration, the Debtors retained Houlihan Lokey, Inc. ("Houlihan") in September 2022 as the Debtors' financial advisor and investment banker to assist the Debtors as they explored various strategic alternatives. As a result of Houlihan's efforts to market and sell the Debtors' assets, the Debtors have secured a stalking horse credit bid for 66

of their stores in Colorado, Minnesota, Illinois, Wisconsin, and Kansas under the Kriser's and Chuck and Don's banners (collectively, the "Go-Forward Business"), and certain of the Debtors' assets required to run the Go-Forward Business, for which the Debtors have sought approval by separate motion. By order dated February 8, 2023, the Court scheduled a hearing to consider the Debtors' motion seeking to establish certain bidding procedures in connection with the proposed sale of the Go-Forward Business for February 21, 2023.

9. For the 93 store locations not included in the Go-Forward Business (such stores, the "Remaining Locations"), with Court authority, the Debtors have initiated going-out-of-business sales in an effort to liquidate existing inventory and, at the conclusion of those sales, the Debtors anticipate seeking authority from the Court to reject applicable leases to avoid the incurrence of rent and related obligations that would otherwise be triggered as of March 1, 2023, with respect to the Remaining Locations. At the same time, however, to ensure that the Debtors maximize value for stakeholders and, in turn, minimize the scope of potential general unsecured claims asserted against the estates, the Debtors and their advisors have continued their efforts to solicit interest in the operating assets at the Remaining Locations, both with respect to governing real property leases and related inventory and assets, from potential buyers and assignees.

10. Specifically, Houlihan, working with Berkeley Research Group ("BRG") and the Debtors' management team, have engaged in ongoing discussions with third parties who have put forward viable proposals with respect to the Remaining Locations. In the course of these efforts, Buyer has entered into a Letter of Intent and is working on an expedited basis to finalize a Purchase Agreement providing for the assignment of the Leases (comprised of 20 Leases of real property) and the purchase of the other Designated Assets, which include the inventory and furniture, fixtures, and equipment associated with certain of the Remaining Locations identified in the term

sheet attached to the Letter of Intent.

11. The Debtors and Buyer executed the Letter of Intent on February 11, 2023, and the Debtors received a non-refundable deposit from Buyer on February 13, 2023, with respect to a transaction involving the acquisition of the Debtors' Designated Assets, subject to (a) negotiating and executing a mutually acceptable asset purchase agreement (i.e., the Purchase Agreement); (b) obtaining all necessary approvals of Buyer, the Debtors, and the Debtors' secured lender group; (c) Buyer and the Debtors' obtaining all other necessary governmental, regulatory, Bankruptcy Court, and third-party consents and/or approvals for the potential transaction; and (d) the satisfaction or waiver by Buyer and the Debtors of any other conditions of closing included in the Purchase Documents. Given the ongoing going-out-of-business sales at the Remaining Locations, including those which constitute the Designated Assets, the Debtors determined, in their business judgment, that to offset any risk attendant to terminating the going-out-of-business sales at such locations, a non-refundable deposit was appropriate under the circumstances. Moreover, because the Debtors need to close the sale described herein prior to March 1, 2023, to avoid incurring rental obligations that would otherwise arise under the governing leases that the Debtors would otherwise reject as of no later than February 28, 2023, the Debtors are requesting that the Court consider this motion on an expedited basis for the benefit of all stakeholders.

12. The Purchase Agreement is expected to be finalized shortly after the filing of this Motion. As soon as it is finalized, and prior to the hearing on this Motion, the Debtors intend to file the executed Purchase Agreement, supplement the record, and provide additional disclosures in compliance with Local Rule 6004-1 with respect thereto.

Need for a Private Sale Process

13. The Debtors believe that a private sale of the Designated Assets to Buyer pursuant to the terms and conditions of the Purchase Documents is both appropriate and in the best interest

of the Debtors, their estates, and their creditors.

14. The Letter of Intent is the product of agreement between the Debtors and Buyer reached through arms' length, good faith negotiations, and the Debtors expect the same for the Purchase Agreement. The going-out-of-business sales that are currently being implemented are scheduled to conclude no later than February 28, 2023, and the Remaining Locations will be surrendered to applicable landlord counterparties absent an alternative, favorable disposition of the Designated Assets. With respect to the Designated Assets, the sale described herein provides that alternative resolution and, once consummated, may result in a significant number of employees maintaining employment and the avoidance of significant rejection damages claims that would otherwise arise in the event these stores are surrendered. Accordingly, given the extensive prepetition marketing process of all assets, including the Designated Assets, and other efforts to date, and to avoid incurring unnecessary expenses of a longer process that is not likely to generate a higher and better offer for the Designated Assets and would otherwise force the Debtors to pay rent and other operating costs for March 2023, the Debtors believe a private sale process is appropriate under the circumstances. For the avoidance of doubt, the Debtors and their advisors will consider any viable proposals for the Designated Assets and, to the extent such proposals might constitute higher and better offers for the subject assets, the Debtors will, in consultation with their secured lenders and any Committee (once appointed), entertain any such proposals.

Summary of Proposed Terms of the Purchase Documents

15. The Letter of Intent contemplates that Buyer will acquire the following Designated Assets: the Debtors' inventory at the Stores (as defined herein); the furniture, fixtures, and equipment associated with the Stores; and assumption and assignment of the Leases for the following 20 store locations (collectively, the "Stores"):

Store	Location
Loyal Companion	North Windham, Maine
Loyal Companion	Portland, Maine
Loyal Companion	Saco, Maine
Loyal Companion	Sanford, Maine
Loyal Companion	Scarborough, Maine
Loyal Companion	South Portland, Maine
Loyal Companion	Bethesda, Maryland
Loyal Companion	Rockville, Maryland
Loyal Companion	Acton, Massachusetts
Loyal Companion	Bedford, Massachusetts
Loyal Companion	Beverly, Massachusetts
Loyal Companion	Concord, Massachusetts
Loyal Companion	Littleton, Massachusetts
Loyal Companion	Medway, Massachusetts
Loyal Companion	Stoneham, Massachusetts
Loyal Companion	Sudbury, Massachusetts
Loyal Companion	Salem, New Hampshire
Loyal Companion	Stratham, New Hampshire
Loyal Companion	Arlington, Virginia
Loyal Companion	Vienna, Virginia

16. Pursuant to the terms and conditions of the Purchase documents, and subject to the Court’s approval, the Debtors propose to sell the Designated Assets to Buyer and to assume the Leases and assign them to Buyer free and clear of all liens, claims, encumbrances, and other interests. The material terms and conditions of the Letter of Intent are as follows:³

Local Rule 6004-1 Disclosure	Terms of the Letter of Intent
Seller	Independent Pet Partners Holdings, LLC and one or more of its subsidiaries
Buyer	PSP Stores, LLC (d/b/a Pet Supplies Plus)
Property Being Sold	The “Designated Assets” includes the Debtors’ inventory for the Stores; the furniture, fixtures, and equipment associated with the Stores; and the Store Leases. Buyer shall assume all liabilities in connection with the Store Leases.

³ The following summary of the Letter of Intent is qualified in its entirety by reference to the applicable provisions of the Letter of Intent. The Debtors will file the Purchase Agreement once it is finalized and include a chart that complies with Local Rule 6004-1 as part of the notice of filing the Purchase Agreement.

Local Rule 6004-1 Disclosure	Terms of the Letter of Intent
Purchase Price	The consideration to be paid for the Designated Assets shall be (a) 200% of the cost of the Debtors' inventory in the Stores as of the Closing Date, plus (b) \$2,000,000, plus (c) assumption of all liabilities, including cure costs, in connection with the Store Leases.
Sale to Insider	The Buyer is not an insider of the Debtors.
Agreements with Management	None.
Releases	None.
Private Sale / No Competitive Bidding	The Debtors are seeking approval of a private sale, without an auction process. For the avoidance of doubt, however, the Debtors are not foreclosing any alternatives that might be put forth for the Designated Assets.
Closing and Other Deadlines	A date to be mutually agreed to by the Debtors and the Buyer that is on or before February 28, 2023, subject to Court approval.
Good Faith Deposit	<p>Upon execution of the Letter of Intent, Buyer paid to the Debtors a non-refundable deposit of \$500,000 (the "<u>Non-Refundable Deposit</u>").</p> <p>The Non-Refundable Deposit will be credited against the Purchase Price paid at the closing.</p>
Interim Arrangements with Proposed Buyer	None.
Use of Proceeds	The Debtors will use the proceeds of the sale in accordance with their debtor in possession financing.
Tax Exemption	None.
Record Retention	None.
Sale of Avoidance Actions	None.
Requested Findings as to Successor Liability	The Purchase Agreement will contain representations, warranties, and indemnities customary for transactions of this type.
Sale Free and Clear of Unexpired Leases	The Designated Assets shall be transferred to the Buyer free and clear of all liens, claims, encumbrances, and interests (other than any permitted exceptions under the Purchase Agreement), with all such liens, claims, encumbrances, and interests to attach to the proceeds of the sale in the order of their priority, with the same validity, force, and effect which they now have as against the Designated Assets, subject to any claims and defenses the Debtors may possess with respect thereto.

Local Rule 6004-1 Disclosure	Terms of the Letter of Intent
Relief from Bankruptcy Rule 6004(h)	The Proposed Order provides for a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

I. Approval of the Relief Requested Is Warranted and in the Best Interests of the Debtors and Their Economic Stakeholders

A. The Debtors Have Demonstrated a Sound Business Justification for the Private Sale

17. The Debtors submit that ample authority exists for approval of the private sale contemplated by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, 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). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of a debtor’s estate, courts have approved the authorization of a sale of a debtor’s assets if such sale is based upon the sound business judgment of the debtor. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing In re Schipper, 933 F.2d 513 (7th Cir. 1991)); In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992); Stephen Indus., Inc. v. McClung, 789 F.2d 386 (6th Cir. 1986); Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983).

18. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was provided to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. See In re Decora Indus., Inc., No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing In re Del. & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991)). Where a debtor demonstrates a valid business justification for a decision, it is

presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” In re Integrated Res., Inc., 147 B.R. at 656.

19. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. See, e.g., In re Abbotts Dairies of Pa., Inc., 788 F.2d 143 (3d Cir. 1986); In re Lionel Corp., 722 F.2d at 1063; In re Food Barn Stores, Inc., 107 F.3d at 564-65 (recognizing the paramount goal of any proposed sale of property of estate is to maximize value).

20. As set forth herein, the Debtors believe that a strong business justification exists for the private sale of the Designated Assets. Faced with the prospect of surrendering all Remaining Locations, including those related to the Designated Assets, no later than February 28, 2023, and presented with an opportunity for the potential to save approximately a hundred jobs and decrease, in a material manner, the scope of rejection damage claims that will otherwise encumber the general unsecured claims pool, the Debtors have determined, in the exercise of their business judgment, that entry into the Letter of Intent (and soon, the Purchase Agreement) is in the best interests of the Debtors and that the Purchase Price is the highest and best price that could be achieved for the Designated Assets. Indeed, the debtors have not received any other offers for the Designated Assets outside of the ongoing going-out-of-business sales, and the Debtors believe that their estates and creditors will benefit from the approval of the Purchase Documents without the added time, energy, expense, and risk associated with a public auction.

21. Finally, the Letter of Intent was negotiated at arm’s length and reflects customary, reasonable market terms, and the Debtors expect the same for the Purchase Agreement.

B. Selling the Designated Assets by Private Sale Is Appropriate

22. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property may be by private sale or public auction. See, e.g., In re 160 Royal Palm, LLC, 600 B.R. 119, 127–28 (S.D. Fla., 2019) (“private sales are not unheard of in bankruptcy and in fact are expressly contemplated by the rules. See Fed. R. Bankr. P. 6004(f)(1).”); see also Bankruptcy Rule 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”)

23. A private sale of the Designated Assets under the terms and conditions of the Purchase Documents—as opposed to a lengthy auction process—will allow the Debtors to avoid incurring operating and lease expenses associated with the Stores for the month of March (and beyond), thereby preserving value for the Debtors’ estates and stakeholders.

24. Further, despite a thorough prepetition marketing process led by Houlihan and spanning approximately three (3) months, the Debtors did not receive any other actionable offers for the Stores. Thus, the Debtors’ advisors do not believe that there is a sufficient likelihood of attracting other bids, such that incurring the additional expenses of a more expansive sale process would be justified.

25. Approval of the private sale is also warranted because a lengthy marketing and sale process would result in deterioration to the business. Previously, the Debtors made the determination, in reasonably exercising their business judgment, to liquidate the Stores’ inventory. Therefore, the Debtors were not planning to restock inventory in the Stores or otherwise proceed in a manner that would maintain goodwill for the Stores for more than a few weeks. The private sale will permit the Debtors to avoid such deterioration to the business.

C. The Designated Assets Should Be Sold Free and Clear of Liens, Claims, Interests and Encumbrances Under Section 363(f) of the Bankruptcy Code

26. The Debtors submit that the Designated Assets should be sold free and clear of any

and all liens, claims, interests and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests and encumbrances attaching to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests and encumbrances if any one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); see also In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

27. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”). The Debtors submit that the sale of the Designated Assets free and clear of all liens, claims, interests and encumbrances will satisfy one or more of

the requirements under section 363(f) of the Bankruptcy Code. Moreover, the Debtors will send notice of the private sale to purported lienholders. If such lienholders do not object to the proposed private sale, then their consent should be presumed. Accordingly, the Debtors request that, unless a party asserting a prepetition lien, claim or encumbrance on any of the Designated Assets timely objects to this Motion, such party shall be deemed to have consented to the sale of the Designated Assets. See Hargave v. Twp. of Pemberton, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein). Accordingly, the Debtors request that the Court authorize the sale of the Designated Assets free and clear of any liens, claims, interests and encumbrances, in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests and encumbrances attaching to the proceed thereof in the same order of relative priority, with the same validity, force and effect as prior to such.

28. Notably, the DIP Lenders and the Debtors' secured lender group that is sponsoring the sale of the Go-Forward Business have reviewed the proposed sale to Buyer of the Designated Assets as set forth in this Motion and have consented, subject to reviewing and approving the Purchase Agreement.

D. Buyer Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

29. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) of the Bankruptcy Code states the following:

The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the

pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” In re Abbotts Dairies, 788 F.2d at 147; see also Allstate Ins. Co. v. Hughes, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal.”).

30. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value.’” In re Abbotts Dairies, 788 F.2d at 147 (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders); see also In re Bedford Springs Hotel, Inc., 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); In re Perona Bros., Inc., 186 B.R. 833, 839 (D.N.J. 1995).

31. In other words, a party would have to show fraud or collusion between the Debtors and bidders to demonstrate a lack of good faith. See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”). Due to the absence of a bright-line test for good faith, the determination is based on the facts of each case, with a focus on the “integrity of [a bidder]’s conduct in the course of the sale proceedings.” In re Pisces Leasing Corp., 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)).

32. The Debtors submit that Buyer is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code. The Debtors and Buyer, and their respective advisors, have entered into the Letter of Intent without collusion, in good faith and after extensive arm’s-length negotiations. There is no evidence of fraud or collusion in the terms of the Letter of Intent and the Debtors do not expect any as it relates to the Purchase Agreement. To the best of the Debtors’ knowledge, information and belief, no party has engaged in any conduct that would cause or permit Buyer to be set aside under section 363(m) of the Bankruptcy Code.

33. The Debtors seek a finding that Buyer is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

E. Buyer Should Be Entitled to the Protections of Section 363(n) of the Bankruptcy Code

34. The Debtors submit that the terms and conditions of the private sale will have been negotiated by the Debtors and Buyer, as applicable, at arm’s length and in good faith, with the assistance of the Debtors’ professional advisors, and that the parties did not engage in any conduct that would cause or permit the Sale to be avoided under section 363(n) of the Bankruptcy Code.

35. Based on the foregoing, the Debtors submit that they have demonstrated that the proposed private sale is a sound exercise of the Debtors’ business judgment and should be approved as a good faith transaction.

F. Assumption and Assignment of the Leases Should Be Authorized

36. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Courts employ the business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract or unexpired lease. See, e.g., In re Market Square Inn, Inc., 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”); In re HQ

Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor’s decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The “business judgment” test in this context only requires that a debtor demonstrate that assumption or rejection of a lease benefits the estate. See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp., 872 F.2d 36, 40 (3d Cir. 1989).

37. Any assumption of the Leases is an exercise of the Debtors’ sound business judgment because the transfer of such Leases is necessary to the Debtors’ ability to obtain the best value for the Designated Assets. Given that consummation of the private sale is critical to the Debtors’ efforts to maximize value for their estates and stakeholders, the Debtors’ assumption and assignment of any Lease is an exercise of sound business judgment and, therefore, should be approved.

38. The consummation of any private sale involving the assignment of the Leases will be contingent upon the Debtors’ compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Leases to be assumed be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured.

39. The Debtors’ assumption and assignment of the Leases will be contingent upon payment of the cure amounts and effective only upon the closing of the private sale or any later applicable date of assumption and assignment of such Leases. Each counterparty to the Leases that the Debtors seek to assume and assign to Buyer will be served with this Motion, including **Exhibit 2** attached to the Proposed Order, which identifies the Leases that the Debtors seek to assume and assign to Buyer as well as the proposed cure amount (the “Cure Amounts”) necessary to cure defaults thereunder as required by section 365 of the Bankruptcy Code. Notably, the

Debtors paid all rent related to the Stores prior to the Petition Date, including rent for February 2023.

40. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” In re Fleming Cos., 499 F.3d 300 (3d Cir. 2007); see also Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (finding that, “[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”). Among other things, adequate assurance may be provided by evidencing the assignee’s financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

41. The Debtors believe that Buyer is able to demonstrate adequate assurance of future performance to the counterparties of the Leases. In the event that such counterparties object on adequate assurance of future performance grounds, the Debtors will present facts at the hearing on this Motion to show the financial wherewithal, willingness and ability of Buyer to perform under the Leases.

Waiver of Bankruptcy Rules 6004(a), 6004(h), and 6006(d)

42. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

43. The Debtors believe that any private sale should be consummated as soon as practicable to preserve and maximize value. Accordingly, the Debtors request that the Proposed Order approving the sale of the Designated Assets and the assumption and assignment of the Leases be effective immediately upon entry of such order and that the fourteen-day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

Notice

44. Notice of this Motion will be provided, via overnight delivery to: (a) the Office of the United States Trustee (Attn: Rosa Sierra-Fox); (b) the Debtors’ prepetition secured lenders; (c) the Debtors’ proposed debtor in possession financing lenders; (d) the Internal Revenue Service; (e) the parties included on the Debtors’ consolidated list of their 30 largest unsecured creditors; (f) the United States Attorney for the District of Delaware; (g) the state attorneys general in states where the Debtors are authorized to do business; (h) all parties known by the Debtors to assert a lien or encumbrance on any of the Designated Assets; (i) all persons known or reasonably believed to have asserted an interest in or claim to any of the Designated Assets; (j) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Designated Assets within the one (1) year prior to the Petition Date; (k) counterparties to the Leases; and (l) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors

respectfully submit that, in light of the nature of the relief requested, no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, and grant the relief requested herein and such other and further relief as the Court may deem just and proper.

[Remainder of page intentionally left blank.]

Dated: February 13, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ S. Alexander Faris

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Andrew L. Magaziner (No. 5426)

S. Alexander Faris (No. 6278)

Kristin L. McElroy (No. 6871)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Email: amagaziner@ycst.com

afaris@ycst.com

kmcelroy@ycst.com

- and -

MCDONALD HOPKINS LLC

David A. Agay

Marc Carmel

Joshua Gadharf

Maria G. Carr

Ashley Jericho

300 North LaSalle Street, Suite 1400

Chicago, Illinois 60654

Telephone: (312) 280-0111

Facsimile: (312) 280-8232

Email: dagay@mcdonaldhopkins.com

mcarmel@mcdonaldhopkins.com

jgadharf@mcdonaldhopkins.com

mcarr@mcdonaldhopkins.com

ajericho@mcdonaldhopkins.com

*Proposed Counsel to the Debtors and Debtors in
Possession*

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
INDEPENDENT PET PARTNERS)	
HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 23-10153 (LSS)
)	
Debtors.)	(Jointly Administered)
)	
)	Docket Ref. No. ____
)	

ORDER (A) AUTHORIZING DEBTORS TO SELL BY PRIVATE SALE CERTAIN OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, WITH SUCH INTERESTS TO ATTACH TO THE PROCEEDS, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN NONRESIDENTIAL REAL PROPERTY LEASES TO BUYER, AND (C) GRANTING RELATED RELIEF (PSP STORES, LLC D/B/A PET SUPPLIES PLUS)

Upon the *Motion of Debtors for Entry of Order (A) Authorizing Debtors to Sell by Private Sale Certain Assets Free and Clear of Liens, Claims, and Encumbrances, with Such Interests to Attach to the Proceeds, (B) Authorizing the Assumption and Assignment of Certain Nonresidential Real Property Leases to Buyer, and (C) Granting Related Relief (PSP Stores, LLC d/b/a Pet Supplies Plus)* (the “Motion”)² filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to sell, by private sale, certain of Debtors’ assets free and clear of liens, claims, and encumbrances, with such interests to attach to the proceeds (the “Sale”), (b) authorizing the assumption and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Independent Pet Partners Holdings, LLC (5913), Independent Pet Partners Intermediate Holdings I, LLC (4827), Independent Pet Partners Intermediate Holdings II, LLC (7550), Independent Pet Partners Employer Holdings, LLC (6785), Independent Pet Partners Employer, LLC (7531), Independent Pet Partners Intermediate Holdings, LLC (8793), IPP - Stores, LLC (6147), IPP Stores Employer, LLC (0847), Especially For Pets, LLC (6801), Pet Life, LLC (3420), Whole Pet Central, LLC (7833), Natural Pawz, LLC (5615), and Pet Source, LLC (1905). The corporate headquarters and the mailing address for the Debtors is 8450 City Centre Dr., Woodbury, MN 55125.

² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion.

assignment of the Leases to Buyer, and (c) granting related relief, all as further described in the Motion; and upon consideration of the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the record of these Chapter 11 Cases establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED AND ORDERED THAT:

1. The relief requested in the Motion is granted as set forth herein.
2. All objections to the Motion or relief provided herein that have not been withdrawn, waived, or settled are hereby overruled and denied on the merits.
3. The Purchase Agreement and all of its terms and conditions are hereby approved. The failure to specifically include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it

being the intent of this Court that the Purchase Agreement be authorized and approved in its entirety.

4. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, the Debtors are authorized to consummate the transactions provided for in the Purchase Agreement effective immediately upon entry of this Order.

5. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and to take all further actions as may be necessary for the purposes of assigning, transferring, granting, conveying and conferring to the Buyer of the Designated Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

6. Pursuant to Bankruptcy Code section 363(f), the sale of the Designated Assets is, without need for any action by any party, free and clear of all liens, claims, encumbrances and interests, with such liens, claims, encumbrances, and interests attaching to the proceeds of such sale (the "Sale Proceeds") with the same validity, extent and priority as had attached to such Designated Assets immediately prior to such sale. The holder of any valid lien, claim, encumbrance, or interest on such Designated Assets shall, as of the effective date of such sale, be deemed to have waived and released such lien, claim, encumbrance, or interest on the Designated Assets, without regard to whether such holder has executed or filed any applicable release, and such lien, claim, encumbrance, or interest shall automatically, and with no further action by any party, attach to the Sale Proceeds. All persons or entities holding liens, claims, encumbrances or interests of any kind or nature whatsoever in, to or against the Designated

Assets or the operation of the Designated Assets are hereby and forever barred, estopped, and permanently enjoined from asserting against the Buyer or any of its successors, assigns or property (including, without limitation, the Designated Assets) any lien, claim, encumbrance or interest existing, accrued or arising prior to the Closing (as defined below). Notwithstanding the foregoing, any such holder of such a lien, claim, encumbrance, or interest is authorized and directed to execute and deliver any waivers, releases or other related documentation, as reasonably requested by the Debtors. For the avoidance of doubt, the Sale Proceeds shall be “DIP Collateral” and “Cash Collateral” under and as defined in the *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 (I) Authorizing the Debtors to Obtain Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Authorizing the Use of Cash Collateral; (IV) Granting Adequate Protection to Prepetition Secured Parties; (V) Modifying the Automatic Stay; (VI) Scheduling Final Hearing; and (VII) Granting Related Relief* [Docket No. 66] (the “Interim DIP Order”) and any final order approving the DIP Facility (as defined in the Interim DIP Order) (the “Final DIP Order,” and the order approving the DIP Facility then in effect, the “DIP Order”), the DIP Liens and Adequate Protection Liens shall attach to the Sale Proceeds in accordance with the DIP Order and the DIP Loan Documents (as defined in the Interim DIP Order), and the Sale Proceeds shall be used by the Debtors only as authorized under and in accordance with the DIP Order and the DIP Loan Documents.

7. This Order shall be good and sufficient evidence of the transfer of title in the Designated Assets to the Buyer, and the sale consummated pursuant to this Order and the Purchase Agreement shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office or contract to accept, file,

register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Designated Assets sold pursuant to this Order, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state and federal, state and local officials, and each of such persons and entities is here-by directed to accept this Order as good and sufficient evidence of such transfer of title and shall rely upon this Order in consummating the sales contemplated hereby. A certified copy of this Order may be: (a) filed with the appropriate clerk or similar official, (b) recorded with the applicable recorder of deeds or similar official, and/or (c) filed or recorded with any other governmental agency to evidence the cancellation of any and all liens, claims, encumbrances and interests with respect to the Designated Assets.

8. This Order and the Purchase Agreement shall be binding and enforceable in all respects upon (a) the Debtors and all successors and assigns of the Debtors, (b) all creditors or interest holders, in each case, whether known or unknown, of the Debtors, (c) the Buyer and its successors and permitted assigns, and (d) any subsequent trustee appointed in the chapter 11 cases of the Debtors party to the Purchase Agreement or upon conversion of such cases to chapter 7 of the Bankruptcy Code.

9. The Purchase Agreement and each of the transactions contemplated therein, were negotiated, proposed, and entered into by the Debtors and Buyer, in good faith, without collusion, and from arm's length bargaining positions. Buyer is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. None of the Debtors or Buyer have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be

imposed under section 363(n) of the Bankruptcy Code. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors. None of the Debtors or Buyer is entering into the Purchase Agreement or proposing to consummate the Sale, fraudulently, or for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims, whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia. Further, Buyer is not an “insider” of the Debtors.

10. Buyer shall be responsible for the satisfaction of any and all assumed liabilities set forth in the Purchase Agreement (the “Assumed Liabilities”). Except as provided in the Purchase Agreement or this Order, after the closing of the Sale (the “Closing”), the Debtors and their estates shall have no further liability or obligations with respect to any of the Assumed Liabilities, including those arising under the unexpired nonresidential leases set forth on **Exhibit 2** attached hereto, and assumed and assigned to the Buyer (the “Assumed Leases”), and all holders of such claims are forever prohibited, barred, and estopped from asserting any claims under any Assumed Liabilities including those arising under the Assumed Leases against the Debtors, their successors or assigns, and their estates.

11. The Debtors are hereby authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign the Assumed Leases to Buyer free and clear of any and all of liens, claims, encumbrances, or other interests, and to execute and deliver to Buyer such documents or other instruments as may be reasonably necessary to assign and transfer the Assumed Leases to Buyer, all as provided in the Purchase Agreement. Upon the assumption and assignment to Buyer of any Assumed Lease at Closing in accordance with this Order, Buyer shall succeed to the entirety of the Debtors’ rights and obligations in respect of each

Assumed Lease so assumed and assigned at Closing. Except as otherwise provided in this Order or the Purchase Agreement, upon payment of any applicable Cure Amounts, to the extent set forth in section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to such Assumed Lease.

12. All non-Debtor counterparties to each Assumed Lease shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, section 365(e)(2)(A)(ii) of the Bankruptcy Code, or otherwise, and Buyer shall enjoy all of the rights and benefits under each such Assumed Lease as of the applicable effective date of assumption and assignment without the necessity of obtaining such person's written consent to the assumption or assignment of such Assumed Lease. Any non-Debtor counterparty to an Assumed Lease that is a shopping center lease that has not objected to the assignment thereof is deemed to consent to such assignment pursuant to section 365(c) of the Bankruptcy Code.

13. With respect to any Assumed Lease that is assumed and assigned to Buyer at Closing, Buyer shall pay to the applicable non-Debtor counterparty the Cure Amount set forth in **Exhibit 2** attached to this Order. The payment of the Cure Amounts shall be deemed to be in full satisfaction of and cure all defaults (as that concept is contemplated by section 365 of the Bankruptcy Code) under the Assumed Leases necessary to effectuate the assumption by the Debtors and the assignment to Buyer of such Assumed Leases pursuant to section 365 of the Bankruptcy Code, and, upon payment in accordance with the preceding sentence, such Assumed Leases shall be deemed to be in full force and effect, free of default for such purposes. To the extent a non-Debtor counterparty to an Assumed Lease failed to timely object to any proposed Cure Amounts listed in the Motion, the Cure Amounts listed therein have been and shall be deemed to be finally determined and any such non-Debtor counterparty shall be

prohibited, barred, and estopped from challenging, objecting to, or denying the validity and finality of the Cure Amount at any time. Each non-Debtor counterparty to an Assumed Lease is forever prohibited, barred, and estopped from asserting against the Debtors or Buyer, their affiliates, successors or assigns, or the property of any of them, any default existing as of the date of the hearing on this Motion if such default was not raised or asserted in a timely-filed objection.

14. In connection with the assumption and assignment of the Assumed Leases pursuant to Section 365 of the Bankruptcy Code, the Buyer shall, upon payment of the Cure Amounts, be deemed to have taken all actions reasonably required under Section 365 to provide “adequate assurance of future performance” to the applicable non-Debtor counterparties as of the Closing.

15. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Buyer or to the Debtors as a result of the assumption and assignment of the Assumed Leases.

16. Notwithstanding anything to the contrary in the Purchase Agreement or this Order, for the avoidance of doubt and as part of the Assumed Liabilities under the Purchase Agreement, as of the entry of this Order, Buyer has assumed all liabilities and obligations under the Assumed Leases that arise or are owed on or after March 1, 2023.

17. No bulk sales law, bulk transfer law, or similar law of any state or other jurisdiction shall apply in any way to the Sale. The Debtors and Buyer waive, and hereby shall be deemed to have waived, any requirement of compliance with, and any claims related to non-compliance with, the provisions of any bulk sales, bulk transfer, or similar law of any jurisdiction that may be applicable.

18. In connection with the Designated Assets, Buyer shall continue the Debtors' existing policy concerning the transfer of personally identifiable information upon Closing, as may be modified in accordance with the terms of such policy.

19. No brokers for Buyer were involved in the consummation of the Sale, and no brokers' commissions are due by the Debtors to any person in connection with the Sale.

20. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall be effective and enforceable immediately upon entry, and the fourteen (14)-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale and the Debtors and Buyer intend to close the Sale as soon as practicable.

21. In the event that there is a conflict between the terms of this Order and the terms of the Purchase Agreement, the terms of this Order shall control. In the event of a conflict between any provisions of the Purchase Agreement and that certain Asset Purchase Agreement, dated as of February 5, 2023, by and among Independent Pet Partners Holdings, LLC, the Seller Subsidiaries set forth on Schedule I attached thereto, and IPP Buyer Acquisition, LLC (the "Stalking Horse APA"), the Stalking Horse APA shall control. In the event of a conflict between this Order and, if entered by the Court, the Bidding Procedures Order (as defined in the Interim DIP Order), the Bidding Procedures Order shall control. In the event of a conflict between this Order and any order approving the sale of assets in accordance with the Stalking Horse APA (a "Stalking Horse Sale Order"), the Stalking Horse Sale Order shall control.

22. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this Order and the Purchase Agreement.

Exhibit 1

Letter of Intent

February 11, 2023

PSP Stores, LLC d/b/a Pet Supplies Plus
17197 N. Laurel Park Drive, Suite 402
Livonia, MI 48152

Re: *Proposed Acquisition by PSP Stores, LLC (the "Buyer") of Certain Assets of Independent Pet Partners Holdings, LLC, and One or More of its Subsidiaries, as Debtors and Debtors-in-Possession (collectively, the "Debtors") in Chapter 11 Bankruptcy Cases (the "Bankruptcy Cases") Commenced in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").*

Dear Ms. Maday:

Buyer is pleased to present this letter of intent (this "LOI") with respect to a possible transaction involving the acquisition of certain of the Debtors' assets (the "Designated Assets"), as further described below (the "Potential Transaction").

The closing of the Potential Transaction ("Closing") would be subject to (a) the negotiation and execution of a mutually acceptable Definitive Agreement (defined below); (b) obtaining all necessary approvals of Buyer, the Debtors, and the Lender Group (defined below); (c) Buyer and the Debtors obtaining all other necessary governmental, regulatory, Bankruptcy Court, and third-party consents for the Potential Transaction; and (d) the satisfaction or waiver by Buyer and the Debtors of any other conditions of Closing included in the Definitive Agreement.

1. Term Sheet. We currently anticipate that the Potential Transaction would be made in accordance with this LOI and the term sheet which is attached hereto and incorporated herein as Attachment A (the "Term Sheet").
2. Designated Assets. As part of the Potential Transaction, Buyer seeks to acquire and take assignment of the store leases (the "Store Leases") and inventory for the locations described herein. A comprehensive description of the Designated Assets is further set forth in the Term Sheet. For the avoidance of doubt, Buyer is not acquiring any intellectual property. Buyer's acquisition of the Designated Assets is subject to approval from the Bankruptcy Court and consent from the Debtors' prepetition secured lenders (the "Lender Group") that have designated that certain stalking horse purchaser to acquire certain of the Debtors' assets as a going-concern in a sale process under section 363 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), pursuant to that certain Asset Purchase Agreement, dated as of February 5, 2022 (the "Stalking Horse APA"). The store locations include the following, arranged by store name and location (collectively, the "Stores"):

Store	Location
Loyal Companion	Concord, MA
Loyal Companion	Acton, MA
Loyal Companion	Littleton, MA

Store	Location
Loyal Companion	Sudbury, MA
Loyal Companion	Beverly, MA
Loyal Companion	Bedford, MA
Loyal Companion	Stoneham, MA
Loyal Companion	Medway, MA
Loyal Companion	Bethesda, MD
Loyal Companion	Rockville, MD
Loyal Companion	South Portland, ME
Loyal Companion	Sanford, ME
Loyal Companion	Portland, ME
Loyal Companion	North Windham, ME
Loyal Companion	Saco, ME
Loyal Companion	Scarborough, ME
Loyal Companion	Stratham, NH
Loyal Companion	Salem, NH
Loyal Companion	Vienna, VA
Loyal Companion	Arlington, VA

3. **Definitive Agreement.** Buyer expects the Potential Transaction would take the form of an acquisition of the Designated Assets by way of an asset purchase agreement. The Potential Transaction would be subject to the terms and conditions of a mutually acceptable definitive, written agreement that would contain mutually agreed to representations, warranties and indemnities of a nature customary in transactions of this type (the “Definitive Agreement”).
4. **Expenses.** The Debtors and Buyer each will be responsible for their own legal, consulting and advisory fees and other out-of-pocket expenses related to the due diligence, business valuation, and documentation, and negotiation of the Potential Transaction, whether or not Closing occurs or the Potential Transaction is otherwise completed.
5. **Due Diligence: Access to Personnel, Books and Records.** The Debtors shall afford to Buyer and its representatives, agents and employees such access during regular business hours (unless otherwise extended by the Debtors) to the Debtors’ books and records, agreements, licenses, technology, patents and any other information related to the Potential Transaction as may be reasonably requested. The Debtors shall also afford to Buyer reasonable access to management and such key employees, customers and suppliers of the Debtors as reasonably requested by Buyer.
6. **Non-binding Nature.** Except as to the provisions of paragraphs 4 (Expenses) through 12 (Counterparts) (inclusive), which provisions are enforceable against the parties to this LOI in accordance with their terms (the “Binding Paragraphs”), the parties to this LOI agree that (i) this LOI sets forth the parties’ current understanding of agreements, (ii) this LOI does not create and is not intended to create a binding and enforceable contract between the parties and may not be relied upon by either party as the basis for a contract by estoppel or otherwise, but rather evidences a non-binding expression of understanding to proceed with the Potential Transaction.

7. **Termination.** This LOI will automatically terminate and be of no further force and effect upon the earlier of (i) execution of the Definitive Agreement; (ii) the mutual agreement of Buyer and the Debtors; or (iii) the delivery of written notice by the Debtors to Buyer of termination of this LOI at any time following the execution hereof. Notwithstanding anything in the previous sentence to the contrary, paragraphs 4, 8, 9 and 11 shall survive the termination of this LOI, and the termination of this LOI shall not affect any rights any party has with respect to the breach of this LOI by another party prior to such termination. For the avoidance of doubt, in the event of termination of the LOI, the Debtors shall be entitled to keep the Non-Refundable Deposit set forth in the Term Sheet, unless the Debtors terminate this LOI under subparagraph (iii) above, or the parties do not enter into a Definitive Agreement, or the Debtors do not obtain Bankruptcy Court approval of the transaction in which event the Non-Refundable Deposit shall be refunded to Buyer.
8. **Confidentiality.** The parties hereto hereby acknowledge and agree that the documents and discussions regarding this LOI and the Potential Transaction are subject to the terms of the Confidentiality Agreement entered into as of February 3, 2023 (the "NDA").
9. **Amendments.** The Binding Provisions of this LOI may be amended or modified only by a written agreement executed by Buyer and the Debtors.
10. **No Other Agreements.** Other than this LOI and the NDA, there are no other written or oral agreements or understandings among the parties with respect to the Potential Transaction.
11. **Governing Law.** This LOI shall be governed by the laws of the State of Delaware without regard to the conflict of laws principles of the State of Delaware.
12. **Counterparts.** This LOI may be executed in any number of counterparts, which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart signature page by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means shall have the same effect as delivery of an executed original of this Letter.

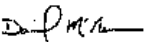
If the terms and conditions of this LOI reflect our mutual understanding and intentions, please sign and return the enclosed counterpart of this LOI, and we will initiate preparation of the Definitive Agreement.

[Signatures contained on following page.]

DocuSign Envelope ID: 8B271F9B-EC1B-428B-85CB-398662A59C68

Very truly yours,

PSP Stores, LLC d/b/a Pet Supplies Plus

DocuSigned by:
By: 
Name: Daniel McNamara
Title: Chief Financial Officer
February 11, 2023 | 3:44:36 PM CST

CONFIRMED this 11th day of February, 2023:

Independent Pet Partners Holdings, LLC

By: 
Julie Maday, Chief Executive Officer

Attachment A
Proposed Term Sheet

Subject to due diligence review, Buyer intends to consummate the Potential Transaction in accordance with the terms set forth below.

Purchase Price: The consideration to be paid for the Designated Assets shall be (a) 200% of the cost of the Debtors' inventory in the Stores as of the Closing Date, plus (b) \$2,000,000.00, plus (b) assumption of all liabilities, including cure costs, in connection with the Store Leases.

Deposit: Upon execution of the LOI, Buyer shall pay to the Debtors a non-refundable deposit of \$500,000 (the "Non-Refundable Deposit"). Upon receipt of the Non-Refundable Deposit, the Debtors will temporarily discontinue the going-out-of-business sale liquidations at the Stores. The Non-Refundable Deposit will be credited against the Purchase Price consideration paid at the Closing.

Designated Assets: The Designated Assets shall include acquisition of the Debtors' inventory for the Stores; the furniture, fixtures, and equipment associated with the Stores; and assumption and assignment of the Store Leases. The Store locations include the following:

Store	Location
Loyal Companion	Concord, MA
Loyal Companion	Acton, MA
Loyal Companion	Littleton, MA
Loyal Companion	Sudbury, MA
Loyal Companion	Beverly, MA
Loyal Companion	Bedford, MA
Loyal Companion	Stoneham, MA
Loyal Companion	Medway, MA
Loyal Companion	Bethesda, MD
Loyal Companion	Rockville, MD
Loyal Companion	South Portland, ME
Loyal Companion	Sanford, ME
Loyal Companion	Portland, ME
Loyal Companion	North Windham, ME
Loyal Companion	Saco, ME
Loyal Companion	Scarborough, ME
Loyal Companion	Stratham, NH
Loyal Companion	Salem, NH
Loyal Companion	Vienna, VA

Loyal Companion	Arlington, VA
-----------------	---------------

Excluded Assets:

All cash and accounts receivable relating to the Stores. Also excluded are the freezers located in the Stores, pending agreement with the vendors associate with the freezers. Further, Buyer is not acquiring any intellectual property.

Assumed Liabilities:

All liabilities in connection with the Store Leases as of the acquisition date. For the avoidance of doubt, such liabilities include the repair obligations under the lease associated with the Concord, Massachusetts store.

Rent, Deposits and Prepayments:

In connection with the Definitive Agreement, the Buyer shall assume any verified deposits, prepayments, or other amounts retained in connection with the Stores or the Store Leases for the benefit of the Buyer subsequent to the Closing (collectively, the "Assumed Deposits"). Buyer shall reimburse Debtors for the Assumed Deposits. Buyer also shall pay its prorated share of rent for any partial months during which Buyer occupies the Stores, but for the avoidance of doubt, Buyer shall assume all obligations and liabilities arising under the Store Leases on or after March 1, 2023.

Necessary Approvals:

Buyer's acquisition of the Designated Assets shall be subject to Bankruptcy Court approval and consent of the Lender Group. Debtors acknowledge and agree that the transactions contemplated hereunder are based on and contemplate the Debtors assumption and assignment to Buyer of the Store Leases.

Operating Assumptions:

The Stores will refrain from using going-out-of-business signage. The Stores will use their best efforts to re-brand to the public from their current banner names by no later than one hundred twenty (120) days after Closing.

Representations & Warranties:

The Definitive Agreement will contain representations, warranties and indemnities customary for transactions of this type.

Other Terms:

In connection with the Potential Transactions, the Debtors will seek to assume and assign the Store Leases to Buyer under section 365 of the Bankruptcy Code.

Between the date of execution of this LOI and the date of execution of the Definitive Agreement, the Debtors will (i) continue to own and operate its business in the ordinary course in a manner consistent with past practice, except for the Bankruptcy Cases; (ii) maintain its properties and other assets in good working

DocuSign Envelope ID: 8B271F9B-EC1B-428B-85CB-398662A59C68

condition (normal wear and tear excepted); and (iii) use reasonable efforts to maintain its employees, customers, business relationships, assets and operations as an ongoing concern in accordance with past practice.

Exhibit 2**Unexpired Leases**

	Location of Unexpired Lease of Real Property	Contact Information for Counterparty to Unexpired Lease	Cure Amount
1.	North Windham, Maine	B33 Windham II LLC 9330 W Sahara Ave, Suite 270 Las Vegas, NV 89117	\$0.00
2.	Portland, Maine	A&D Realty LLC 80 Hayden Avenue Lexington, MA 02421	\$0.00
3.	Saco, Maine	Saco Valley LLC One Canal Plaza Suite 500 Portland, ME 04101	\$0.00
4.	Sanford, Maine	CFS Limited Partnership 5050 Belmont Avenue Youngstown, OH 44505	\$0.00
5.	Scarborough, Maine	Feldco Development, Corp 95 Beacon St, Suite 12 Boston, MA 02108	\$0.00
6.	South Portland, Maine	50 Market Street Limited Partnership P.O. Box 66749 Falmouth, ME 04105	\$0.00
7.	Bethesda, Maryland	c/o L. Edward O'Hara, Jr., Trustee 12510 Prosperity Drive, Suite 150 Silver Spring, MD 20904-1639	\$0.00
8.	Rockville, Maryland	ProMark Real Estate Services Frederick Avenue, Suite 325 Gaithersburg, MD 20877	\$0.00
9.	Acton, Massachusetts	Concord Financial Co. P.O. Box 1544, Arlington MA, 02474	\$0.00
10.	Bedford, Massachusetts	Great Road Shopping Center, LLC 160 Gould Street Suite 122 Needham, MA 02494	\$0.00

11.	Beverly, Massachusetts	CEA Beverly LLC 1105 Massachusetts Avenue, Suite 2F Cambridge, MA 02138	\$0.00
12.	Concord, Massachusetts	Scanio CRE 1173 Main, LLC 49 Lexington St, Suite 5 West Newton, MA 02465	\$0.00
13.	Littleton, Massachusetts	Sam Park & Company 333 School Street, Suite 200 Mansfield MA, 02048	\$0.00
14.	Medway, Massachusetts	Charter Realty & Development Corp 800 Westchester Avenue, Suite S-632 Rye Brook, NY 10573	\$0.00
15.	Stoneham, Massachusetts	WS Asset Management, Inc. 33 Boylston Street, Suite 3000 Chestnut Hill, MA 02467	\$0.00
16.	Sudbury, Massachusetts	CGI Management Inc 637 Washington Street, Suite 200 Brookline, MA 02446-4579	\$0.00
17.	Salem, New Hampshire	Linear Retail Properties, LLC Five Woods Drive Burlington, MA 01803	\$0.00
18.	Stratham, New Hampshire	Northstar Centers LLC 532 Page Street Stoughton, MA 02072	\$0.00
19.	Arlington, Virginia	A. J. Dwoskin & Associates, Inc., 3201 Jermantown Road, Suite 700 Fairfax, VA 22030-2879	\$0.00
20.	Vienna, Virginia	Rappaport Management Company 8405 Greensboro Drive, 8th Floor McLean VA, 22102-5121	\$0.00

Exhibit 3

Purchase Agreement

[To Come]