



August 13, 2019

RE: Request for Bid on Sale Operating Pet Club Stores, JDB Capital et al vs NPP, LLC Receivership

Dear Interested Buyer:

Simon Consulting, LLC, as Receiver of the assets of NPP, LLC in the above referenced proceeding and pursuant to the provisions of the enclosed Order Appointing Receiver (“Receivership Order”) hereby notifies you that the Receiver is offering in a single bulk for sale the seven (7) operating Pet Club locations outlined below:

Store Name	Store Address	City, State, Zip
Gilbert	2530 S Val Vista Dr Ste 101	Gilbert, AZ 85295-1696
Payson	101 W Aero Dr Bldg 1	Payson, AZ 85541-5402
Power Ranch	23954 S Power Rd	Queen Creek, AZ 85142-8413
Queen Creek	40649 N Gantzel Rd	San Tan Valley, AZ 85140-7008
Tempe	6350 S Mcclintock Dr	Tempe, AZ 85283-3282
W. Gilbert	835 W Warner Rd Ste 101	Gilbert, AZ 85233-7268
Superstition Feed	606 N Idaho Rd Bldg 1	Apache Junction, AZ 85119-4016

The Receiver’s intends to sell to any buyer, the assets of these Pet Club store, including all leasehold rights to each leased store; the real estate for the Superstition Feed location; and all store furniture, fixtures and inventory.

Interested parties must complete a non-disclosure agreement (“NDA”), after which due diligence information will be provided. Please contact Paula Durham at (602) 279-7505 or via email at pdurham@simonconsulting.net to obtain an NDA.

Any sale of the assets of these Pet Club Stores will be subject to an Asset Purchase Agreement, which will indicate that all assets are being sold “As-Is” and without any representations and warranties. Any sale is subject to approval by the Receivership Court in the above referenced proceeding.

Interested parties should submit bids to the Receiver on a *per-store basis* no later than August 21, 2019 at 5:00 pm. All bids must be accompanied by proof of funds matching the offered amount (i.e. a bank letter, bank statement, or letter of credit) and a \$20,000 refundable deposit.

Very truly yours,

Peter S. Davis

For Simon Consulting, as Receiver of the assets of Natural Pet Partners, LLC

COPY FOR CERTIFICATION

CLERK OF THE SUPERIOR COURT

FILED

JUL 19 2019 @ 3:03 P.M.

D. Tapia, Deputy

Quarles & Brady LLP
Firm State Bar No. 00443100
Renaissance One
Two North Central Avenue
Phoenix, AZ 85004-2391
TELEPHONE 602.229.5200

Attorneys for Plaintiff

Scott A. Klundt (012234)
Scott.klundt@quarles.com
Molly J. Kjartanson (034063)
Molly.kjartanson@quarles.com

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JDB CAPITAL PROPERTIES, LLC, an
Arizona limited liability company; and
SIMONCRE SECOND IV, LLC, an
Arizona limited liability company,

Plaintiffs,

vs.

NATURAL PET PARTNERS, LLC, a
Delaware limited liability company;
ARIZONA DEPARTMENT OF
REVENUE; and John Does I-X,

Defendants.

Case No. CV2019-010768

ORDER APPOINTING RECEIVER

The Court, having considered Plaintiffs' *Complaint* (the "**Complaint**") and *Application for Appointment of Receiver* (the "**Application**") filed in this matter, and pursuant to Rule 66, Arizona Rules of Civil Procedure, finds that substantial cause exists for the appointment of a receiver. If such receiver is not appointed, the opportunity to preserve and protect Plaintiffs' interests in the collateral described in the *Complaint* will be lost or substantially impaired.

FINDING SO, IT IS HEREBY ORDERED:

A. **APPOINTMENT OF RECEIVER.** Simon Consulting, L.L.C., acting by and through Peter Davis (the "**Receiver**") is hereby appointed receiver in this action, such

1 appointment to be effective immediately upon the entry of this Order. Within five (5)
2 business days after entry of this Order, the Receiver shall file with the Clerk of the Court
3 (1) the Oath of Receiver; and (2) the Receiver's bond in the sum of \$5,000.00. The Receiver
4 shall be appointed until such time as the Court enters a further Order terminating,
5 discharging, and/or exonerating the Receiver.

6 **B. POSSESSION BY RECEIVER.** The Receiver shall have and take
7 possession and control of the assets of Defendant Natural Pet Partners, LLC ("NPP")
8 identified in the attached Exhibit A (collectively, the "Collateral"). The Receiver shall be
9 entitled to exclusive possession and control of the Collateral, whether in the possession of
10 NPP or any other person or entity.

11 **C. DUTIES OF RECEIVER.** The Receiver is granted the following powers
12 and authority:

13 1. To marshal, take possession of, and administer all of the Collateral,
14 wherever located, and to protect and preserve the Collateral. Specifically, but without
15 limitation, the Receiver shall be entitled to take control of NPP's bank accounts in order to
16 safeguard proceeds of the Collateral, and the Receiver shall be entitled to notify all of NPP's
17 banks of such control pursuant to this Order. The Receiver also shall have, from NPP, all
18 passwords, identification numbers, and other information necessary or appropriate to
19 facilitate the Receiver's efforts to accomplish and ensure such control. Nothing herein will
20 preclude Plaintiffs from exercising any of Plaintiffs' rights, as secured creditors, to demand
21 and receive the proceeds in any bank account(s) of NPP;

22 2. To evaluate the current value of the Collateral, determine the best
23 means to maximize the value of the Collateral, and to provide a report concerning the same
24 and the Receiver's recommendations to the Court and to the parties;

25 3. To operate, repair, restore, manage, maintain, list, market, sell, convey,
26 or transfer the Collateral, wherever located, in whole or in part, in a manner deemed
27 appropriate by the Receiver to maximize the Collateral's value; provided that a sale,
28 conveyance, or transfer of the Collateral by the Receiver shall be subject to approval by the

1 Court and Plaintiffs;

2 4. To negotiate, enter into, modify, or terminate any agreement, contract,
3 or arrangement pertaining to the Collateral, or any portion thereof, including any contract,
4 agreement, or arrangement in existence when the Receiver takes possession of the
5 Collateral. However, nothing herein will require or authorize the Receiver to seek to limit,
6 impair, impede, or modify the Loan Documents or any enforcement of Plaintiffs' rights
7 thereunder;

8 5. To demand, collect, and receive all income, proceeds, revenues, rents,
9 profits or other amounts generated by or derived from the Collateral (the "**Income and**
10 **Profits**"), including but not limited to any Income and Profits arising from NPP's accounts
11 receivable and any Income and Profits in the possession of NPP as of or prior to the date of
12 this Order; or any part thereof;

13 6. To file and prosecute all proper actions for (i) collection of income and
14 proceeds of the Collateral; (ii) protection of the Collateral; (iii) recovery of damages caused
15 to the Collateral, including collection of insurance and condemnation awards, payments,
16 and proceeds; and (iv) recovery of possession of the Collateral;

17 7. To employ any person or firm to collect, manage, lease, list, market,
18 sell, or maintain the Collateral if the Receiver deems it necessary or appropriate to do so;

19 8. To hire, employ, and retain attorneys, certified public accountants,
20 investigators, security guards, consultants, brokers, and other personnel or employees which
21 the Receiver deems necessary to assist in the performance of the Receiver's activities;

22 9. To retain existing employees of NPP or employees working at NPP's
23 business operations as employees in order to continue any business operations, in which
24 case payroll taxes, workers compensation insurance, and related costs will be carried and
25 reported as those of NPP, and not of the receivership estate;

26 10. To apply for, obtain, and pay any reasonable fee for any lawful license,
27 permit, or other governmental approval relating to the Collateral; to confirm the existence
28 of and, to the extent permitted by law, exercise the privileges of any existing license or

1 permit; and to do all things necessary to protect and maintain any such license or permit;

2 11. To confirm that the Collateral is adequately insured and in proper
3 repair, to promptly report any evidence or findings to the contrary to the parties and to the
4 Court, and if necessary, to disburse funds for the maintenance of insurance for the
5 Collateral;

6 12. To have the ability (but not the obligation) to cause to be made any
7 repairs to the Collateral that the Receiver deems necessary or appropriate;

8 13. To pay and discharge out of the funds coming into the possession of
9 the Receiver, in the following order of priority: (i) all the expenses of the receivership and
10 the costs of preserving, operating and maintaining the Collateral, including the Receiver's
11 Compensation (as set forth in Paragraph G below); (ii) the indebtedness owing to Plaintiffs
12 secured by the Loan Documents¹ relating to the Collateral; and (iii) at the Receiver's
13 discretion, all taxes and other assessments or charges against the Collateral that become due
14 during the term of this receivership;

15 14. To expend funds to purchase merchandise, materials, inventory,
16 supplies and services as the Receiver deems necessary and advisable to assist in performing
17 the Receiver's duties hereunder and to pay the ordinary and usual rates and prices out of the
18 funds that may come into the possession of the Receiver;

19 15. If the Income and Profits are insufficient to pay the ordinary,
20 necessary, and reasonable costs and expenses of the administration of the receivership, the
21 Receiver shall have the power to borrow funds, including such borrowing from Plaintiffs;
22 and Plaintiffs may, but are not obligated to, advance to the Receiver sufficient funds to pay
23 such ordinary, necessary, and reasonable costs and expenses (hereinafter the "Receivership
24 Advances"). Any Receivership Advances made by Plaintiffs shall be advances of principal
25 under the Loan Documents and shall be secured by liens and security interests encumbering
26 all of the Collateral, with the same priority as Plaintiffs' existing liens and security interests

27 ¹ "Loan Documents" shall retain the definition as set forth in Plaintiffs' *Complaint and Application for Appointment of*
28 *Receiver* filed in this matter.

1 encumbering the Collateral. If it is ever determined that Plaintiffs' existing liens and
2 security interests encumbering the Collateral are not in first secured positions, the
3 Receivership Advances made by Plaintiffs pursuant to this Order or any other or further
4 receivership financing order nevertheless shall be secured by first priority liens and security
5 interests encumbering the Collateral. The Receiver shall be authorized and directed to issue
6 receivership certificate(s) to Plaintiffs, at Plaintiffs' request, reflecting the amount and
7 priority of any Receivership Advances;

8 16. To open and use bank accounts, including existing bank accounts of
9 NPP, for receivership funds;

10 17. To present for payment any checks, money orders, and other forms of
11 payment made payable to NPP which are proceeds of the Collateral, endorse same, and
12 collect the proceeds thereof, subject to the continuing security interest and lien of Plaintiffs;

13 18. To occupy and use any leasehold or other real property interest held
14 by NPP, and to negotiate and communicate with any landlord or interested party regarding
15 such leasehold or real property interests. Nevertheless, the Receiver and Plaintiffs are not
16 obligated to assume or satisfy any leasehold or real property obligation, but may do so,
17 wholly or in part in their sole and absolute discretion to facilitate realization of the value of
18 the Collateral;

19 19. To pay reasonable expenses incurred in connection with the
20 receivership, including, but not limited to, fees and expenses charged by the Receiver,
21 subject to Court approval as set forth in Paragraph G below;

22 20. To comply with applicable laws and regulations of the United States,
23 the State of Arizona, and any other state or nation where NPP may operate and/or may have
24 possession of any of the Collateral;

25 21. To pay proceeds of the Collateral to Plaintiffs in order to reduce the
26 secured indebtedness. Any such payment, however, shall remain subject to the Court's
27 jurisdiction to require disgorgement and return thereof when and if it is ever finally
28 adjudicated that Plaintiffs are not lawfully entitled to receive any such payment on account

1 of unpaid, secured indebtedness owed to Plaintiffs;

2 22. To open and review mail directed to NPP and its representatives
3 pertaining to the Collateral; and

4 23. To take such other actions as may be necessary or incidental to the
5 foregoing specific powers, directions, and general authorities relating to the Collateral.

6 **D. TURNOVER.** NPP and any of its officers, directors, general partners,
7 members, agents, property managers, architects, contractors, subcontractors and employees,
8 and all other persons with actual or constructive knowledge of this Order and their agents
9 and employees, except Plaintiffs, shall immediately:

10 1. Turn over to the Receiver the possession, custody, and control of the
11 Collateral, including, without limitation, NPP's records, books of account, ledgers and all
12 business records thereof, wherever located and however maintained (including, without
13 limitation, information contained on computers and any and all software relating thereto, as
14 well as all banking records, statements, and canceled checks and a list identifying all of the
15 NPP's accounts and all passwords, identification numbers, and other information necessary
16 or appropriate for access to those accounts);

17 2. Turn over to the Receiver all documents which are or pertain to the
18 Collateral, including, but not limited to, all licenses, permits, or governmental approvals
19 relating to the Collateral;

20 3. Turn over to the Receiver all documents which are or pertain to
21 insurance policies, whether currently in effect or lapsed, which relate to the Collateral;

22 4. Turn over to the Receiver all contracts, leases and subleases,
23 management agreements, franchise agreements, royalty agreements, employment
24 agreements, licenses, assignments, or other agreements of any kind whatsoever, whether
25 currently in effect or lapsed, which relate to any of the Collateral;

26 5. Turn over or otherwise make available to the Receiver all documents
27 pertaining to past, present or future maintenance or repairs of any type with respect to all or
28 any part of the Collateral;

1 6. Turn over or otherwise make available to the Receiver any and all of
2 tax identification numbers, credit card machines, credit card processing information, and
3 any merchant numbers relating to the Collateral or the business conducted in connection
4 with the Collateral;

5 7. Provide and give the Receiver immediate and unlimited access to and
6 full use of any real property interests held by NPP, including but not limited to any
7 leasehold interests or premises of NPP; and

8 8. Otherwise cooperate fully with the Receiver in the performance of
9 the Receiver's powers and duties, including, without limitation, the Receiver's exercise of
10 all powers granted under Paragraph C of this Order.

11 **E. NON-INTERFERENCE WITH RECEIVER.** NPP, including, without
12 limitation, any agents, representatives, successors, assignees, and employees of NPP, and
13 any other any other person or entity, are prohibited from:

14 1. Interfering with the Receiver, directly or indirectly, in the
15 administration of the Collateral and/or the Receiver's exercise of powers granted to the
16 Receiver under this Order, or otherwise directly or indirectly taking any action or causing
17 any action to be taken which would dissipate or negatively affect the Collateral;

18 2. Expending, disbursing, transferring, assigning, selling, conveying,
19 devising, pledging, mortgaging, creating a security interest in, or otherwise disposing of
20 any of the Collateral, without the prior written consent of Plaintiffs, provided, however, that
21 nothing contained in this Order shall prohibit or restrain Plaintiffs from initiating and/or
22 completing any sale by judicial or nonjudicial foreclosure of the Collateral, or any portion
23 thereof, repossessing or otherwise taking possession of any of the Collateral, or otherwise
24 exercising Plaintiffs' rights with respect to any or all of the Collateral; and

25 3. Doing any act which will or may, directly or indirectly, impair
26 Plaintiffs' interest in any of the Collateral.

27 No person or entity shall file or continue suit against NPP, the Receiver (in his
28 individual or representative capacity with respect to the receivership estate), or the

1 receivership estate or take or continue other legal action against NPP, the Receiver (in his
2 individual or representative capacity with respect to the receivership estate), or the
3 receivership estate, without an order of this Court permitting the suit or action; provided,
4 however, no prior court order is required to enforce the provisions of this Order or any other
5 order of this Court in this action.

6 **F. UTILITIES RELATING TO THE PROPERTY.** Any utility company
7 providing services to the NPP or in connection with the Collateral, including gas, electricity,
8 water, sewer, trash collection, telephone, communications or similar services, shall be
9 prohibited from discontinuing service to the NPP or in connection with the Collateral based
10 upon unpaid bills incurred by NPP. Further, such utilities shall transfer any deposits held
11 by the utility to the exclusive control of the Receiver and be prohibited from demanding
12 that the Receiver deposit additional funds in advance to maintain or secure such services.

13 **G. RECEIVER COMPENSATION.** The Receiver shall be compensated at the
14 following hourly rates:

15	Managing Directors	\$305.00 - \$360.00
16	Directors	\$245.00 - \$300.00
17	Managers	\$195.00 - \$240.00
	Senior Associates	\$135.00 - \$190.00
	Associates	\$ 95.00 - \$130.00

18 In addition, the Receiver shall be reimbursed for all reasonable and necessary out-of-pocket
19 costs and expenses, including but not limited to legal expenses, the premium incurred to
20 obtain the Receiver's bond, and travel expenses, in performing his services in this matter.

21 Such compensation will be paid out of the Income and Profits. To the extent that the Income
22 and Profits are insufficient to pay the Receiver's compensation, Plaintiffs shall be liable to
23 pay such compensation as follows: JDB Capital Properties, LLC shall be liable for 58% of
24 any deficiency in the compensation due to the Receiver, and SimonCRE Second IV, LLC
25 shall be liable for 42% of any deficiency in the compensation due.

26 The Receiver shall submit invoices for the Receiver's fees and costs to Plaintiffs for
27 informal approval (subject to Plaintiffs' objection) and payment on a monthly basis. The
28 Receiver shall also file interim reports with the Court for Court approval of the Receiver's

1 fees and costs.

2 **H. FURTHER APPROVAL.** Any provision of this Order requiring the
3 Receiver to obtain approval before proceeding with any action or expenditure shall be
4 deemed to be satisfied by an Order of this Court entered after notice to Plaintiffs and NPP,
5 with said approval being obtained either before or after the occurrence of such action or
6 expenditure.

7 **I. CONTEMPT.** Upon the failure of NPP, its agents, representatives or any
8 persons acting under, in concert with, or for them, to abide by any term or condition of this
9 Order, the Receiver may petition the Court for further action to compel and enforce this
10 Order.

11 **J. LIMITATION OF RECEIVER'S LIABILITY.** The Receiver and its
12 agents, employees, attorneys and all professionals and management companies retained by
13 the Receiver shall have no liability for any obligations or debts incurred by NPP. The
14 Receiver and its agents, employees, and attorneys shall have no personal liability, and they
15 shall have no claim asserted against them, relating to the Receiver's duties under this Order,
16 without prior authority from this Court. Nothing contained in this Order shall be construed
17 as obligating the Receiver to advance its own funds to pay any costs and expense of the
18 receivership estate.

19 **K. EXCLUSIVE JURISDICTION.** The Receiver appointed pursuant to this
20 Order is the Court's Officer and is not, and shall not be deemed to be, the agent or
21 representative of Plaintiffs or NPP. The Court shall have and retain exclusive jurisdiction
22 of the receivership, all assets administered by the Receiver (subject, however, to provisions
23 of this Order recognizing and allowing Plaintiffs' rights to enforce its liens and security
24 interests with respect to its Collateral), and all disputes involving the Receiver and/or
25 otherwise arising in or related to any aspect of the receivership.

26 **L. LIMITATION OF PLAINTIFFS' LIABILITY.** In the event that there is
27 a shortfall such that the reasonable expenses incurred in connection with the receivership,
28 including, but not limited to, fees and expenses charged by the Receiver, are greater than

1 the Income and Profits held by the receivership, Plaintiffs shall not be liable or required to
2 pay for any such shortfall.

3 **M. PLAINTIFFS' RIGHTS UNDER LOAN DOCUMENTS.** This Order, and
4 the appointment of the Receiver, do not preclude Plaintiffs and their agents from exercising
5 any rights Plaintiffs may have under the Loan Documents, including but not limited to,
6 exercising any rights regarding any of the Collateral and any proceeds thereof.

7 **IT IS FURTHER ORDERED** that the Receiver shall otherwise have and enjoy the
8 powers and prerogatives ordinarily provided to receivers by law.

9 **IT IS FURTHER ORDERED** that nothing in this Order shall subject the Receiver
10 to personal liability for acting as the receiver herein or for any obligations of NPP or the
11 Collateral. Unless based on willful or malicious conduct of the Receiver and his
12 consultants, agents, and employees, all obligations and risks incurred by the Receiver and
13 his consultants, agents, employees in the discharge of his duties shall be obligations and
14 risks solely of the Collateral. The Receiver shall be and hereby is excused and exculpated
15 by the Court from any such personal liability, unless based upon willful and malicious
16 conduct of the Receiver.

17 **IT IS FURTHER ORDERED** that the parties may at any time apply to this Court
18 for further or other instructions and powers necessary to enable the Receiver to properly
19 perform the Receiver's duties.

20 ///

21 ///

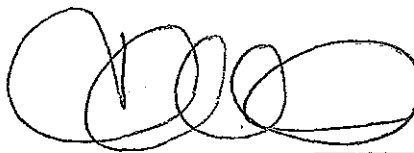
22 ///

23 ///

24 **IT IS FURTHER ORDERED** that the Receiver's duties and powers shall be
25 assumed forthwith upon compliance with Paragraph A of this Order.

26 **DATED** this 19th day of July, 2019.

28



JUDGE OF THE SUPERIOR COURT

Christopher T. Whitten

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A
(Collateral)

1
2
3 (a) all accounts, deposit accounts, contract rights, chattel paper (whether electronic
4 or tangible), instruments, promissory notes, documents, general intangibles, payment
5 intangibles, software, letter of credit rights, letter of credit rights, health-care insurance
receivables and other rights to payment of every kind;

6 (b) all inventory, goods held for sale or lease or to be furnished under contracts for
7 service, or goods so leased or furnished, raw materials, component parts, work in process
8 and other materials used or consumed in NPP's business, wherever located, and all products
9 thereof, whether in the possession of NPP, any warehousemen, any bailee or any other
person, or in process of delivery, and whether located at NPP's places of business or
elsewhere;

10 (c) all warehouse receipts, bills of sale, bills of lading and other documents of every
11 kind (whether or not negotiable), and all additions and accessions thereto, whether in the
12 possession or custody of NPP, any bailee or any other person for any purpose;

13 (d) all money and property delivered to or deposited with Plaintiffs or any of its
14 affiliates or otherwise coming into the possession, custody or control of Plaintiffs or any of
15 their affiliates (or any agent or bailee of Plaintiffs or any of their affiliates) in any manner
16 or for any purpose whatsoever and whether held in a general or special account or deposit
for safekeeping or otherwise;

17 (e) all right, title and interest of NPP under licenses, guaranties, warranties,
18 management agreements, marketing or sales agreements, escrow contracts, indemnity
19 agreements, insurance policies, service or maintenance agreements, supporting obligations
and other similar contracts of every kind in which NPP has an interest;

20 (f) all goods, tools, machinery, furnishings, furniture and other equipment and
21 fixtures of every kind, and all improvements, replacements, accessions and additions thereto
22 and embedded software included therein, whether located on any property owned or leased
23 by NPP or elsewhere, including without limitation, any of the foregoing located at or
24 installed on the land or in the improvements at any of the real property owned or leased by
NPP, and all such goods after they have been severed and removed from any of said real
property;

25 (g) all motor vehicles, trailers, mobile homes, manufactured homes, boats, other
26 rolling stock and related equipment of every kind, and all additions and accessories thereto,
whether located on any property owned or leased by NPP or elsewhere; and

27 (h) all books, records, documents, ledger receipts and other information of NPP
28 pertaining to any of the foregoing, including, without limitation, all customer lists, credit

1 files, computer records, computer programs, storage media and computer software used or
2 required in connection with the establishment, generation, processing, maintenance or
3 storage of such books, records or documents or otherwise used or acquired in connection
with documenting information pertaining to any of the aforesaid collateral;

4 together with whatever is receivable or received when any of the foregoing or the proceeds
5 thereof are sold, leased, collected, exchanged or otherwise disposed of, whether such
6 disposition is voluntary or involuntary, including without limitation, all rights to payment,
7 including returned premiums, with respect to any insurance relating to any of the foregoing,
and all rights to payment with respect to any claim or cause of action affecting or relating
to any of the foregoing.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25
26
27
28

The foregoing instrument is a full, true and correct copy
of the original on file in this office.

Attest JUL 19 2019 20

JEFF FINE, Clerk of the Superior Court of the
State of Arizona, in and for the County of Maricopa.

By _____, Deputy Clerk



E. Vazquez
Deputy Clerk