

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

In re:

THE NEWS-GAZETTE, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11901 (KBO)

(Jointly Administered)

Hearing Date: June 25, 2020 at 1:00 p.m. (ET)

Objection Deadline: June 5, 2020 at 4:00 p.m. (ET)

**DEBTORS' MOTION FOR AN ORDER (A) APPROVING
AUCTION PROCEDURES WITH RESPECT TO THE
SALE OF CERTAIN REAL PROPERTY; (B) APPROVING FORM OF
ASSET PURCHASE AGREEMENT; (C) AUTHORIZING THE SALE OF SUCH REAL
PROPERTY THROUGH PUBLIC AUCTION; AND (D) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (each a "Debtor" and, collectively, the "Debtors") hereby submit this motion (the "Motion") pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002, 6004, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (collectively, 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"), for entry of an order in the form attached hereto (the "Proposed Order") (A) approving the Debtors' proposed terms of sale and auction procedures to govern the sale (the "Sale") of certain of the Debtors' real property; (B) approving the form of purchase and sale agreement; (C) authorizing the sale of such real property through public auction, free and clear of all claims, liens and encumbrances as provided therein upon the consummation of such Sale and payment of all consideration thereunder; and (D) granting certain related relief.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: The News-Gazette, Inc. (0894) and D.W.S., Inc. (7985). The Debtors' headquarters are located at 15 East Main Street, Champaign, Illinois 61820.

In support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 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 as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and pursuant to Local Rule 9013-1(f) the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007 and 9014, and Local Rule 6004-1.

BACKGROUND

A. General

4. On August 30, 2019 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors are continuing in possession of their respective properties and are continuing to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner. No official committee of unsecured creditors has been appointed in these chapter 11 cases.

7. A full description of the Debtors' businesses, capital structure and events leading to the filing of these chapter 11 cases is set forth in the *Declaration of Traci E. Nally in Support of Chapter 11 Petitions and Related Motions* (Docket No. 3), incorporated herein by reference.

Operating Asset Sale

8. On August 30, 2019, the Debtors filed a motion for authority to sell substantially all of their operating assets pursuant to certain sale and bidding procedures (Docket No. 15) (the "Bidding Procedures Motion"). On September 18, 2019, the Court granted the Bidding Procedures Motion and approved procedures for the auction and sale of the Debtors' businesses (Docket No. 66) (the "Bidding Procedures Order").

9. Pursuant to the terms of the Bidding Procedures Order, the Debtors selected Champaign Multimedia Group, LLC ("CMG") as the successful bidder for substantially all of the Debtors' operating assets.

10. On October 2, 2019, the Court entered an order approving the sale of the Debtors' operating assets to CMG (Docket No. 129) (the "Operating Asset Sale"). The Properties (as defined below) were excluded from the Operating Asset Sale.

Real Estate Assets

11. The Debtors are now in the process of formulating a plan of liquidation which will be the mechanism for distributions to the Debtors' creditors. To that end, the Debtors will need to liquidate all remaining tangible assets into cash to be included in such distribution. The following remaining tangible assets that the Debtors intend to market for Sale pursuant to this Motion are: (a) the real property located at 15 East Main Street, Champaign, IL 61820 (the "Champaign Property"); and (b) the real property located at 208 North Market Street, Paxton, IL 60957 (the "Paxton Property") and together with the Champaign Property, the "Properties" and each, a "Property").

12. To aid in this process, the Debtors retained AWS Commercial, LLC dba Colliers International (“Colliers”) to market and sell the Properties via a public auction in accordance with the procedures proposed herein. On April 20, 2020, the Court entered the *Order Authorizing the Employment and Retention of AWS Commercial, LLC dba Colliers International as Real Estate Broker to the Debtors* (Docket No. 341) (the “Colliers Retention Order”). Under the Colliers Retention Order, Colliers (in cooperation with Guth and Associates, LLC as real estate brokers and Mark Abood of Colliers, as Auctioneer) is approved to serve as the Debtors’ listing agent and auctioneer for the Properties.

Terms of Sale

13. In order to guide the process, Colliers and the Debtors have established the Terms of Sale attached to the Proposed Order as **Exhibit 1**, which set forth the process and procedures for the auction of the Properties (the “Auction Agreement”). In addition, due to the historic COVID-19 pandemic, the Debtors and Colliers are seeking a flexible date on which to announce and conduct the Auction. While the Debtors and Colliers are targeting sometime in July 2020 to schedule the Auction for the Properties, this date remains fluid given COVID-19’s overall effect on the economy and to account for when states — like Illinois — will be rescinding the “stay at home orders” and phasing in a return to regular economic activity. As such, the Debtors are proposing a flexible date for holding the Auction. Once a date is identified, Colliers will provide notice of such date in its marketing materials to prospective bidders and the Debtors will also file a notice of the auction date on the Court’s docket. The Debtors reserve the right to adjourn such Auction date in their sole discretion.

14. The additional pertinent terms of the Auction Agreement are as follows:²

- (a) Purpose of the Auction Agreement. The Debtors retained Colliers to act as their exclusive agent to sell the Properties through a publicly-marketed sale and auction, as set forth therein.
- (b) Auction Procedure and Format. This Auction will be a live, public, open-outcry auction (the “Auction”) and is at the direction of and subject to the authority and approval of the Bankruptcy Court. To bid, a participant must be a registered bidder and must raise their hand, shout out their bid or notify a bidder’s assistant of their bid. A bid shall not be valid unless and until the Auctioneer recognizes the bidder and their respective bid. The authorized signatory of each bidder must be at the Auction. The final High Bid will be accepted at the time and place of the Auction, provided that such High Bid is equal to or greater than the Published Reserve Price (as may be reduced by the Auctioneer at any time during the Auction).
- (c) Bidder Information Package: A Bidder’s Information or Due Diligence Package must be obtained by all registered bidders prior to the Auction. The Bidder’s Information Package shall contain information pertaining to the respective Property being offered.
- (d) Auction Registration: All participants interested in bidding at the Auction shall register at the registration counter by providing the following items: (1) valid state issued identification; (2) proof that participant has inspected the Property; (3) presentation of certified or cashier’s check in the amount of \$50,000 for the Champaign Property and \$5,000 for the Paxton Property; and (4) an acknowledgment that the bidder has received, reviewed and understands this Terms of Sale, the Real Estate Purchase and Sale Agreement, and the Bidder’s Information Package and is capable of closing if announced as the successful bidder; however, all bidders are advised to perform their own due diligence prior to the Auction.
- (e) Remote Bidding: Remote bidding via simultaneous digital transmission is available for participants that are unable to attend the Auction in person (“Remote Bidding”). In order to qualify for Remoted Bidding and be issued a remote bid number, a participant wanting to bid remotely must: (1) be pre-approved by Auctioneer; (2) deliver to the Auctioneer a signed blank Purchase and Sale Agreement no later than 48 hours before the Auction; and (3) wire \$50,000 (if bidding on the Champaign Property) or \$5,000 (if bidding on the Paxton Property) to the title company no later than 48 hours before the Auction (which shall be held in escrow at the title company pending outcome of the Auction).

² This is intended to be a summary of the procedures for the auction. To the extent that this summary conflicts with the Auction Agreement attached as Exhibit A to the Proposed Order, the Auction Agreement shall govern.

- (f) Requirements of the High Bidder: The High Bidder in the Auction for each parcel shall be required to: (1) upon conclusion of the auction, immediately tender a certified or cashier's check in the amount of \$50,000.00 for the Champaign Property and \$5,000.00 for the Paxton Property (each, an "Initial Deposit"), as applicable; (2) upon conclusion of the Auction for the relevant parcel, immediately execute the Real Estate Purchase and Sale Agreement for such parcel; (3) upon conclusion of the Auction, immediately execute the appropriate Illinois Agency Disclosure Forms and Property Disclosure Forms; and (4) within two (2) days following the conclusion of the Auction, increase the hard money deposit to twenty percent (20%) of the Purchase Price via wire transfer. In the event the High Bid for the relevant parcel meets or exceeds the Published Reserve Price, all such money deposits shall immediately become non-refundable with respect to that High Bid for the relevant parcel.
- (g) Non-refundable Money Deposits: All money deposits submitted by the High Bidder shall become immediately non-refundable. This sale is not subject to Purchaser obtaining financing, any contingencies, inspections or other reasons except as expressly noted herein. If the High Bidder fails to perform within the time limitations specified, any and all money deposits shall be forfeited as liquidated damages.
- (h) Title and Escrow Instructions: Title and Escrow services shall be provided by *Attorneys Title Guaranty Fund* (the "Title Company"). All money deposits shall be deposited with the Title Company. The total money deposit shall be increased to twenty percent (20%) of the Purchase Price via wire transfer within two (2) days after the Auction. Title and escrow fees and costs for sale of each parcel shall be split equally between the Seller and the Purchaser, with specific expense allocation set forth in the Real Estate Purchase and Sale Agreement (a copy of which is included in the Bidder Information Package).
- (i) Closing Dates: The Closing Date shall occur twenty-five (25) days after the Auction Date (unless otherwise agreed in writing by both Seller and Purchaser) at the office of the Title Company. At such time, Purchaser shall tender or have already tendered the balance of the Purchase Price.
- (j) Buyer's Premium: Colliers shall charge an eight percent (8.0%) buyer's premium that will be added to the Auction High Bid Price or offer price in order to calculate the Total Purchase Price for all parcels in the Auction.
- (k) Financing: The Parcels offered at Auction are not subject to or contingent upon the Purchaser obtaining financing.
- (l) Conduct of the Auction: Neither Seller nor Auctioneer is permitted to bid at the Auction. Conduct of the Auction and increments of bidding are at the sole direction and discretion of the Auctioneer. Any announcements made

from the podium on the day of the Auction shall supersede any printed material disseminated prior to the Auction. The Auction is open to registered bidders and Seller's invited guests. In the event of a dispute between bidders, the Auctioneer shall make the final decision to either accept the final bid, to re-offer/re-sell the relevant property, or to remove the relevant property from the Auction. If any disputes should arise following the Auction, the Auctioneer's records shall be conclusive.

- (m) "AS-IS" Condition — Binding Sale. The property is being sold in its present condition with no warranties, whatsoever, except for title, which is to be clear and marketable. It is being sold "as is where is — in its present condition, with all faults."

Real Estate Purchase and Sale Agreement

15. The Debtors have attached as Exhibit 2 to the Proposed Order a form of Real Estate Purchase and Sale Agreement (the "Real Estate PSA"), which they intend to use as the form for consummating the sale of the Properties with the high bidder(s) at the conclusion of the Auction. In light of the open and public bidding at the Auction, the Real Estate PSA will result in a good-faith sale that is free from self-dealing.

Sale Provisions Highlighted Pursuant to Local Rule 6004-1(b)(iv)

16. Pursuant to Local Rule 6004-1, a motion to approve a sale must highlight material terms, including but not limited to (a) whether the proposed form of sale order and/or the underlying purchase agreement constitutes a sale or contains any provision of the type set forth below, (b) the location of any such provision in the proposed form of order or purchase agreement and (c) the justification for the inclusion of such provision:

- (a) Sale to Insider. No insiders of the Debtors will participate in the Auction.
- (b) Agreements with Management. There is no agreement with any of the Debtors' management with respect to the sale of the Properties.
- (c) Releases. The Real Estate PSA provides for a release by the Purchaser upon Closing in light of the fact that the Sale is being done on an "As Is, Where Is and Without Faults." **Real Estate PSA § 19.**

- (d) Private Sale/No Competitive Bidding. The Auction for the Properties shall be public. **Real Estate PSA § 13.**
- (e) Closing and Other Deadlines. The deadlines for Closing are twenty-five (25) days after the Auction (unless otherwise agreed in writing by both Seller and Purchaser). **Real Estate PSA § 4.**
- (f) Good Faith Deposit. The Auction Agreement provides that potential purchasers must bring a cashier's or certified check in the amount of \$50,000 for the Champaign Property or \$5,000 for the Paxton Property to participate in the Auction, each of which shall be remitted by the High Bidder at the conclusion of the Auction. Moreover, the High Bidder shall provide within two (2) days following the conclusion of the Auction, increase the hard money deposit to twenty percent (20%) of the Purchase Price via wire transfer. Should the High Bidder fail to consummate the Sale, it shall forfeit such deposits. **Real Estate PSA §§ 3(1); 3(2).**
- (g) Interim Arrangements with Proposed Buyer. The Debtors are not entering into any interim agreements or arrangements with the proposed purchaser.
- (h) Use of Proceeds. The Debtors shall pay the transaction fees and costs (including accrued real property taxes) and Colliers' Buyer's Premium out of the sale proceeds upon the Closing. **Real Estate PSA §§ 3, 6.**
- (i) Tax Exemption. The Debtors are not seeking to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code.
- (j) Record Retention. The Debtors are not selling any records pursuant to this Motion.
- (k) Sale of Avoidance Actions. The Debtors are not seeking to sell or otherwise limit its rights to pursue avoidance claims under chapter 5 of the Bankruptcy Code.
- (l) Requested Findings as to Successor Liability. The proposed order on this Motion does not have any provision limiting the proposed purchaser's successor liability.
- (m) Sale Free and Clear of Unexpired Leases. The Debtors are not seeking to sell property free and clear of a possessory leasehold interest, license or other right.
- (n) Credit Bid. The Debtors do not have any secured creditors, so there will be no credit bidding at the Auction.
- (o) Relief from Bankruptcy Rule 6004(h). The Debtors do not seek relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

BASIS FOR RELIEF

The Procedures Set Forth in the Auction Agreement Are Fair and Reasonable

17. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. In accordance with the Auction Agreement, the Debtors (through Colliers) seek to market the Properties via a competitive bidding and auction process to maximize value. Consequently, the Debtors believe that good cause exists to expose the Properties to sale at auction and to approve the Auction Agreement. An Auction conducted substantially in accordance with the Auction Agreement will enable the Debtors to obtain the highest and best offers for the Properties.

18. The Debtors believe that the procedures proposed in the Auction Agreement are appropriate under sections 105 and 363 of the Bankruptcy Code to ensure that the bidding and sale process is conducted fairly and will yield the highest value for their estates and creditors. The procedures proposed in the Auction Agreement are designed to facilitate an open, competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids for Properties with minimal restrictions. The procedures proposed in the Auction Agreement also provide potential bidders with sufficient notice and opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtors and all parties in interest can be assured that the consideration for the Properties will be fair and reasonable. Utilizing this process, the Debtors will allow the market to dictate the fair value for the Properties through a competitive process subject to higher and better bids.

19. The Debtors believe that the procedures proposed in the Auction Agreement provide an appropriate framework, process and timeline for Colliers to market and sell the Properties to the highest bidder. Accordingly, the Debtors believe the Court should approve the Auction Agreement. A similar process, in the context of a real property sale, has been approved

in this Court. See In re RMR Liquidation Inc. et al, Case No. 19-10234 (KG) (Bankr. D. Del. May 14, 2019).

Approval of the Sale Is Warranted Under Section 363(b) of the Bankruptcy Code

20. Compelling business justifications exist for the proposed sale of the Properties. The Debtors are currently in the process of winding down their business and formulating a plan of liquidation. In order to fully administer their estates, the Debtors are liquidating all remaining tangible assets for the benefit of their creditors. The proposed sale process contemplated herein provides the Debtors an adequate opportunity to market the Properties in chapter 11 while working toward the ultimate consummation of the Debtors' chapter 11 cases.

21. In the current age of uncertainty surrounding business opportunities and liquidity needs in the age of COVID-19, the Debtors and Colliers require both the time and flexibility to market the Properties and schedule the Auction when the time is right. As a result, and consistent with their fiduciary obligation to maximize distributable value for all creditors, the Debtors believe that a sale of the Properties in accordance with the Auction Agreement and the Real Estate PSA to the highest cash bidder provides the best available alternative for the Debtors' estates and stakeholders. Accordingly, the Debtors have determined that they should pursue the sale of the Properties as set forth in the Auction Agreement and the Real Estate PSA.

22. Section 363 of the Bankruptcy Code provides that “[t]he [debtor-in-possession], 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). “It is a well-established principle of bankruptcy law that the . . . Debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992). Following the decision in In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986), courts have used the

“sound business purpose” standard for approving sales pursuant to section 363. See, e.g., In re ICL Holding Co. Inc., 802 F.3d 547, 551 (3d Cir. 2015); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Lionel Corp., 722 F.2d 1063, 107071 (2d Cir. 1983); In re Gulf Coast Oil Corp., 404 B.R. 407, 417-18 (Bankr. S.D. Tex. 2009); Dai-Ichi Kangyo Bank Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.), 242 B.R. 147, 153 (Bankr. D. Del. 1999).

23. “In evaluating whether a sound business purpose justifies sale of property under Section 363, courts consider a variety of factors, which essentially represent a ‘business judgment’ test.” In re Culp, 550 B.R. 683, 697 (Bankr. D. Del. 2015). The “sound business purpose” test requires a debtor to establish: “(1) a sound business purpose exists; (2) the sale price is fair; (3) the debtor has provided adequate and reasonable notice; and (4) the purchaser has acted in good faith.” In re Decora Indus., Inc., No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing Del. & Hudson Ry. Co., 124 B.R. at 176).

24. Sound Business Purpose. There is a sound business justification for the sale of the Properties on the terms set forth in the Auction Agreement and the Real Estate PSA. As described above, the Debtors have sold substantially all of their assets and are winding down their affairs. In this context, the Debtors no longer have any need for the Properties they will seek to sell through the Auction. The Debtors have concluded, in a sound exercise of their business judgment, that the sale of the Properties subject to higher and better bids through an Auction run by Colliers will maximize the value of the asset for the benefit of the Debtors’ estates and their stakeholders.

25. Fair and Reasonable Terms. Pursuant to the terms of the Colliers Retention Order, the Auction Agreement and the Real Estate PSA, Colliers is to receive (a) reimbursement of its Marketing Expenses in an amount not to exceed \$23,800 and (b) an eight percent (8.0%) Buyer's

Premium. The Debtors have researched the market and have concluded that such rates are market rates for the sale and auction of real property in a transaction of this size. Moreover, subjecting the Properties to a marketing and auction process (in accordance with appropriate minimum reserves, in consultation with Colliers) will determine an appropriate fair market value for the Properties. As such, the Debtors determined that the terms of the Auction Agreement and the Real Estate PSA are fair and reasonable.

26. Accurate and Reasonable Notice. Pursuant to the Auction Agreement, Colliers will market the Properties to a wide variety of potentially interested parties, and its payment structure incentivizes it to do so in order to obtain the highest possible price. Colliers and its agents regularly work in the disposition of real property through auction and have developed a substantial list of potential purchasers for the Properties to which they will directly market the upcoming sale and Auction. In addition, Colliers will advertise the proposed sale of the Properties utilizing appropriate marketing techniques to ensure that the widest possible audience will receive notice of the Auction. The Debtors anticipate that the Auction will not occur before July 2020, which means that Colliers will have significant time to market the Properties. Moreover, given the flexibility requested in terms of scheduling the Auction, Colliers will be sure to provide appropriate advance notice of the date and time of the Auction to parties in interest.

27. Good Faith. Courts generally conclude that parties have acted in good faith with respect to a proposed transaction if the consideration is adequate and reasonable and the terms of the transaction are fully disclosed. See, e.g., Abbotts Dairies, 788 F.2d at 149-50. Pursuant to the Auction Agreement and the Real Estate PSA, Colliers will conduct the sale process to ensure that the sale and Auction transaction is at arm's-length, without collusion or fraud, and in good faith and will ensure that the Properties will be sold to the highest or otherwise best bidder. At the

conclusion of the Auction, Colliers shall prepare, and the Debtors shall file, a report with the Court that identifies the buyer, the price paid for the each of the Properties and the amount of the Buyer's Premium.

28. As discussed above, the Debtors have concluded that the Sale of the Properties presents the best alternative for the Company and maximizes stakeholder recoveries. Pursuing the Sale through the proposed Auction Agreement and the Real Estate PSA will ensure that the Debtors can complete a transaction within a reasonable time, thereby maintain their ability to propose a liquidating plan and exit from chapter 11 in short order. Consequently, the proposed Sale of the Properties in accordance with the Auction Agreement and the Real Estate PSA satisfies the "sound business purpose" test for the sale of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code.

The Acquired Assets Should Be Sold Free and Clear of Claims, Liens and Encumbrances Under 11 U.S.C. § 363(f)

29. The Debtors also submit that the Properties be sold free and clear of any and all claims, liens, encumbrances, and other interests, pursuant to section 363(f) of the Bankruptcy Code. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of third-party interests only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Since section 363(f) of the Bankruptcy Code is written in the disjunctive, any of the five conditions provides authority to sell free and clear of claims, liens and encumbrances.

See In re Pacific Energy Resources Ltd., et al., Case No. 09-10785 (KJC) D. Del. Aug. 18, 2009);

In re Flying J Inc., et al., Case No. 08-1334 (MFW) (Bankr. D. Del. July 27, 2009); In re Dundee Equity Corp., 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992); In re Collins, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995).

30. The Court may also authorize the sale of a debtor's assets free and clear of any liens, claims or encumbrances under section 105 of the Bankruptcy Code. See In re Trans World Airlines, Inc., 322 F.3d 283 (3d Cir. 2003); 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 liens] is within the court's equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].”).

31. The Debtors submit that they should be authorized to sell the Properties free and clear of any and all liens, claims and encumbrances, with such liens to be transferred and attached to the proceeds of the Sale with the same validity and priority, and subject to the same defenses, that such liens had against the Properties.

32. The Debtors submit that there are no liens on any of the Properties (other than any liens for real property taxes that would be paid as part of the closing in order to transfer title). To the extent there is a lien, claim, encumbrance or interest, the Debtors believe that they would satisfy at least one of the five conditions of section 363(f) of the Bankruptcy Code, and the Debtors submit that any such lien, claim, encumbrance or interest will be adequately protected by attachment to the proceeds of the sale, subject to any claims and defenses that the Debtors may possess with respect thereto. The Debtors believe that the parties holding liens on the Properties could be compelled to accept a monetary satisfaction of such interests, satisfying section 363(f)(5) of the Bankruptcy Code.

33. Out of an abundance of caution, however, if a lien on the Properties (other than liens for real property taxes) were to be discovered, the Debtors would still consummate the sale of the Properties because any such liens on any assets sold will attach to the proceeds of the Sale in their order of priority and entities holding such interests could be compelled to accept money satisfaction in legal or equitable proceedings. Accordingly, the Debtors would intend address the treatment and payment of any such valid liens in their plan of liquidation.

34. Moreover, the Debtors are serving notice of this Motion on all creditors. If any of those creditors claim a lien on the Properties and do not object to the proposed Sale, then their consent should reasonably be presumed. Accordingly, the Debtors request that unless a party asserting a lien on any of the Properties (other than liens for real property taxes) timely objects to this Motion, such party shall be deemed to have consented to any Sale consummated pursuant to the Auction Agreement and the Real Estate PSA. See Hargrave v. Twp. of Pemberton, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

NO PRIOR REQUEST

35. No prior request for the relief sought herein has been requested from this Court or any other court.

NOTICE

36. Notice of this Motion has been provided to: (a) all entities known to have expressed a *bona fide* interest in a transaction with respect to the Properties at any time; (b) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Properties; (c) all federal, state and local environmental, regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by this Motion; (d) the U.S. Trustee; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) the U.S. Attorney for

the District of Delaware; (h) parties under collective bargaining agreements, including without limitation the Printing, Publishing and Media Workers Sector of the Communications Workers of America, Champaign-Urbana Typographical Union Local No. 444 for the Circulation District Managers and the Printing, Publishing and Media Workers Sector of the Communications Workers of America, Champaign-Urbana Typographical Union Local No. 444/14407 for the Newsroom; (i) multiemployer pension plans in which or to which a Debtor or any of its affiliates is or was participating or contributing, including without limitation the CWA/ITU Negotiated Pension Plan and the GCIU-Employer Retirement Fund; (j) all persons and entities that have filed a request for service of filings in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (k) all known creditors of the Debtors. The Debtors submit that, under the circumstances, no other or further notice is required.

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WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**: (a) approving the Auction Agreement; (b) approving the form of Real Estate PSA; (c) authorizing the Sale of the Properties through a public auction; and (d) granting such further relief as is proper and just.

Dated: May 15, 2020
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE LLP

/s/ Mark D. Olivere

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and Debtors in Possession*

Exhibit A

Sale Order

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

In re:

THE NEWS-GAZETTE, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11901 (KBO)

(Jointly Administered)

Related Docket No. _____

ORDER (A) APPROVING AUCTION PROCEDURES WITH RESPECT TO THE SALE OF CERTAIN REAL PROPERTY; (B) APPROVING FORM OF ASSET PURCHASE AGREEMENT; (C) AUTHORIZING THE SALE OF SUCH REAL PROPERTY THROUGH PUBLIC AUCTION; AND (D) GRANTING RELATED RELIEF

This matter coming before the Court on the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order pursuant to sections 105 and 363 of title 11, United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 9006, 9007 and 9014 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 Terms of Sale (the “Auction Agreement”), attached hereto as **Exhibit 1** with respect to the sale of the Properties (defined below); (B) approving the form of Real Estate Purchase and Sale Agreement attached hereto as **Exhibit 2** (the “Real Estate PSA”) with respect to the sale of the Properties (defined below); (C) authorizing the sale of the Properties (defined below) free and clear of all liens, claims and encumbrances through a public auction; and (D) granting related relief; the Court having reviewed the Motion; the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: The News-Gazette, Inc. (0894) and D.W.S., Inc. (7985). The Debtors’ headquarters are located at 15 East Main Street, Champaign, Illinois 61820.

² Capitalized terms used, but not otherwise defined herein, shall have the meanings given to them in the Motion.

Court finding that (i) the Court has jurisdiction over this matter pursuant to 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 as of February 29, 2012, (ii) venue is appropriate pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and a final order may be entered on this matter under Article III of the U.S. Constitution, (iv) notice of the Motion was sufficient under the circumstances and no other or further notice is necessary, and (v) a sound business purpose exists for the relief granted herein; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Approval of the sale of the (i) the real property located at 15 East Main Street, Champaign, IL 61820 (the "Champaign Property"); and (ii) the real property located at 208 North Market Street, Paxton, IL 60957 (the "Paxton Property" and together with the Champaign Property, the "Properties" and each, a "Property"), pursuant to the terms set forth in the Auction Agreement, is in the best interests of the Debtors, their creditors, estates, and other parties-in-interest.

D. The Debtors have demonstrated a good, sufficient and sound business purpose and justification for the sale of the Properties pursuant to the terms set forth in the Auction Agreement and the Real Estate PSA.

E. The Debtors may sell the Properties free and clear of all interests of any kind or nature whatsoever because one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

F. The terms and conditions of the Real Estate PSA are non-collusive, fair and reasonable. The Real Estate PSA was negotiated, proposed and entered into at arm's length, without collusion, and in good faith.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to perform their obligations under and comply with the terms of the Auction Agreement relating to the sale of the Properties, and to hold an auction and consummate such sales, pursuant to and in accordance with the terms and conditions of the Auction Agreement and the form of Real Estate PSA, as outlined herein.
3. The Debtors are authorized to execute and deliver, and empowered to consummate and implement the sale of the Properties pursuant to the terms set forth in the Auction Agreement and the Real Estate PSA, and execute and deliver, and perform under, any additional instruments and documents that the Debtors deem necessary or appropriate to implement such sale, and to take all further actions as may be necessary or appropriate for the performance of the obligations as contemplated thereby.

4. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the sale of the Properties pursuant to the provisions of the Auction Agreement and the terms set forth in the Real Estate PSA, shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever. Any such interests shall be transferred and attached to the proceeds of the sale with the same validity and priority, and subject to the same defenses, that such liens had against the Champaign Property or the Paxton Property.

5. Pursuant to the terms of the Auction Agreement, the high bidder shall be deemed a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code.

6. The Debtors shall not be required to file a separate motion or to seek further Court approval for any sale or other disposition of the Properties authorized to be auctioned and sold pursuant to the terms set forth in the Auction Agreement and consummated pursuant to the Real Estate PSA.

7. At the conclusion of the process, AWS Commercial, LLC dba Colliers International (“Colliers”) shall prepare, and the Debtors shall file a report (the “Final Report”) with the Court that identifies the buyer, the price paid for each of the Champaign Property and the Paxton Property, and the respective Buyer’s Premium earned by Colliers with respect to each of the transactions, which in no case shall exceed 8% of the high bid for each Property at the auction. For the avoidance of doubt, the Final Report need only describe the information contained in this paragraph.

8. This Order, the terms and provisions of the Auction Agreement, and the form of Real Estate PSA shall be binding on (a) all of the Debtors’ creditors (whether known or unknown), (b) the Debtors, (c) Colliers and their respective affiliates, successors, and assigns, and (d) any affected third parties, including, but not limited to, all persons asserting an interest

in the Properties, in each case notwithstanding any subsequent appointment of any trustee or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order, the terms and provisions of the Auction Agreement and the terms of any fully executed Real Estate PSA, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors or converting the Debtors' cases from chapter 11 to chapter 7 of the Bankruptcy Code.

9. To the extent that this Order is inconsistent with the Auction Agreement or the Real Estate PSA, the terms of this Order shall govern.

10. This Court shall retain jurisdiction over any and all matters or disputes with respect to any of the relief granted in this Order.

EXHIBIT 1
(Terms of Sale/Auction Agreement)

TERMS OF SALE

**15 EAST MAIN STREET, CHAMPAIGN, IL, 61820 (“Champaign Property”)
208 NORTH MARKET STREET, PAXTON, IL, 60957 (“Paxton Property”)**

AUCTION PROCEDURE AND FORMAT: This is a live, public, open-outcry auction (the “Auction”) that has been approved by the United States Bankruptcy Court for the District of Delaware (Case No. 1:19-BK-11901). To bid, a participant must be a registered bidder and must raise their hand, shout out their bid or notify a bidder’s assistant of their bid. A bid shall not be valid unless and until the Auctioneer recognizes the bidder and the respective bid. The authorized signatory of each bidder must be at the Auction. The final High Bid will be accepted at the time and place of the Auction, provided that such High Bid is equal to or greater than the Published Reserve Price (as may be reduced by the Auctioneer at any time during the Auction). The Auctioneer reserves the right to seek an opening bid below the Published Reserve Price (as set forth below). In the event the bidding level does not reach the Published Reserve Price, the High Bid will be considered an offer and the Property will be offered “With Reserve, Subject to Acceptance.” The final High Bid shall be irrevocable until 4:00 P.M., Eastern Time, thirty (30) business days after the actual date of Auction. ***Pounding and knocking of a gavel is a common occurrence at an auction. Such occurrences shall not be deemed to indicate a sale or that a parcel has been sold unless or until the Auctioneer announces verbally that said parcel has been sold.***

METHOD OF BIDDING: THE ABOVE-REFERENCED PARCELS SHALL BE OFFERED WITH RESERVE SUBJECT TO THE FOLLOWING PUBLISHED RESERVE PRICES/MINIMUM BIDS:

PARCEL 1:	15 EAST MAIN ST., CHAMPAIGN, IL 61820	-	\$900,000.00
PARCEL 2:	208 NORTH MARKET ST., PAXTON, IL 60957	-	\$10,000.00

IN THE EVENT SUCH PUBLISHED RESERVE PRICES ARE MET OR EXCEEDED, THE PROPERTIES SHALL BE SOLD.

BIDDER INFORMATION PACKAGE: A Bidder’s Information or Due Diligence Package must be obtained by all registered bidders prior to the Auction. The Bidder’s Information Package shall contain information pertaining to the property being offered; however, all bidders are advised to perform their own due diligence prior to the Auction.

ATTORNEY REVIEW RECOMMENDATION: All information contained in the brochure and all other auction-related material, such as the Bidder’s Information Package, should be carefully reviewed by bidder’s attorney prior to the Auction and is subject to and may be superseded by the terms of the Real Estate Purchase and Sale Agreement to be executed at the conclusion of the Auction and/or and any announcements made by the Auctioneer from the podium prior to commencement of bidding.

AUCTION REGISTRATION: Except for participants utilizing Remote Bidding (defined below), all participants interested in bidding at the Auction shall register at the registration counter by providing the following items: (1) valid state issued identification; (2) proof that participant has inspected the Property; (3) presentation of certified or cashier’s check in the amount of \$50,000 for Champaign Property and \$5,000 for Paxton Property; and (4) an acknowledgment that the bidder has received, reviewed and understands this Terms of Sale, the Real Estate Purchase and Sale Agreement, and the Bidder’s Information Package and is capable of closing if announced as the successful bidder.

REMOTE BIDDING: Remote bidding via simultaneous digital transmission is available for participants that are unable to attend the Auction in person (“Remote Bidding”). In order to qualify for Remoted Bidding and be issued a remote bid number, a participant wanting to bid remotely must: (1) be pre-approved by Auctioneer; (2) deliver to the Auctioneer a signed blank Purchase and Sale Agreement no later than 48 hours before the Auction; and (3) wire \$50,000 (if bidding on the Champaign Property) or \$5,000 (if bidding on the Paxton Property) to the title company no later than 48 hours before the Auction (which shall be held in escrow at the title company pending outcome of the Auction).

REQUIREMENTS OF THE HIGH BIDDER: The High Bidder in the Auction for each parcel shall be required to: (1) upon conclusion of the auction, immediately tender a certified or cashier’s check in the amount of **\$50,000.00** for the Champaign Property and **\$5,000.00** for the Paxton Property (each, an “Initial Deposit”); (2) upon conclusion of the Auction for the relevant parcel, immediately execute the Real Estate Purchase and Sale Agreement for such parcel; (3) upon conclusion of the Auction, immediately execute the appropriate Illinois Agency Disclosure Forms and Property Disclosure Forms; and (4) within two (2) days following the conclusion of the Auction, increase the hard money deposit to twenty percent (20%) of the Purchase Price via wire transfer. In the event the High Bid for the relevant parcel meets or exceeds the Published Reserve Price, all such money deposits shall immediately become non-refundable with respect to that High Bid for the relevant parcel.

NON-REFUNDABLE MONEY DEPOSITS: All money deposits submitted by the High Bidder shall become immediately non-refundable. This sale is not subject to Purchaser obtaining financing, any contingencies, inspections or other reasons

except as expressly noted herein. If High Bidder fails to perform within the time limitations specified, any and all money deposits shall be forfeited as liquidated damages. For the avoidance of doubt, the failure of the High Bidder to increase the hard money deposit to twenty percent (20%) of the Purchase Price for the relevant parcel within two (2) days following conclusion of the Auction, shall result in High Bidder's forfeiture of the Initial Deposit for such parcel.

TITLE AND ESCROW INSTRUCTIONS: Title and Escrow services shall be provided by: Attorneys Title Guaranty Fund Contact: Donna Gagliardo Kogut; Phone: 312-752-1246; Email: DKogut@atgf.com (the "Title Company"). All money deposits shall be deposited with the Title Company. The total money deposit shall be increased to twenty percent (20%) of the Purchase Price via wire transfer within two (2) days of the Auction. Title and escrow fees and costs for sale of each parcel shall be split equally between the Seller and the Purchaser, with specific expense allocation set forth in the Real Estate Purchase and Sale Agreement (a copy of which is included in the Bidder Information Package).

CLOSING DATES: The Closing Date shall occur twenty-five (25) days after the Auction Date (unless otherwise agreed in writing by both Seller and Purchaser) at the office of the Title Company. At such time, Purchaser shall tender or have already tendered the balance of the Purchase Price. **TIME IS OF THE ESSENCE IN THIS TRANSACTION.**

BUYER'S PREMIUM: A Buyer's Premium in an amount equal to Eight Percent (8%) of the High Bid shall be paid by the Purchaser and added to the High Bid amount in order to calculate the Total Purchase Price for all parcels in the Auction. Purchaser acknowledges and accepts that such amount shall be added to the High Bid and such amounts shall be the responsibility of the Purchaser.

FINANCING: The Parcels offered at Auction are not subject to or contingent upon the Purchaser obtaining financing.

AGENCY DISCLOSURE: AWS Commercial, LLC d/b/a Colliers International, Guth and Associates, LLC, Jill Guth, and Mark Abood, Court-Appointed Disposition Agent/Auctioneer all represent the Seller in this transaction.

BUYER BROKER PARTICIPATION: A Buyer Broker meeting the following requirements is eligible to receive an amount equal to one percent (1%) of the High Bid Amount paid out of the Buyer's Premium by the Auctioneer upon Closing and receipt of all commissions by Auctioneer. To qualify, the Buyer Broker must: (1) be an active licensed Illinois Real Estate salesperson or broker in good standing; (2) register their client in writing via email to mark.abood@colliers.com no later than two (2) weeks before the Auction; (3) attend a scheduled open house or property inspection with his or her client; (4) attend the Auction with the client; and (5) the client must be the successful High Bidder and close on the sale of the relevant property. No Buyer Broker will be recognized for a Purchaser who has previously contacted or been contacted by the Seller, its agents or representatives or the Auctioneer. Referral fees will be paid out of the Buyer's Premium by the Auctioneer upon Closing and receipt of all commissions by Auctioneer. No referral fees will be paid by the Auctioneer, if the Buyer Broker, its agents, or a member of its immediate family is participating in the purchase of the property. An affidavit will be required certifying that the Buyer Broker is not participating in any way as a principal. No sub-agency shall be offered to any broker by Auctioneer. No oral registrations will be accepted. Buyer Brokers are hereby notified that the Seller has provided a dual commission arrangement for the sale of the Champaign Property and Paxton Property.

CONDUCT OF THE AUCTION: Neither Seller nor Auctioneer is permitted to bid at the Auction. Conduct of the Auction and increments of bidding are at the sole direction and discretion of the Auctioneer. Any announcements made from the podium on the day of the Auction shall supersede any printed material disseminated prior to the Auction. The Auction is open to registered bidders (in person and those participating in Remote Bidding) and Seller's invited guests. In the event of a dispute between bidders, the Auctioneer shall make the final decision to either accept the final bid, to re-offer/re-sell the relevant property, or to remove the relevant property from the Auction. If any disputes should arise following the Auction, the Auctioneer's records shall be conclusive.

AS-IS CONDITION – BINDING SALE. The property is being sold in its present condition with no warranties, whatsoever, except for title, which is to be clear and marketable. It is being sold "as is where is - in its present condition, with all faults." Each bidder is relying on his/her own independent inspection of the real estate for its physical conditions, character, and suitability and fitness for such ultimate purchaser's intended use and is not relying upon any representation of Sellers, Colliers International, AWS Commercial, LLC, Guth and Associates, LLC, Jill Guth, Mark Abood, or any of their agents, representatives, personnel or staff.

DISCLAIMER: THE INFORMATION CONTAINED HEREIN IS SUBJECT TO INDEPENDENT INSPECTION AND VERIFICATION BY ALL PARTIES RELYING ON IT. THIS SALE IS BEING CONDUCTED SUBJECT TO THESE TERMS OF SALE AND THE REAL ESTATE PURCHASE AND SALE AGREEMENT. NO LIABILITY FOR ITS INACCURACY, ERRORS OR OMISSIONS IS ASSUMED BY THE SELLERS OR BROKER/AUCTIONEER. ALL ACREAGE, SQUARE FOOTAGE, AND DIMENSIONS ARE APPROXIMATE. THIS OFFERING MAY BE WITHDRAWN, MODIFIED, OR CANCELED WITHOUT NOTICE AT ANY TIME. EACH PROPERTY IS SUBJECT TO PRIOR SALE. THIS IS NOT A SOLICITATION OR OFFERING TO RESIDENTS OF ANY STATE OR JURISDICTION WHERE PROHIBITED BY LAW.

ALL POTENTIAL PURCHASERS WHO BECOME BIDDERS AT THE AUCTION HAVE RECEIVED COPIES OF THESE TERMS OF SALE, HAD THEM ORALLY PRESENTED TO THEM ON AUCTION DAY, AND BY PLACING THEIR BIDS AGREE TO BE BOUND.

I CERTIFY THAT I HAVE READ THE CONTRACT, THE TERMS OF SALE, THE BIDDER INFORMATION PACKAGE, AND I HAVE INSPECTED THE PROPERTY THAT I AM BIDDING UPON AND I ACKNOWLEDGE THAT I AM BIDDING ON THE PROPERTY IN ITS "AS-IS, WHERE-IS, WITH ALL FAULTS" CONDITION. I ALSO WARRANT THAT I WILL ADHERE TO ALL AUCTIONEER INSTRUCTIONS AND REQUIREMENTS AND, IF THE HIGH BIDDER, I WILL CLOSE AS CONTRACTED.

ACKNOWLEDGED AND AGREED:

Signed _____ Date _____

Printed Name _____

Exhibit 2
(Form of Real Estate Purchase and Sale Agreement)

REAL ESTATE PURCHASE AND SALE AGREEMENT
15 EAST MAIN ST., CHAMPAIGN, IL 61820



1. **Parties:** NEWS-GAZETTE, INC. (f/k/a Professional Impressions Media Group, Inc. f/k/a Champaign News-Gazette, Inc.), an Illinois corporation (“Seller”), agrees to sell and convey to:

A. **Individual Purchaser:** _____

or

B. **Business Entity:** _____
State of formation: _____

(“Purchaser”) and Purchaser agrees to buy from Seller the Property (as defined in Section 2, (below) for the consideration and upon and subject to the terms, provisions, and conditions hereinafter set forth.

2. **Property:** 15 EAST MAIN STREET, CHAMPAIGN, IL 61820. A three-story, granite, masonry and glass office building totaling approximately 53,000+/- square feet (inclusive of a 15,000+/- square foot lower level), built circa 1912 and renovated in 1985, situated upon 0.89+/- acres of land in the City of Champaign, IL. Permanent Parcel Numbers: 422012428011, 012, 013, 014, 016, 017, 019 and 021 (Champaign County). The Champaign Property is zoned CB-2, Central Business Downtown (the “Property”). Deed Book and Page: _____

The Property with all improvements, equipment and fixtures thereon, owned by Seller and used in the ordinary operation of the property are to be included. Excluded items of personal property: “Newsboy” statue located on SE corner of the Property. Storage shed immediately adjacent to building.

3. **Purchase Price:**

Calculation of Purchase Price: (A + B = C)

A. High Bid or Offer Price \$ _____

B. Buyer’s Premium
(Equal to 8% of the High Bid
or Offer Price): \$ _____

C. Total “Purchase Price” (A+B) \$ _____
payable in U.S. dollars by Purchaser as follows:

(1) Initial Deposit. Simultaneously with the execution of this Agreement, Purchaser shall deposit the sum of **FIFTY THOUSAND DOLLARS (\$50,000.00)**, payable either by wire transfer or in the form of a cashier’s check drawn a FDIC-insured bank located within the continental 48 United States made payable to the order of Attorneys Title Guaranty Fund. Contact: Donna Gagliardo Kogut. Address: One South Wacker Drive, 24th Floor, Chicago, IL 60606. Phone: 312-752-1246. Email: DKogut@atgf.com, as Escrow Agent (“Escrow Agent”), the receipt of which shall be acknowledged.

(2) **Additional Money Deposit:** On or before 4 P.M. Eastern Time, _____, 2020, the Purchaser shall be required to make an Additional Money Deposit, the amount of which, taken together with the Initial Deposit, shall equal twenty percent (20%) of the Total Purchase Price. The Additional Money Deposit of \$ _____ shall be payable by wire transfer from a FDIC-insured bank located within the continental 48 United States to Escrow Agent. The aggregate of the Initial Deposit and Additional Money Deposit (collectively, the "Money Deposit") shall be held by the Escrow Agent in accordance with the terms hereof and deposited in a non-interest-bearing account. If the Closing occurs, the Money Deposit shall be paid to Seller and credited against the Purchase Price. If the Closing does not occur, the Money Deposit shall be payable to Seller and Broker as provided in their separate Auction Listing Agreement. The failure of Purchaser to timely deposit any required Money Deposit shall be deemed a default hereunder, without notice or opportunity to cure, as partial liquidated damages. This Agreement shall terminate and neither party shall have any further obligations to the other hereunder, except as otherwise provided herein.

(3) **Balance of the Purchase Price:** The Balance of the Purchase Price, plus or minus prorations and closing adjustments, if any, is due at the Closing of this transaction (as defined in Section 4 below) and must be paid by Purchaser by wire transfer from a FDIC-insured bank located within the continental 48 United States to Escrow Agent. In such event, Purchaser acknowledges and agrees that this is an all-cash purchase and sale and it is NOT contingent upon Purchaser obtaining financing even though Purchaser may apply to a lending institution of Purchaser's choice for a mortgage loan. Purchaser understands and agrees that neither its receipt of a commitment from such a lending institution, its acceptance of such a commitment, nor its satisfaction or failure to satisfy any condition set forth in such a commitment shall in any way be conditions to, or excuse the timely performance of, Purchaser's obligations under this Agreement.

4. **Closing:** The Closing of the sale (the "Closing") shall take place at the offices of the Escrow Agent on or before 12:00 noon EST, _____, 2020 (the "Closing Date"), unless such date is changed in writing by both Seller's and Purchaser's prior written consent, or as otherwise extended as may be herein provided.

A. At the Closing, Seller shall deliver to Purchaser, the following:

- (1) A duly executed and acknowledged Limited Warranty Deed conveying insurable title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, reservations and restrictions, except for those matters set forth in Exhibit "B" attached hereto ("Permitted Title Exceptions");
- (2) A Pro Forma Title Policy at closing and, subsequent to closing, an Owner's Policy of Title Insurance (the "Title Policy") issued by Attorneys Title Guaranty Fund, (the "Title Company") in the full amount of the Total Purchase Price, dated as of Closing, insuring Purchaser's fee simple title to the Property subject only to the Permitted Title Exceptions, the standard printed exceptions and additional exceptions contained in the usual form of Owner's Title Policy;
- (3) Internal Revenue Code Reporting requirements or disclosures, if any; and
- (4) All other documents including those that are customary and necessary to close this transaction.

B. At the Closing, Purchaser shall:

- (1) Pay the remaining cash portion of the Total Purchase Price including prorations and adjustments, if any;
- (2) If Purchaser is a corporation or a limited liability company, deliver to Seller:
 - (a) certified resolutions of the board of directors or members of Purchaser authorizing all the transactions contemplated by this Agreement;

(b) An incumbency certificate with respect to those officers of Purchaser executing any documents or instruments in connection with the transactions contemplated herein; and

(c) Certified copies of its charter, articles of organization, bylaws, and/or operating agreement, Certificate of Existence for the entity acquiring title from the Secretary of State or other appropriate governmental office of the state in which the Purchaser is organized.

(3) If the entity acquiring title is a partnership, deliver to Seller a certified copy of the partnership agreement and all appropriate resolutions, partnership consents and evidence of authority of said entity; and

(4) Execute all other documents that are customary and necessary to close this transaction.

5. **Possession:** The possession of the Property shall be delivered to Purchaser at Closing.

6. **Sales Expenses to Be Paid in Cash at Or Prior to Closing:**

A. **Seller's Expenses:** Cost of the title search; 1/2 of expense of Owner's Title Policy; 1/2 of any escrow fee; Cost of preparation of Deed; Stamp and Transfer Tax; Real Estate Brokerage fees pursuant to the written agreement between AWS Commercial, LLC d/b/a Colliers International, Mark Abood, Auctioneer and Seller and other expenses stipulated to be paid by Seller under provisions of this Agreement.

B. **Purchaser's Expenses:** All recording costs of the Deed, Mortgage and the collateral documents, 1/2 of expense of Owner's Title Policy, expense of an ALTA Mortgage Title Policy, if any; 1/2 of any escrow fee; and expenses stipulated to be paid by Purchaser under other provisions of this Agreement.

7. **Prorations and Adjustments:** The following shall be prorated and adjusted between Seller and Purchaser as of the time of Closing, except as otherwise expressly provided herein:

A. Electricity, telephone and other utility charges based, to the extent practicable, on final meter readings and/or final invoices.

B. Accrued and unpaid general real estate taxes for 2019 will be paid by Seller at Closing. Accrued general real estate taxes for 2020 shall be prorated as of the time of Closing based on 2019 real estate taxes and paid at Closing. Any personal property taxes relating to the Property will be the responsibility of Purchaser.

C. Any proceeds of insurance received by the Seller on account of damage to the Property occurring on or after the date of this Agreement and not applied as of the Closing Date on account of the cost of repair.

D. Such other items that are customarily prorated in transactions of this nature shall be prorated as of the time of Closing. Except as expressly provided herein, all prorations shall be final. The covenants and agreement set forth in the Section 7 shall survive the Closing.

8. **Seller's Title Default:** If Seller shall be unable to convey title to the Property at Closing subject to the Permitted Title Exceptions and otherwise in accordance with the title provisions of this Agreement ("Defect"), then Purchaser may elect to accept title as Seller conveys with a credit against monies payable at the Closing equal to the lesser of \$50,000 or the estimated cost to cure the unpermitted title exceptions. If Purchaser shall not so elect, this Agreement shall be terminated and the sole liability of Seller in the absence of fraud or deceit shall be to cause the refund of the Money Deposit and accrued interest thereon, if any, to Purchaser. Seller shall have thirty (30) days after receipt of written notice from Purchaser of the Defect to cure the Defect; however, Seller shall not be required to bring any action or proceeding or to incur any expense in excess of \$50,000 to cure any unpermitted title defect.

9. Default:

A. Purchaser's Default: Unless otherwise provided for herein, if Purchaser fails to comply with the terms and conditions hereof, Seller may terminate this Agreement, in which event the Money Deposit, that is, the Initial Deposit and the Additional Money Deposit plus accrued interest, if any, shall be due and payable to Seller and Broker as liquidated damages, it being agreed between Purchaser and Seller that such sum shall be liquidated damages for a default of Purchaser hereunder because of the difficulty, inconvenience, and uncertainty of ascertaining actual damages for such default. The limitation of damages set forth herein shall not apply to any indemnities, covenants or obligations of Purchaser which expressly survive either the termination of this Agreement or Closing, for which Seller shall be entitled to all rights and remedies available at law or in equity. Purchaser shall be liable for payment of both the Initial Deposit and Additional Money Deposit if not previously paid. In the event Seller engages an attorney to enforce the obligations of Purchaser to make the Initial Deposit and Additional Money Deposit, then Purchaser shall pay all attorneys' fees, costs and expenses relating to such enforcement, whether or not a lawsuit is commenced. This shall be Seller's sole remedy in the event of a Purchaser default. The foregoing provisions shall survive termination of this Agreement.

B. Seller's Default: If Seller defaults for any reason other than for a title defect as provided for in Section 8, above, Purchaser may elect to either (1) receive a refund of its Money Deposit plus accrued interest, if any, and terminate this Agreement, or (2) commence an action for specific performance for Seller's breach of this Agreement, which shall be Purchaser's sole and exclusive remedies. Any suit by Purchaser to enforce specific performance under this Agreement must be filed in the United States Bankruptcy Court for the District of Delaware on or before sixty (60) days after the proposed Closing Date or Purchaser's right to enforce specific performance under this Agreement shall be forever waived. Purchaser acknowledges and agrees that under no circumstances except Seller's fraud or deceit, shall Seller be liable to Purchaser for any damages, consequential, actual, punitive, speculative, or otherwise.

10. Escrow: The Money Deposit shall be deposited with Escrow Agent with the understanding that the Escrow Agent: (A) does not assume or have any liability for performance or nonperformance of any party; and (B) has the right to request a written release of liability of the Escrow Agent, except for negligence or fraud. At the Closing, any Money Deposits and accrued interest, if any, shall be applied to the Total Purchase Price as set forth on the settlement statement. Any distribution of the Money Deposits under this Agreement pursuant to a Purchaser default shall be paid directly to Broker and Seller as set forth in their separate Auction Listing Agreement.

11. No Right to Cure: Purchaser and Seller hereby agree that in the event Seller notifies Escrow Agent that Purchaser has breached this Agreement by reason of Purchaser's failure to timely deposit any Money Deposits or to timely close the transaction or for any other reason as set forth in this Agreement and that Seller has thereby elected to declare Purchaser's Money Deposit forfeited, the Escrow Agent shall notify the Purchaser as to the same and Escrow Agent is hereby authorized (without further approval or action) by Purchaser and Seller to remit the Money Deposit and any accrued interest to Seller and Broker. Purchaser and Seller hereby agree to indemnify, save harmless and agree to defend Escrow Agent from and against any claims, demand, costs or damages (including reasonable attorney's fees) incurred by Escrow Agent and arising from or out of or with respect to Escrow Agent's complying with such demand by Seller, except for any negligence or fraud committed by Escrow Agent.

12. "AS IS, WHERE IS" SALE. Limited Representations and Warranties of Seller:

A. This Agreement and the Closing of the Sale are subject in all respects to the Order of the United States Bankruptcy Court for the District of Delaware, Case No. 19-11901, which is attached hereto as Exhibit C.

SELLER DISCLOSES TO PURCHASER, AND PURCHASER UNDERSTANDS AND ACKNOWLEDGES, THAT THE SELLER (INCLUDING THE BANKRUPTCY TRUSTEE AND SELLER'S OFFICERS, MANAGERS, DIRECTORS, EMPLOYEES, PARENT ENTITIES, SUBSIDIARIES AND/OR AFFILIATES; SELLER AND SUCH PARTIES BEING REFERRED TO HEREIN AS THE "SELLER ENTITIES") MAY NOT HAVE COMPLETE KNOWLEDGE OF THE PHYSICAL OR ECONOMIC CHARACTERISTICS OF THE PROPERTY BEING SOLD PURSUANT HERETO. ACCORDINGLY, SELLER, FOR AND ON BEHALF OF ITSELF, THE SELLER ENTITIES, BROKER AND AUCTIONEER, HEREBY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, OR CONCERNING: (A) THE CONDITION OR STATE OF REPAIR OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY CONDITION ARISING IN CONNECTION WITH THE GENERATION, USE, TRANSPORTATION, STORAGE, RELEASE, OR DISPOSAL OF PETROLEUM PRODUCTS, TOXIC OR HAZARDOUS SUBSTANCES, ON AND UNDER, ABOVE, UPON, OR IN THE VICINITY OF THE PROPERTY, AND ITS IMPACT ON WATER, SOIL AND GEOLOGY; (B) THE SUITABILITY OF THE PROPERTY AND ITS WATER, SOIL AND GEOLOGY FOR ANY ACTIVITIES AND USE THAT THE PURCHASER MAY ELECT TO CONDUCT; (C) THE EXTENT OF ANY RIGHT OF WAY, LEASE, POSSESSION, LIEN, ENCUMBRANCE, EASEMENT, LICENSE, RESERVATION, OR CONDITION IN CONNECTION WITH THE PROPERTY (EXCEPT AS OTHERWISE PROVIDED HEREIN); (D) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE LAWS, ORDINANCES, OR REGULATIONS OF ANY GOVERNMENT OR OTHER BODY, INCLUDING WITHOUT LIMITATION, COMPLIANCE WITH ANY LAND USE, AMERICANS WITH DISABILITIES ACT, WETLAND, OR ZONING LAW OR REGULATION, OR APPLICABLE ENVIRONMENTAL OR COASTAL LAWS, RULES, ORDINANCES, AND REGULATIONS; (E) THE BOUNDARIES OF THE PROPERTY; AND (F) THE PHYSICAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE STRUCTURAL, MECHANICAL AND ENGINEERING CHARACTERISTICS OF THE IMPROVEMENTS TO THE PROPERTY.

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SALE OF THE PROPERTY SHALL BE ON AN "AS IS, WHERE IS, WITH ALL FAULTS," BASIS, AND PURCHASER EXPRESSLY AGREES THAT THE SELLER, ON BEHALF OF ITSELF AND OF THE SELLER ENTITIES, MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PROPERTY. PURCHASER SHALL BUY THE PROPERTY BASED ON ITS OWN INVESTIGATIONS, AND, BY ACCEPTING TITLE TO ALL OR PART OF THE PROPERTY, ACKNOWLEDGES THAT IT HAS CONDUCTED SUCH INVESTIGATION AS IT HAS DEEMED NECESSARY OR ADVISABLE AND THAT PURCHASER IS NOT RELYING UPON ANY REPRESENTATIONS OF SELLER, ANY BROKER, AUCTIONEER, OR ANY OF THEIR AGENTS WHATSOEVER.

Purchaser has or will independently investigate and verify to Purchaser's satisfaction the extent of any limitations or permitted uses of the Property. Purchaser acknowledges that the current use of the Property or the improvements located on the Property (or both) may not conform to applicable federal, state or municipal laws, ordinances, codes or regulations. Zoning, permitted uses, height limitations, setback requirements, minimum parking requirements, limitations on coverage of improvements to total area of land, requirements of the Americans with Disabilities Act, wetlands restrictions and other matters may have a significant economic impact upon the intended use of the Property by Purchaser. Purchaser is not relying upon any warranties or representations of Seller, Seller Entities, Brokers or

Auctioneer, concerning the permitted uses of the Property or with respect to any conformance or nonconformance of the Property.

It is expressly agreed by Purchaser, as a material consideration for the execution of this Agreement by Seller, that this Agreement is the entire agreement of the parties and that neither Seller, nor any Broker, Auctioneer, agent, attorney, employee, or representative of Seller has made any representation whatsoever regarding the Property, including, without limiting the generality of the foregoing representations as to the physical nature or condition of the Property, except as expressly set forth herein.

13. Representation, Warranties and Covenants of Purchaser: Purchaser represents, warrants and covenants to Seller as follows:

- A. Purchaser has performed a physical inspection and examination of the Property, the systems, all marketing materials, the Terms of Sale, the Due Diligence Package, this Agreement, the title documentation, and has performed other such reasonable research on the Property and is fully satisfied with results of such inspections and wishes to proceed to purchase the Property.
- B. Purchaser participated in the auction process knowingly and with a full understanding of the program, the bidding process, the terms of sale, the responsibilities and obligations required of a successful bidder and is satisfied with the outcome of the auction.
- C. Purchaser accepts the provisions of this Agreement, including its Section 12, and is purchasing the Property in its "AS IS, WHERE IS" Condition "WITH ALL FAULTS" with no representations by Seller as to merchantability, suitability or fitness for any particular use, it being understood and agreed that Purchaser is relying solely on its own inspections, engineering studies and reports, economic feasibility studies and examinations of the Property and Purchaser's own determination of the condition of the Property.
- D. Purchaser has all requisite power and authority to consummate the transaction contemplated by this Agreement and has by proper proceedings duly authorized the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby.
- E. This Agreement when executed and delivered by Purchaser and Seller, will constitute the valid and binding agreement of Purchaser enforceable against Purchaser in accordance with its terms.
- F. To Purchaser's knowledge, neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby will violate or be in conflict with (i) any applicable provision of law, (ii) any order of any court or government agency having jurisdiction over the Purchaser, or (iii) any agreement or instrument to which Purchaser is a party or which Purchaser is bound.
- G. Other than the Seller's pending chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Delaware, Case No. 19-11901, there are no actions, suits, claims or other proceedings pending, or to the best of Purchaser's knowledge, contemplated or threatened against Purchaser that could affect Purchaser's ability to perform its obligation under this Agreement.
- H. Purchaser has sufficient funds available to consummate the Closing of the transaction described in this Agreement.
- I. This is an arm's length transaction and the Purchaser is not related in any way to the Seller or any other debtor in the Seller's pending chapter 11 bankruptcy case.

14. Condition of And Damage to Property: The Property shall remain at the risk of the Seller until the Closing Date. After transfer of record title to the Premises to Purchaser, the risk of loss shall be and is assumed by the Purchaser. There shall be no proration of insurance; it shall be the obligation of Purchaser to procure Purchaser's own policies of all risk property insurance and commercial general liability insurance to be effective from and after Closing.

15. **Broker's Commission:** Seller shall cause to be paid a broker's commission and fees to Mark S. Abood, Court Appointed Disposition Agent, AWS Commercial, LLC d/b/a Colliers International (collectively hereinafter referred to as "Seller's Broker") as set forth in a separate agreement, and a commission to _____ (hereinafter referred to as "Buyer's Broker") in an amount equal to one percent (1.0%) of the High Bid Amount (such fees and commissions to Seller's Broker and Buyer's Broker are hereinafter referred to as the "Brokerage Fees"). Seller and Purchaser agree that all Brokerage Fees accrue, become due and payable shall be paid at Closing and only if the purchase and sale transaction contemplated by this Agreement closes. This paragraph and disbursement instructions may not be amended or revoked without the prior written consent of Seller's Broker. Seller and Purchaser hereto agree to indemnify the other party and all those parties claiming through them from and against claims by any other broker other than Seller's Broker or Buyer's Broker, if any, with whom the indemnifying party may have dealt. The provisions of this paragraph shall survive the Closing.
16. **Agency Disclosure:** Seller's Broker and their sales agents and representatives ("Listing Company") represents Seller. The Listing Company owes duties of trust, loyalty and confidence to Seller only. While the Listing Company has a duty to treat Purchaser honestly, the Listing Company is Seller's agent and is acting on behalf of Seller and not Purchaser. Any cooperating broker properly identified will be recognized as a Buyer's Broker. No Broker or Auctioneer named herein is an expert in construction, engineering or environmental matters. No Broker, Auctioneer or salesperson has made any (and will not make any) representations or warranties nor will they conduct or have conducted investigations of the environmental condition or the suitability of the Property or any adjacent property, including but not limited to any conditions listed herein above or below.
17. **Consult Your Attorney:** THIS IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY. NO REPRESENTATION OR RECOMMENDATION IS MADE BY SELLER, SELLER'S BROKER, AUCTIONEER OR THEIR AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS DOCUMENT OR THE TRANSACTION RELATING THERETO. THESE ARE QUESTIONS FOR YOUR ATTORNEY. CONSULT YOUR ATTORNEY BEFORE SIGNING. NEITHER THE SELLER, THE SELLER'S BROKER, NOR THE AUCTIONEER CAN GIVE YOU ANY LEGAL ADVICE.
18. **Disclaimer:**
- A. EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO OR CONCERNING THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY ELECT TO CONDUCT THEREON.
- B. PURCHASER ACKNOWLEDGES THAT IT HAS BEEN GIVEN AN UNIMPEDED OPPORTUNITY TO INSPECT THE PROPERTY, IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND FINANCIAL ANALYSIS OF THE REVENUE AND EXPENSES THAT MAY BE RECEIVED OR INCURRED IN ARRIVING AT ITS DECISION TO PURCHASE THE PROPERTY, AND THAT PURCHASER IS PURCHASING THE PROPERTY IN ITS PRESENT CONDITION, "AS IS, WHERE IS, AND WITH ALL FAULTS" AND SELLER HAS NO OBLIGATION TO CONSTRUCT ANY IMPROVEMENTS THEREON, OR TO PERFORM ANY OTHER ACT REGARDING THE PROPERTY.
- C. ANY FACTUAL INFORMATION SUCH AS PROPERTY DIMENSIONS, SQUARE FOOTAGE, OR SKETCHES SHOWN TO PURCHASER OR SET FORTH HEREIN ARE OR MAY BE APPROXIMATE AND PURCHASER REPRESENTS TO SELLER THAT THEY HAVE

INSPECTED AND VERIFIED THE FACTS AND INFORMATION PRIOR TO THE EXECUTION OF THIS AGREEMENT. NO LIABILITY FOR ANY INACCURACIES, ERRORS OR OMISSIONS IS ASSUMED BY THE SELLER, THE SELLER'S BROKER, AUCTIONEER OR OTHER RESPECTIVE AGENTS.

D. THE SELLER, THE REAL ESTATE SALESPERSONS, SELLER'S BROKER, AUCTIONEER, AND ALL OF THEIR AGENTS AND REPRESENTATIVES IN THIS TRANSACTION HAVE NO EXPERTISE WITH RESPECT TO ENVIRONMENTAL MATTERS. PROPER INSPECTIONS OF THE PROPERTY BY QUALIFIED EXPERTS ARE AN ABSOLUTE NECESSITY TO DETERMINE WHETHER OR NOT THERE ARE ANY CURRENT OR POTENTIAL ENVIRONMENTAL CONCERNS RELATING TO THE PROPERTY. THE SELLER, THE REAL ESTATE SALESPERSONS, SELLER'S BROKER, AUCTIONEER, AND ALL OF THEIR AGENTS AND REPRESENTATIVES IN THIS TRANSACTION HAVE NOT MADE, NOR WILL THEY MAKE, ANY REPRESENTATION, EITHER EXPRESSED OR IMPLIED, REGARDING THE EXISTENCE OR NON-EXISTENCE OF ANY SUCH ENVIRONMENTAL CONCERNS IN OR ON THE PROPERTY. PROBLEMS INVOLVING ENVIRONMENTAL CONCERNS CAN BE EXTREMELY COSTLY TO CORRECT. IT IS THE RESPONSIBILITY OF PURCHASER TO RETAIN QUALIFIED EXPERTS TO DEAL WITH THE DETECTION AND CORRECTION OF SUCH MATTERS.

E. ANY MATERIALS, REPORTS, STUDIES OR OTHER ITEMS FURNISHED BY SELLER, OR ON SELLER'S BEHALF, WHETHER OR NOT REQUIRED BY THE TERMS OF THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO THE COMMITMENT AND THE REPORTS) ARE WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, BY SELLER AS TO THE TRUTH, ACCURACY AND COMPLETENESS THEREOF, AND ANY RELIANCE THEREON BY THE PURCHASER SHALL BE AT PURCHASER'S OWN RISK, WITHOUT ANY RECOURSE AGAINST SELLER AND SUBJECT TO PURCHASER'S INDEPENDENT EXAMINATION.

19. **RELEASE:** PURCHASER RELEASES AND FOREVER DISCHARGES SELLER, AUCTIONEER, ALL BROKERS, THEIR LICENSEES, EMPLOYEES AND ANY AGENT, OFFICER OR PARTNER OF ANY ONE OF THEM AND ANY OTHER PERSON, FIRM OR CORPORATION WHO MAY BE LIABLE BY OR THROUGH THEM, FROM ANY AND ALL CLAIMS, LOSSES OR DEMANDS, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY AND PROPERTY DAMAGE AND ALL OF THE CONSEQUENCES THEREOF, WHETHER KNOWN OR NOT, WHICH MAY ARISE FROM THE PRESENCE OF TERMITES OR OTHER WOOD-BORING INSECTS, RADON, LEAD-BASED PAINT HAZARDS, MOLD, FUNGI OR INDOOR AIR QUALITY, ENVIRONMENTAL HAZARDS, ANY DEFECTS IN THE INDIVIDUAL ON-LOT SEWAGE DISPOSAL SYSTEM OR DEFICIENCIES IN THE ON-SITE WATER SERVICE SYSTEM, OR ANY DEFECTS OR CONDITIONS ON THE PROPERTY. SHOULD SELLER BE IN DEFAULT UNDER THE TERMS OF THIS AGREEMENT, OR IN VIOLATION OF ANY SELLER DISCLOSURE LAW OR REGULATION, THIS RELEASE DOES NOT DEPRIVE PURCHASER OF ANY RIGHT TO PURSUE ANY REMEDIES THAT MAY BE AVAILABLE UNDER LAW OR EQUITY. THIS RELEASE SHALL SURVIVE CLOSING OR TERMINATION OF THIS AGREEMENT.

20. **Notices:** All notices, elections, consents, demands, and communications (collectively called "Notices" or individually called "Notice") shall be in writing and delivered (i) personally; (ii) by registered or certified mail return receipt requested, postage prepaid; (iii) by express mail; (iv) by courier; (v) by facsimile; or (vi) by electronic mail, and, if sent by hard copy to Purchaser, addressed to Purchaser at Purchaser's address and, if sent by hard copy to the Seller, addressed to the Seller at Seller's address each stated on the signature page of this Agreement. Copies of Notices shall also be sent to the Attorneys for the respective parties, if identified on the signature page. Either party may, by written notice to the other, change the address to which notices are to be sent. Unless otherwise provided herein, all Notices shall be deemed given when (a) personal delivery is effectuated or when deposited in any branch, station or depository maintained by the U.S. Postal Service or the express mail service within

the United States of America, except that a Notice of a change of address shall be deemed given when actually received; or (b) when the facsimile or electronic mail is transmitted. Seller's affidavit of the date and time of deposit in a mailbox or with the express mail service or the postmark or the courier, whichever is earlier shall constitute evidence of the effective date when the Notice has been given.

21. **Cooperation in A Tax Deferred Exchange:** Purchaser and Seller herein reserve the right to consummate this transaction as part of a deferred exchange of like kind property as provided by Section 1031 of the Internal Revenue Code but in all events Seller would receive cash at Closing. Both Purchaser and Seller agree to cooperate with each other in this regard at or prior to Closing and execute necessary documents as appropriate provided that the non-exchanging party shall have no liability in connection with the executing of such exchange documents. Should there be any additional costs associated with this deferred exchange they will be borne solely by the party effectuating the exchange. Seller reserves the right to have all documents relative to the exchange reviewed and approved by its attorney at Purchaser's sole cost and expense which cost and expense shall be reasonable and customary. Purchaser hereby indemnifies and holds Seller harmless in connection with any matter concerning or arising out of such exchange or deferred exchange which indemnification shall survive the Closing.
22. **No Recording:** Neither this Agreement nor any type of memorandum thereof shall be recorded with the Office of the Recorder of Deeds of the County where the Property is located or with any other governmental agency. Any purported recordation or filing of this Agreement or a memorandum hereof by or on behalf of Purchaser shall constitute a default on the part of Purchaser entitling Seller to exercise any and all rights and remedies granted to Seller hereunder or otherwise at law or in equity, and Purchaser shall immediately record in the Office of the Recorder of Deeds of the County where the Property is located or with any other governmental agency a release of this Agreement or any such memorandum hereof.
23. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all prior understandings and agreements. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties, including the Seller's Broker or Auctioneer, relating to the subject matter contained in this Agreement which is not fully expressed or referred to herein.
24. **Successors and Assigns:** The provisions of this Agreement shall bind and inure to the benefit of Purchaser and its heirs, legal representatives, successors and permitted assigns and shall bind and inure to the benefit of the Seller and its successors and assigns. This Agreement may not be assigned by Purchaser without the prior written consent of Seller; provided, however, that in no event shall Purchaser be relieved of any of its obligations or liabilities hereunder as a result of or subsequent to any such assignment.
25. **Joint Purchasers:** The term "Purchaser" shall be read as "Purchasers" if more than one person is the Purchaser of the Property, in which case their obligations and liabilities shall be joint and several.
26. **Further Assurances:** Either party shall execute, acknowledge and deliver to the other party such instruments and take such other actions, in addition to the instruments and actions specifically provided for herein at any time and from time to time after execution of this Agreement whether before or after the Closing, as such other party or Escrow Agent may reasonably request in order to effectuate the provisions of this Agreement or the transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to this transaction, provided that neither party shall be required to incur any material expense in connection therewith.

27. **Severability:** If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under any circumstances, the remainder of this Agreement and the applicability of any such clause or provision to other persons or circumstances shall not be affected thereby. All other clauses and provisions of this Agreement, not found invalid or unenforceable, shall be and remain valid and enforceable.
28. **Time:** Time is of the essence in the performance of this Agreement.
29. **Strict Compliance / Waiver:** Any failure by either party to insist upon strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, irrespective of the number of violations or breaches that may occur, and each party, notwithstanding any such failure, shall have the right thereafter to insist upon strict performance by the other of any and all of the provisions of this Agreement.
30. **Governing Law:** The provisions of this Agreement and all questions with respect to the construction and enforcement thereof and the rights and liabilities of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Illinois and the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. All parties shall comply with the Real Estate Settlement Procedures Act of 1974, as amended and the Tax Reform Act of 1986, if applicable.
31. **Waiver of Jury Trial:** Except as prohibited by law, the parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, connected with, or relating to the Agreement or the relationship created hereby.
32. **Attorney's Fees:** In any legal proceeding against the Purchaser to enforce this Agreement or the transaction contemplated hereby, Seller shall be entitled to recover court costs and reasonable attorneys' fees and related expenses.
33. **Gender:** A reference in this Agreement to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context requires otherwise.
34. **Certain References:** The term "herein," "hereof," or "hereunder" or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used. Unless otherwise stated, all references herein to sections, subsections or other provisions are references to sections, subsections or other provisions of this Agreement.
35. **Captions:** The captions in this Agreement are for convenience and reference only and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.
36. **No Oral Changes:** This Agreement cannot be changed or any provision hereof waived orally. ANY CHANGES OR ADDITIONAL PROVISIONS OR WAIVERS MUST BE SET FORTH IN A RIDER ATTACHED HERETO OR IN A SEPARATE WRITTEN AGREEMENT SIGNED BY THE PARTIES.
37. **Exhibits:** All Exhibits described herein and attached hereto are incorporated herein by this reference for all purposes.
38. **Date of Performance:** If any date for performance hereunder falls on a Saturday, Sunday or other day which is a holiday under Federal law or under the State law where the Property is located, the date for such performance shall be the next succeeding day which is not a Saturday, Sunday or legal holiday.
39. **Counterparts:** This Agreement may be executed in multiple counterparts all of which when taken together shall constitute one Agreement.

40. **Counterpart Digital Means Execution:** For purposes of executing this Agreement, a document signed and transmitted by digital means shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any digital document shall be re-executed by both parties in original form. No party hereto may raise the use of a digital means or the fact that any signature was transmitted through the use of digital means as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section 40. This Section 40 does not supersede the requirements of the "Notices" section.

41. **Irrevocable Offer:** Purchaser acknowledges that this Agreement is executed and delivered by Purchaser pursuant to an open outcry auction conducted on behalf of Seller. In consideration of the following: (a) preserving the integrity of the auction process and assuring that all offers are made in conformity therewith and in reliance thereon; (b) the monies spent by Seller to arrange for the auction; (c) the opportunity of the Purchaser to bid for the Property; (d) the promise by the Seller to sell the Property to Purchaser and (e) for other good and valuable consideration, the receipt and adequacy of which are expressly acknowledged by Purchaser, including the mutual promises made by each party, this Agreement constitutes an irrevocable offer to purchase by Purchaser in accordance with this Agreement which cannot be revoked by Purchaser prior to 4:00 P.M. Eastern Time on _____, 2020 ("Irrevocable Deadline").

IN WITNESS HEREOF, PURCHASER AND SELLER AGREE THAT THE DATE OF THIS AGREEMENT SHALL BE THE DATE THE SELLER EXECUTES THIS AGREEMENT.

Purchaser: *(Execute applicable Section A or B)*

A. Individual Purchaser:

(Sign Name)

(Print Name)

B. Business Entity Purchaser:

(Print Entity Name)

a _____
(State of Formation) *(Type of Entity)*

BY: _____
(Signed)

(Printed Name and Title)

Purchaser's Address: _____

Email: _____

Purchaser's Phone: _____

Taxpayer I.D./SSN: _____

Date Purchaser Executes This Agreement: _____

Purchaser's Attorney: _____

Attorney's Address: _____

Phone: _____ Email: _____

Seller: NEWS-GAZETTE, INC,

BY: _____

(Signed)

JOHN REED, PRESIDENT

(Printed Name and Title)

Seller's Address: _____

PHONE: _____ ; EMAIL: _____

With a copy to Seller's Attorney: _____

Seller Executes This Agreement: _____ ("Date of Contract").

Auctioneer Corporate Headquarters: Mark Abood Court Appointed Auctioneer, 2787 Francena Court, Brunswick, OH 44212. Phone: 216.338.1091. Mark.Abood@colliers.com.

Broker Corporate Headquarters: AWS Commercial, LLC d/b/a Colliers International – 200 Public Square, Suite 1200, Cleveland, OH 44114; 216-239-5121. Mark.abood@colliers.com. In cooperation with: Guth and Associates, LLC – 2500 Galen Drive, Suite 104, Champaign, IL 61821. Phone: 217-778-8305. Email: jill.guth@outlook.com.

LIST OF EXHIBITS:

Exhibit A: Legal Description

Exhibit B: Permitted Title Exceptions

Exhibit C: Bankruptcy Court Order Approving Auction and Sale

EXHIBIT A

Legal Description

EXHIBIT B

Permitted Title Exceptions

Exhibit C

Bankruptcy Court Order Approving Auction and Sale

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

In re:

THE NEWS-GAZETTE, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11901 (KBO)

(Jointly Administered)

Hearing Date: June 25, 2020 at 1:00 p.m. (ET)

Objection Deadline: June 5, 2020 at 4:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT:

On May 15, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed with the Court the *Debtors’ Motion for an Order (A) Approving Auction Procedures with Respect to the Sale of Certain Real Property; (B) Approving Form of Asset Purchase Agreement; (C) Authorizing the Sale of Such Real Property Through Public Auction; and (D) Granting Related Relief* (the “Motion”). By the Motion, the Debtors seek, *inter alia*, to conduct a sale by auction of (i) the real property located at 15 East Main Street, Champaign, IL 61820 and (ii) the real property located at 208 North Market Street, Paxton, IL 60957.

Objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **June 5, 2020 at 4:00 p.m. (ET)**.

At the same time, you must also serve a copy of the objection upon the undersigned counsel so as to be **received no later than 4:00 p.m. (ET) on June 5, 2020**.

A HEARING ON THE MOTION, IF REQUIRED, WILL BE HELD ON **JUNE 25, 2020 AT 1:00 P.M.** BEFORE THE HONORABLE KAREN B. OWENS, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM 3, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: The News-Gazette, Inc. (0894) and D.W.S., Inc. (7985). The Debtors’ headquarters are located at 15 East Main Street, Champaign, Illinois 61820.

UNLESS AN OBJECTION IS TIMELY FILED AND SERVED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE COURT, AND THE COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

Dated: May 15, 2020
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE LLP

/s/ Mark D. Olivere

William E. Chipman, Jr. (No. 3818)
Mark D. Olivere (No. 4291)
Hercules Plaza
1313 North Market Street, Suite 5400
Wilmington, Delaware 19801
Telephone: (302) 295-0191
Facsimile: (302) 295-0199
chipman@chipmanbrown.com
olivere@chipmanbrown.com

- and -

MCDONALD HOPKINS LLC
Nicholas M. Miller (Admitted *Pro Hac Vice*)
300 North LaSalle Street, Suite 1400
Chicago, Illinois 60654
Telephone: (312) 280-0111
nmiller@mcdonalhopkins.com

*Co-Counsel to the Debtors
and Debtors in Possession*