

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

THE NEWS-GAZETTE, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-11901 (KBO)

(Jointly Administered)

Related Docket Nos. 15, 18, ~~41~~ and 42, and 65

**ORDER (A) ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF ALL, OR SUBSTANTIALLY ALL, OF THE DEBTORS' ASSETS; (B) APPROVING BID PROTECTIONS; (C) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING FORM AND MANNER OF THE SALE, CURE AND OTHER NOTICES; AND (E) SCHEDULING AN AUCTION AND A HEARING TO CONSIDER THE APPROVAL OF THE SALE**

Upon the motion (“**Motion**”)<sup>2</sup> of the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**” or the “**Company**”) pursuant to sections 105, 363, 364, 365 and 503 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**,” and collectively, the “**Bankruptcy Rules**”), for (I) an order (the “**Bidding Procedures Order**”) (A) approving the Debtors’ proposed auction (the “**Auction**”) and the bidding procedures (as the same may be amended, supplemented, or otherwise modified from time to time, the “**Bidding Procedures**”) to be employed in connection with the proposed sale (the “**Sale**”) of all, or substantially all, of the Debtors’ assets (the “**Assets**”); (B) approving bid protections; (C) establishing procedures for the

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.

assumption and assignment of executory contracts and unexpired leases; (D) approving the form and manner of notice of the Sale, the notice of assumption and assignment of executory contracts and unexpired leases, including the form and manner of notice of proposed cure amounts (the “Cure Notice”) and the other notices set forth herein; and (E) scheduling the Auction and a hearing before the court (the “Sale Hearing”) to consider approval of the Sale (collectively, (I) (A) through (E) above, the “Bidding Procedures Relief”); and (II) an order (the “Sale Order”) authorizing (A) the Sale of the Assets to the bidder(s) with the highest or otherwise best bid(s) (the “Successful Bidder”) free and clear of all claims, liens, interests and encumbrances as provided therein; and (B) the Debtors’ assumption and assignment of the applicable executory contracts and/or unexpired leases to the Successful Bidders; and (III) certain related relief; and the Court having considered that portion of the Motion seeking the Bidding Procedures Relief, ~~and the arguments of counsel made and the evidence adduced, at the hearing held on that portion of the Motion (the “Bidding Procedures Hearing”);~~ and due and sufficient notice of the ~~Bidding Procedures Hearing~~ <sup>hearing on the Bidding Procedures Relief (the “Bidding Procedures Hearing”)</sup> and the relief sought therein having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the Bidding Procedures Relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby:

**FOUND, CONCLUDED AND DETERMINED THAT:<sup>3</sup>**

A. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion

<sup>3</sup> The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. 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.

and the Declaration of Philip Murray in Support of Sale Motion [D.I. 65] filed on September 17, 2019 - 2 -



in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363, 364, 365, 503 and Bankruptcy Rules 2002, 6004, 6006 and 9014.

B. The relief granted herein is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

C. The Debtors have articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures, the Assumption and Assignment Procedures, the form and manner of the Sale Notice, the Cure Notice and the other notices of the Motion, the Auction and the Sale Hearing as set forth herein, (ii) set the date for the Auction, the Sale Hearing, and the other dates set forth herein and (iii) grant the relief requested in the Motion as provided herein.

D. Due, sufficient and adequate notice of the Bidding Procedures Hearing and the relief granted in this Order has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required. The Debtors' notice of the Motion and the relief requested in the Motion for which approval was sought at the Bidding Procedures Hearing is appropriate and reasonably calculated to provide all interested parties with timely and proper notice under Bankruptcy Rules 2002, 4001, 6004 and 6006, and no other or further notice of, or hearing on, this Bidding Procedures Order and that portion of the Motion being approved hereby is required.

E. The Debtors' Sale Notice, Cure Notice and other notices with respect to the Sale, the Auction, the assumption and assignment procedures set forth in section E of the Motion (the "**Assumption and Assignment Procedures**"), and the Sale Hearing are appropriate and reasonably calculated to provide all interested parties with timely and proper notice thereof and no further notice of each is necessary or required.

F. The Bidding Procedures, substantially in the form attached as Exhibit A, and incorporated herein by reference as if fully set forth herein, are fair, reasonable and appropriate, were negotiated in good faith and represent the best method for maximizing the value of the Debtors' estates in connection with the Sale.

G. The Bid Protections, to the extent payable under the Stalking Horse APA and the terms and restrictions of this Order, shall be deemed (i) an actual and necessary cost of preserving the Debtors' estates within the meaning of Bankruptcy Code section 503(b), (ii) of substantial benefit to the Debtors' estates, and (iii) reasonable and appropriate in light of the size and nature of the transactions.

H. The Assumption and Assignment Procedures are reasonable and appropriate.

I. Champaign Multimedia Group, LLC (the "**Stalking Horse Bidder**") has submitted a bid (the "**Stalking Horse Bid**") to purchase substantially all of the Purchased Assets under the terms and conditions of that certain asset purchase agreement by and between the Stalking Horse Bidder and the Debtors (the "**Stalking Horse APA**").

J. The Stalking Horse APA and the protections being afforded the Stalking Horse Bidder are reasonably designed to maximize the value to be achieved for the Purchased Assets in connection with the Bid Procedures. As such, the Bid Protections (defined below) and the Bid Procedures, (1) are reasonable and appropriate under the circumstances, (2) confer a benefit to the Debtors' estates, and (3) are supported by, and constitute a proper exercise of, the Debtors' sound business judgment.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Those portions of the Motion seeking approval of the Bidding Procedures Relief are GRANTED, as set forth herein.



2. Any objection to the portions of the Motion seeking approval of the Bidding Procedures Relief or any other relief granted in this Order, to the extent not resolved, waived or withdrawn, and all reservations of rights included therein, is hereby overruled and denied on the merits.

**I. THE STALKING HORSE BIDDER.**

3. The Stalking Horse Bidder is approved as the stalking horse bidder for the purchase of the Purchased Assets, on the terms and conditions of the Stalking Horse APA, subject to: (i) higher and better bids under the terms of the Bid Procedures; (ii) approval by this Court after proper notice and hearing.

4. The Stalking Horse APA is hereby approved as the Form APA (the “**Form APA**”) for purposes of submitting a Qualifying Bid and is appropriate and reasonably calculated to enable the Debtors and other parties in interest to easily compare and contrast the differing terms of the Bids presented at the Auction.

**II. BID PROTECTIONS FOR THE STALKING HORSE BIDDER.**

5. The following bid protections (“**Bid Protections**”) shall govern the conduct of the sale of the Debtor’s Assets:

- (a) To reimburse the Stalking Horse Bidder in connection with the proposed sale and serving as the Stalking Horse Bidder, in the event that the Successful Bidder (as that term is defined in the Bid Procedures) is not the Stalking Horse Bidder and the sale of the Purchased Assets to a Successful Bidder, other than the Stalking Horse Bidder, closes, then the Stalking Horse Bidder shall be entitled to an expense reimbursement the (the “**Expense Reimbursement Fee**”) as an allowable administrative expense under Section 503(b) of the Bankruptcy Code and shall be paid at the closing of a sale to a Successful Bidder who is not the Stalking Horse Bidder;
- (b) Notwithstanding anything in the Stalking Horse APA to the contrary, the Expense Reimbursement Fee shall be limited to the aggregate amount equal to the reasonable and documented out-of-pocket costs, fees, and expenses of the Stalking Horse Bidder (including legal, accounting, and other consulting fees and expenses, other than any success or similar fees payable to any

financial advisors, consultants or other Persons) incurred in connection with the transactions contemplated to occur pursuant to the Stalking Horse APA, including, without limitation, (a) the negotiation and execution of the Stalking Horse APA, and (b) carrying out its obligations under the Stalking Horse APA prior to the Closing; *provided, however*, that such Expense Reimbursement Amount shall not exceed an amount equal to \$225,000;

- (c) The minimum cash overbid amount shall equal the minimum amounts set forth in the Bidding Procedures attached hereto, which include pro rata amounts for the cash consideration for the Acquired Assets, *plus* the Expense Reimbursement Fee, *plus* a minimum overbid. For the avoidance of doubt, bidding on the Debtor's Assets at any auction shall proceed in increments of not less than \$100,000 on a pro rata basis; and
- (d) In the event of a credit bid by a secured creditor (a "**Credit Bid**"), any Credit Bid submitted or made by a secured creditor, and that may be permitted by the Court, shall include a cash component sufficient to pay (in addition to all costs required by the Bid Procedures Order and after the return of the Deposit to the Stalking Horse Bidder as provided in the Stalking Horse APA), the maximum amount of the Expense Reimbursement Fee (*i.e.* \$225,000) as an administrative expense (with any remaining balance of such maximum amount to be returned upon the Court's determination of the allowable Expense Reimbursement Fee), which Expense Reimbursement Fee shall be paid at the closing of a sale to a secured creditor who makes a Credit Bid and is the Successful Purchaser.

### **III. BIDDING PROCEDURES.**

6. The Bidding Procedures in the form attached hereto as **Exhibit A** and incorporated herein by reference as if fully set forth in this Order are hereby APPROVED in their entirety. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

#### **The Bid Deadline**

7. As further described in the Bidding Procedures, a potential Bidder who desires to make a Bid for the Assets that satisfies the bidding requirements set forth in the Bidding

Procedures shall deliver its Bid, so as to be received by no later than 4:00 p.m. (*prevailing Eastern Time*) on **September 27, 2019** (the “**Bid Deadline**”) to the following parties (collectively, the “**Notice Parties**”):

- (i) **The Sellers**, 15 East Main Street, Champaign, Illinois 61820, Attention: John Reed ([jreed@newsgazetteinc.com](mailto:jreed@newsgazetteinc.com)) and Traci E. Nally ([tnally@newsgazetteinc.com](mailto:tnally@newsgazetteinc.com));
- (ii) **Counsel to the Sellers**, Neal Gerber & Eisenberg, LLP, 2 North LaSalle Street, Suite 1700, Chicago, Illinois 60602, Attention: Nicholas M. Miller ([nmiller@nge.com](mailto:nmiller@nge.com)); and Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, Attention: William E. Chipman, Jr., Esquire ([chipman@chipmanbrown.com](mailto:chipman@chipmanbrown.com));
- (iii) **Broker to the Sellers**, Dirks, Van Essen, Murray & April, 119 East Marcy Street, Suite 100, Santa Fe, New Mexico, Attn: Phil Murray, Esquire ([phil@dirksvanessen.com](mailto:phil@dirksvanessen.com)).

#### **IV. Notices of Sale, Bidding Procedures, Bid Protections and the Sale Hearing**

8. The notices described below are hereby approved, and the service or publication thereof (as applicable) as described below constitutes proper, timely, adequate and sufficient notice of the Sale, the Bidding Procedures, and the Sale Hearing, and no other or further notice shall be required.

9. Within three (3) Business Days after the entry of this Order, or as soon thereafter as practicable, the Debtors (or their agents) shall serve this Order and the Bidding Procedures by first-class mail, postage prepaid, or by email, where available, upon the following parties (collectively, the “**Supplemental Notice Parties**”):

- (a) all entities known to have expressed a *bona fide* interest in a transaction with respect to the Assets within the past two years;
- (b) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Assets;



- (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 the Motion;
- (d) the U.S. Trustee;
- (e) the Federal Communications Commission;
- (f) the Internal Revenue Service;
- (g) the Securities and Exchange Commission;
- (h) the U.S. Attorney for the District of Delaware;
- (i) 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;
- (j) 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;
- (k) all persons and entities that have filed a request for service of filings in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and
- (l) the creditors listed on the Debtors' consolidated top 20 list of creditors.

10. On September 4, 2019, as set forth in the certificate of service filed on September 5, 2019 [Docket No. 50], the Debtors (or their agents) served by first-class mail, postage prepaid, a notice of sale (the "**Sale Notice**") upon all known creditors of the Debtors and all counterparties to the Debtors' executory contracts and unexpired leases. Such notice is deemed sufficient and proper notice of the Sale to such creditors and contract counterparties.

11. On or about September 19, 2019, the Debtors shall publish the Sale Notice on one occasion in the *News-Gazette*. Such publication notice is deemed sufficient and proper notice of the Sale to any other interested parties whose identities are unknown to the Debtors.

12. The Sale Hearing to approve the Sale shall be held on **October 2, 2019 at 10:00 a.m./p.m. (prevailing Eastern Time)**, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, before the Honorable Karen B. Owens.

13. All objections to the Sale (a “**Sale Objection**”) must be in writing and filed on and served so as to be received by **September 27, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the “**Sale Objection Deadline**”) with the Clerk of the Court, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801. In addition, any Sale Objection must be served on the Notice Parties and counsel to the Stalking Horse Bidder, John M. Steiner, Esquire, 525 William Penn Place, 28<sup>th</sup> Floor, Pittsburgh, Pennsylvania 15219, [jsteiner@leechtishman.com](mailto:jsteiner@leechtishman.com), so as to be received on or before the Sale Objection Deadline; *provided however*, that any objections to the conduct of the Auction or selection of the Successful Bid or Back-Up Bids (a “**Supplemental Objection**”) shall be in writing, filed with the Court, together with proof of service, and served so as to be received by the Notice Parties and the Stalking Horse Bidder and its counsel, on or before the commencement of the Sale Hearing.

14. Failure to file and serve a Sale Objection or Supplemental Objection as aforesaid shall be deemed to be consent to the Sale for purposes of section 363(f) of the Bankruptcy Code.

15. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest either by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of the court, in each case subject to the Bidding Procedures.

V. THE AUCTION.

16. The Debtors are authorized, subject in all respects to the terms of this Order and the Bidding Procedures, to conduct the Auction with respect to the Assets. The Auction shall take place on **September 30, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, or such other place and time as the Debtors shall notify all Qualified Bidders and each of their respective counsel and advisors. The Debtors are authorized, subject to the terms of this Order and the Bidding Procedures, to take actions reasonably necessary, in the discretion of the Debtors, to conduct and implement the Auction.

17. Only the Debtors, the United States Trustee, the Stalking Horse Bidder and the Qualified Bidders, in each case, along with their respective representatives and counsel, may attend the Auction (such attendance to be in person) and only the Stalking Horse Bidder and such other Qualified Bidder(s) will be entitled to make any Bids at the Auction. The Debtors and their professionals shall direct and preside over the Auction, and the Auction shall be transcribed.

18. The Stalking Horse Bidder (in its capacity as a Qualified Bidder) and each other Qualified Bidder participating in the Auction must confirm that it has (a) not engaged in any collusion with respect to the bidding or Sale of the Assets, (b) reviewed, understands and accepts the Bidding Procedures and (c) consented to the core jurisdiction of the Court.

19. Subject to the rights of parties in interest to (i) challenge the Sale or the Sale Process, (ii) challenge the Debtors' decisions with respect to the Sale Process, or (iii) such other rights as such parties may have under applicable law, the Debtors may, in each case pursuant and subject to, and in accordance with, the Bidding Procedures, (a) determine, in their business judgment, which Qualified Bid is the highest and best proposal for the Assets and which is the



next highest and best proposal for the Assets and (b) reject any bid that, in the Debtors' business judgment, is (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bidding Procedures, the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules or (z) contrary to the best interests of the Debtors and their estates.

20. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse Bidder shall be a Qualified Bidder.

**VI. THE STALKING HORSE APA.**

21. Pursuant to sections 105, 363, 364 and 503 of the Bankruptcy Code, the Debtors are hereby authorized and directed to pay the Bid Protections at the Closing of any Competing Transaction pursuant to and subject to the terms and conditions set forth in the Stalking Horse APA, as an administrative expense of the estate.

**VII. CONTRACT AND LEASE ASSUMPTION AND ASSIGNMENT PROCEDURES.**

22. The Assumption and Assignment Procedures as set forth in the Motion are hereby approved and made part of this Order as if fully set forth herein. The Assumption and Assignment Procedures are appropriate and fair to all non-Debtor counterparties and comply in all respects with the Bankruptcy Code.

23. The decision to assume and assign the applicable assumed and assigned contracts and/or leases to the Successful Bidder(s) is subject to Court approval and the consummation of a Sale of the Assets. Accordingly, absent the consummation of such Sale, the applicable assumed and assigned contracts and/or leases shall not be deemed assumed and/or assigned and shall, in all respects, be subject to further administration under the Bankruptcy Code.

(a) Cure Notice

24. On September 4, 2019, as set forth in the certificate of service filed on September 5, 2019 [Docket No. 50], the Debtors (or their agents) served by first-class mail, postage prepaid, Cure Notices upon all counterparties to the Debtors' executory contracts and unexpired leases and any other affected parties. Such notice is (a) reasonably calculated to provide sufficient and effective notice to all non-Debtor counterparties to assumed and assigned contracts or leases and any other affected parties of the Debtors' intent to assume and assign some or all of such contracts or leases and to afford the non-Debtor counterparty to each such contract or lease the opportunity to exercise any rights affected by the Motion pursuant to Bankruptcy Rules 2002, 6004 and 6006, and (b) hereby approved.

25. The inclusion of a contract or lease on a Cure Notice shall not constitute or be deemed a determination or admission by the Debtors, the Stalking Horse Bidder, the Successful Bidder(s) or any other party in interest that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that such contract or lease will be assumed and assigned in connection with the Sale of the Assets. The Debtors retain all of their rights, claims and causes of action with respect to the contracts or leases listed on the Cure Notice.

(b) Contract and/or Lease Objection Procedures

26. All Contract and/or Lease Objections must be filed and served so as to be received by **September 27, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the "**Contract and/or Lease Objection Deadline**").

27. Any Contract and/or Lease Objection must be in writing and filed with the Clerk of the Court, 824 North Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, and served so as to be received by the Notice Parties on or before the Contract and/or Lease Objection Deadline.

28. Any Contract and/or Lease Objection must state (a) the basis for such objection and (b) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

29. Any Contract and/or Lease Objection solely to the Cure Amount(s) shall not prevent or delay the Debtors' assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to Cure Amount(s): (i) the Debtors may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties; or (ii) notwithstanding anything in the Successful Bidders APA to the contrary, the Successful Bidder may elect to remove such contract and/or lease that is the subject of the Contract and/or Lease Objection from its list of Assigned Contracts to be assumed and assigned and have no obligation to take an assignment of, or pay a Cure Amount for, said contract and/or lease. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtors can, without further delay, assume and assign such contract(s) or lease(s). Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

30. If no Contract and/or Lease Objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

31. As soon as reasonably practicable after receiving the schedule from the Stalking Horse Bidder or other Qualified Bidder, the Debtors will prepare and file a list of those executory



contracts and unexpired leases that such bidders elect to have assumed and assigned (the “**Designated Contracts**”) at Closing pursuant to section 365 of the Bankruptcy Code, subject to any right to add or delete executory contracts or unexpired leases in accordance with the Stalking Horse APA.

32. As soon as reasonably practicable thereafter, the Debtors will post on the Case Website (a) the list of any Designated Contracts, which the Debtors will update as and when executory contracts or unexpired leases are added or deleted by any such Bidders and (b) a description of the Bidders and information as to the Bidders’ ability to perform the Debtors’ obligations under the relevant Designated Contracts.

33. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by a Qualified Bidder under the applicable executory contract(s) or unexpired lease(s) (an “**Adequate Assurance Objection**” and together with a Contract and/or Lease Objection, an “**Objection**”), then such non-Debtor counterparty shall file a written Adequate Assurance Objection with the Court and serve such objection on the Debtors, the Notice Parties and the applicable Qualified Bidder(s) so that such Adequate Assurance Objection is received on or before **12:00 p.m. (prevailing Eastern Time) on September 27, 2019** (the “**Adequate Assurance Objection Deadline**”). An Adequate Assurance Objection shall be filed on or before the Adequate Assurance Objection Deadline in accordance with, and subject to, the Contract Objection Procedures set forth above.

34. If any non-Debtor counterparty does not timely file and serve a Contract and/or Lease Objection, an Adequate Assurance Objection and/or an Objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped and enjoined from asserting any additional Cure Amount(s)

under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder, and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder.

**VIII. CONSUMER PRIVACY OMBUDSMAN.**

35. Pursuant to section 332(a) of the Bankruptcy Code, the Office of the United States Trustee for the District of Delaware is directed to appoint one (1) disinterested person (other than the U.S. Trustee) to serve as the consumer privacy ombudsman in these chapter 11 cases.

36. Subject to further order of the Court, the consumer privacy ombudsman shall perform the functions set forth in section 332(b) of the Bankruptcy Code.

37. The consumer privacy ombudsman shall at all times comply with section 332(c) of the Bankruptcy Code.

38. The consumer privacy ombudsman shall be compensated pursuant to section 330 of the Bankruptcy Code upon approval by the Court of a request for compensation

**IX. RELATED RELIEF.**

39. The Debtors are hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Order.

40. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

41. The Debtors are authorized to proceed with the Sale without the necessity of complying with any state or local bulk transfer tax or state or local bulk transfer laws or requirements.

42. This Order shall be binding on the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors' estates.

43. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7052, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

44. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

45. Any and all objections to the Sale are hereby preserved and subject to the terms and deadlines set forth in this Order.

Dated: September 18, 2019  
Wilmington, Delaware

KaB. Ow  
THE HONORABLE KAREN B. OWENS  
UNITED STATES BANKRUPTCY JUDGE



**Exhibit A**

**Bidding Procedures**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

THE NEWS-GAZETTE, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-11901 (KBO)

(Jointly Administered)

**BIDDING PROCEDURES**

These bidding procedures (the “**Bidding Procedures**”) set forth the process by which The News-Gazette, Inc. and D.W.S., Inc. (collectively, the “**Company**” or the “**Sellers**”) shall conduct a sale (the “**Sale**”) by auction (the “**Auction**”) of some or substantially all of their assets.

On September \_\_, 2019, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order (the “**Bidding Procedures Order**”), which, among other things, authorized the Sellers to determine the highest and otherwise best offer(s) for their assets, subject to the process and procedures set forth below.

The Court presides over the Sellers’ jointly administered chapter 11 bankruptcy cases (the “**Chapter 11 Cases**”) captioned *In re The News-Gazette, Inc. et al.*, Case No. 19-11901 (KBO) (Bankr. D. Del. August 30, 2019).

On August 30, 2019, the Sellers filed the *Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of All, or Substantially All, of the Debtors’ Assets; (B) Approving Bid Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens, Interests and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief* (the “**Sale Motion**”).<sup>2</sup> The Bidding Procedures Order and the order approving the Sale are referred to herein, collectively, as the “**Sale Orders**.”

As referenced in the Sale Motion, the Sellers are aware of numerous prospective buyers that may submit, or already have submitted, letters of intent and/or indications of interest to become a purchaser for some or all of the Sellers’ assets (collectively, the “**Prospective Purchasers**”).

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning ascribed to them in the Sale Motion.

## I. ASSETS TO BE SOLD

The Sale Motion contemplates one or a combination of multiple offers to purchase all or substantially all of the Sellers' assets (such assets that a Successful Bidder acquires pursuant to the terms of the Stalking Horse APA or Modified Asset Purchase Agreement (*as defined below*) that is consummated in connection with the Successful Bid of such Successful Bidder, collectively, the "**Acquired Assets**"). A party may participate in the bidding process by submitting a Bid (*as defined below*) for all of the Acquired Assets or for smaller subsets of the Acquired Assets (as described in more detail below, the "**Lots**").

Subject to the terms of the Sale Orders, upon the consummation of the Successful Bid and payment of all consideration in accordance with the terms thereof, all of the Sellers' right, title and interest in and to the Acquired Assets shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, interests, charges, options and interests thereon (collectively, the "**Liens**") except as otherwise provided in the Stalking Horse APA or Modified Asset Purchase Agreement (*as defined below*) submitted by a Successful Bidder (*as defined below*) (including any exhibits or schedules thereto), with such Liens to attach to the proceeds of the sale of the Acquired Assets with the same validity and priority as such Liens applied against the Acquired Assets immediately prior to the consummation of such Successful Bid.

## II. BIDDING PROCESS

### A. Overview

The Sellers and their advisors will, subject to the other provisions of these Bidding Procedures:

1. coordinate the efforts of Preliminary Interested Purchasers (*as defined below*) in conducting their due diligence investigations;
2. receive offers from Bidders (*as defined below*);
3. determine whether any person is a Qualified Bidder (*as defined below*); and
4. conduct the Auction and further negotiate any offers made to purchase the Acquired Assets.

### B. Key Dates For Potential Competing Bidders

The Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Sellers and to submit competing bids for the Acquired Assets. The Sellers will assist Preliminary Interested Purchasers in conducting their respective due diligence investigations and will accept Bids until **September 27, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the "**Bid Deadline**"), subject to any extension of the Bid Deadline in accordance with, and subject to, these Bidding Procedures.



The key dates for the Sale process are as follows:<sup>3</sup>

September 27, 2019 at 4:00 p.m. ET	<b><u>Bid Deadline:</u></b> Due Date to submit a Qualified Bid and Good Faith Deposit ( <i>each as defined below</i> )
September 30, 2019 at 10:00 a.m. ET	<b><u>Auction:</u></b> To be held at Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801
October 2, 2019 at _____ a.m./p.m. ET	<b><u>Sale Hearing:</u></b> To be held at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6 <sup>th</sup> Floor, Courtroom 2, Wilmington, Delaware 19801

C. Access to Diligence Materials

To participate in the bidding process either as a Stalking Horse Bidder or to effectuate an alternate sale transaction for some or substantially all of the Acquired Assets (an “**Alternate Transaction**”) and to receive access to due diligence materials (the “**Diligence Materials**”), a party must submit to the Sellers an executed confidentiality agreement in substantially the same form as that which was previously approved by Murray (as defined below) and circulated to Prospective Purchasers, and otherwise in form and substance satisfactory to Murray and the Sellers (a “**Confidentiality Agreement**”), and provide preliminary evidence satisfactory to the Sellers and their advisors of such party’s financial wherewithal to consummate a transaction as a Stalking Horse Bidder or through an Alternate Transaction.

A party who executes such a Confidentiality Agreement for access to Diligence Materials, and provides such preliminary evidence of financial wherewithal, shall be a “**Preliminary Interested Purchaser**.” The Sellers will afford any Preliminary Interested Purchaser the time and opportunity to conduct reasonable due diligence in accordance with a diligence protocol determined by the Sellers and their advisors; *provided, however*, that the Sellers shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (*as defined below*) on or before the Bid Deadline.

The Sellers reserve the right to withhold any Diligence Materials that the Sellers determine are business-sensitive or otherwise not appropriate for disclosure to a Preliminary Interested Purchaser who is a competitor or customer of the Sellers or is affiliated with any competitor or customer of the Sellers. Neither the Sellers nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Preliminary Interested Purchaser.

<sup>3</sup> These dates are subject to extension or adjournment as provided for herein with respect to one or more Lots (as defined below) or other applicable Acquired Assets.

All due diligence requests must be directed to Dirks, Van Essen, Murray & April, Attention Phil Murray (“**Murray**”), at [Phil@dirksvanessen.com](mailto:Phil@dirksvanessen.com).

D. Due Diligence from Bidders

Each Preliminary Interested Purchaser and each Bidder shall comply with all reasonable requests for additional information and due diligence access by the Sellers or their advisors regarding such Preliminary Interested Purchaser or Bidder, as applicable, and its contemplated transaction. Failure by a Preliminary Interested Purchaser or Bidder (other than the Stalking Horse Bidder) to comply with requests for additional information and due diligence access may be a basis for the Sellers to determine that such Bidder is not a Qualified Bidder.

III. **AUCTION QUALIFICATION PROCESS**

Qualifying Bids. To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “**Bid**”), and each party submitting such a Bid (other than any party designated as a Stalking Horse Bidder) (each, a “**Bidder**”), must be reasonably determined by the Sellers to satisfy each of the following conditions:

1. Good Faith Deposit: Each Bid must be accompanied by a cash deposit, paid by wire transfer of immediately available funds, in the amount of ten percent (10%) of the purchase price (excluding any Assumed Liabilities) contained in the Modified Asset Purchase Agreement (*as defined below*), which deposit shall be held in an escrow account to be identified and established by the Sellers (the “**Good Faith Deposit**”).
2. Executed Agreement: Each Bid must be based on the Stalking Horse APA, and such Bid must include binding, executed, irrevocable transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate an Alternate Transaction (a “**Modified Asset Purchase Agreement**”). A Bid must also include a copy of the Modified Asset Purchase Agreement (including all exhibits thereto) marked against the applicable Stalking Horse APA to show all changes requested by the Bidder (including those related to purchase price and to remove any provisions that apply only to the Stalking Horse Bidder, such as the expense reimbursement and break-up fee provisions contained in the Stalking Horse APA, which terms shall not be in any Modified Asset Purchase Agreement). Each Modified Asset Purchase Agreement must exclude any and all preference, fraudulent conveyance, and other claims of Sellers arising under Chapter 5 of the Bankruptcy Code or similar state law.
3. Scope of Bid / Lots: A Bid must be for all or substantially all of the Acquired Assets or for one or more of the following Lots (or such other Lots as the Sellers may otherwise agree to):<sup>4</sup>

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<sup>4</sup> Any Bid for the Radio Lot that does not also include a bid for the Newspaper Lot, and vice versa, must include a commitment to enter into an IP sharing agreement on substantially the same terms that exist today. Any bid for



- (a) substantially all of the assets of the newspaper business (the “**Newspaper Lot**”);
  - (b) substantially all of the assets of the Radio Business, including the relevant real estate assets (the “**Radio Lot**”);
4. Minimum Bid: A Bid must have a purchase price that includes a combination of cash, in the amounts below, as well as the assumption of any postpetition liabilities, if any, and cure costs associated with the relevant Lot,<sup>5</sup> and subject to any adjustments typical of similar transactions, that, in the Sellers’ reasonable business judgment, has a value equal to or greater than the following, subject to the terms of these Bidding Procedures:
- (a) For substantially all of the Acquired Assets: \$4,825,000;
  - (b) For the Newspaper Lot: \$2,412,500;
  - (c) For the Radio Lot: \$2,412,500;
5. Designation of Assigned Contracts and Leases; Cure Costs: A Bid must specifically (a) identify the executory contracts and unexpired leases with respect to which the Bidder seeks assignment from the Sellers and (b) provide for the Bidder’s payment in full in cash of all of the cure costs related to any such executory contracts and unexpired leases.
6. Designation of Assumed Liabilities: A Bid must identify all liabilities which the Bidder proposes to assume.
7. Corporate Authority: A Bid must include written evidence reasonably acceptable to the Sellers demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; *provided* that, if the Bidder is an entity specially formed for the purpose of effectuating the Alternate Transaction then the Bidder must furnish written evidence reasonably acceptable to the Sellers of the approval of the Alternate Transaction by the equity holder(s) of such Bidder.
8. Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Acquired Assets, including any equity holders in the case of a Bidder which is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid

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less than substantially all of the assets of the Debtors must allocate the purchase price to each Lot included in such bid. Any other Lot that could be evaluated by the Debtors pursuant to Section IX.E., below, should also include an allocation of value as described in this footnote.

<sup>5</sup> A schedule of the post-petition liabilities for each lot and a schedule of estimated cure costs for executory contracts that could be assumed by any Bidder has been made available in the electronic data room that each Prospective Purchaser has access to.



(including any co-bidder or team bidder), and the complete terms of any such participation, including any agreements, arrangements or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. A Bid must also fully disclose any connections or agreements with the Sellers, the Stalking Horse Bidder or any other known, potential, prospective Bidder or Qualified Bidder, and/or any officer, director or equity security holder of the Sellers.

9. Proof of Financial Ability to Perform: A Bid must include detailed, written evidence that the Sellers may conclude, in consultation with their advisors, demonstrates that the Bidder has and will continue to have the necessary financial ability to consummate the Alternate Transaction and comply with section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed and assigned in such Alternate Transaction. Such information must include, *inter alia*, the following:
  - (a) contact names and numbers for verification of financing sources;
  - (b) evidence of the Bidder's internal resources and proof of unconditional debt funding commitments from a recognized banking institution and, if applicable, equity commitments in an aggregate amount equal to the cash portion of such Bid or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Sellers in the amount of the cash portion of such Bid as are needed to consummate the Alternate Transaction;
  - (c) the Bidder's current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Sellers;
  - (d) a description of the Bidder's pro forma capital structure; and
  - (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Sellers demonstrating that such Bidder has the ability to consummate the Alternate Transaction.
10. Regulatory and Third Party Approvals: A Bid must set forth (a) each regulatory and third-party approval required for the Bidder to consummate the Alternate Transaction, (b) the time period within which the Bidder expects to receive such regulatory and third-party approvals, (c) those actions the Bidder will take to ensure receipt of such approvals as promptly as possible, and (d) a detailed description of any steps the Bidder will take

to address any delay in obtaining such approvals (e.g. transition services agreement).

11. Contact Information and Affiliates: A Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder.
12. Contingencies: Each Bid (a) may not contain representations and warranties, covenants, or termination rights materially more onerous in the aggregate to the Sellers than those set forth in the Stalking Horse APA, as determined by the Sellers in good faith, and (b) may not be conditioned on (i) obtaining financing, (ii) any internal approvals or credit committee approvals, or (iii) the outcome or review of due diligence, including with respect to any environmental, employee, vendor, labor, health and/or safety matters.
13. Irrevocable: Each Bid must be irrevocable until ten (10) business days after the conclusion of the Sale Hearing for the relevant Acquired Assets or Lot; provided that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable until the earlier of the consummation of the Sale of the relevant Acquired Assets or Lot or the Extended Outside Date (*as defined below*).
14. Compliance with Diligence Requests: The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Sellers to the reasonable satisfaction of the Sellers.
15. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the applicable Acquired Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the applicable Acquired Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the applicable Acquired Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Stalking Horse APA.
16. Confidentiality Agreement: To the extent not already executed, the Bid must include an executed Confidentiality Agreement.
17. Termination Fees: The Bid (other than a Bid pursuant to the Stalking Horse APA) must not entitle the Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Bidder waives the right to pursue a substantial



contribution claim under 11 U.S.C. § 503 related in any way to the submission of its Bid or participation in any Auction.

18. Adherence to Bid Procedures: By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
19. Closing Date: The Bid must include a commitment to consummate the transactions contemplated by the Modified Asset Purchase Agreement by no later than December 4, 2019 or such later date as Debtors may agree to in writing (the “**Outside Date**”). In no event shall the consummation of the Sale occur later than January 19, 2020 without the written consent of Debtors (any such date, the “**Extended Outside Date**”). In the event the Bid contemplates an Extended Outside Date in order to address any antitrust, regulatory or permitting issues, the Bid must include a mechanism to cover any and all costs incurred after the Outside Date in a manner acceptable to the Sellers.
20. No Late Bids: Unless otherwise ordered by a Court, the Sellers shall not consider any Bids for the Acquired Assets or with respect to any Lot submitted after the conclusion of the Auction for the Acquired Assets or with respect to any such Lot, and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
21. Bid Notice: The following parties must receive a Bid in writing (in both PDF and Word format), on or before the Bid Deadline:
  - (a) The Sellers, 15 East Main Street, Champaign, Illinois 61820, Attention: John Reed ([jreed@newsgazetteinc.com](mailto:jreed@newsgazetteinc.com)) and Traci E. Nally ([tnally@newsgazetteinc.com](mailto:tnally@newsgazetteinc.com));
  - (b) Counsel to the Sellers, Neal Gerber & Eisenberg, LLP, 2 North LaSalle Street, Suite 1700, Chicago, Illinois 60602, Attention: Nicholas M. Miller, Esquire ([nmiller@nge.com](mailto:nmiller@nge.com)); and Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801, Attention: William E. Chipman, Jr., Esquire ([chipman@chipmanbrown.com](mailto:chipman@chipmanbrown.com));
  - (c) Broker to the Sellers, Dirks, Van Essen, Murray & April 119 East Marcy Street, Suite 100, Santa Fe, New Mexico 87501, Attention: Phil Murray, Esquire ([phil@dirksvanessen.com](mailto:phil@dirksvanessen.com)).
22. Pension Plan Related Disclosures: Each bid must state whether or not the Potential Bidder intends to assume sponsorship of any of the potential liabilities associated with The News-Gazette, Inc. Defined Benefit Plan (the “**Pension Plan**”). To the extent a Qualified Bid provides for



assumption of the Pension Plan, the Debtors shall within one (1) calendar day provide to the Pension Benefit Guaranty Corporation (“PBGC”) the necessary financial information to demonstrate that the Qualified Bidder can provide adequate assurance of its financial ability to assume the Pension Plan. The Debtors will deliver, within one (1) calendar day after receipt thereof, copies of all bids to PBGC, Office of the General Counsel, 1200 K Street, N.W., Washington, DC 20005 (Attn: Desirée Amador, [amador.desiree@pbgc.gov](mailto:amador.desiree@pbgc.gov)), but only if such bid includes the assumption of any liabilities associated with the Pension Plan. In evaluating the bids, the Debtors shall take into consideration such assumption of the Pension Plan or its liabilities in determining the highest and best bid.

A Bid received from a Bidder before the Bid Deadline that meets all of the above requirements for the Acquired Assets shall constitute a “**Qualified Bid**” and such Bidder shall constitute a “**Qualified Bidder**”; *provided* that if the Sellers receive a Bid prior to the Bid Deadline that is not a Qualified Bid, the Sellers will promptly provide the Bidder with notice of the basis for the disqualification of such Bid and provide such Bidder with the opportunity to remedy any deficiencies prior to the Bid Deadline; *provided, further*, that, for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access from the Sellers to the satisfaction of the Sellers, then the Sellers may disqualify any Qualified Bidder and Qualified Bid, in the Sellers’ discretion, and such Bidder shall not be entitled to attend or participate in the Auction.

Any amendments, supplements or other modifications to any Bids (including pursuant to this paragraph) shall be delivered to the parties listed in paragraph 22 above as provided therein. All Qualified Bids will be considered, but the Sellers reserve their right to reject any or all bids. However, bids that are unconditional and contemplate sales that may be consummated on or soon after the Sale Hearing are preferred. Additionally, notwithstanding anything herein to the contrary, the Stalking Horse APA submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid. The Sellers will inform counsel to the Stalking Horse Bidder, and any Qualified Bidders, whether the Sellers consider any Bid to be a Qualified Bid as soon as practicable but in no event later than one day before the Auction.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including the Sellers and their agents and representatives (other than as may be set forth in a definitive agreement executed by the Sellers), regarding the Sellers, any of the Acquired Assets, the Auction, these Bidding Procedures or any information provided in connection therewith.

Without the consent of the Sellers, a Qualified Bidder may not amend, modify or withdraw its Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Bid, during the period that such Bid is required to remain irrevocable and binding.

#### IV. AUCTION

##### A. Auction

If multiple Qualified Bids (including the Stalking Horse APA) with respect to the same Acquired Assets or Lots are submitted by the Bid Deadline, the Sellers will conduct the Auction to determine the highest and otherwise best Qualified Bid with respect to such Acquired Assets or Lots.

##### B. Assessment Criteria

The Sellers' determination of the highest and otherwise best Qualified Bid with respect to the Acquired Assets will take into account any factors the Sellers reasonably deem relevant to the value of the Qualified Bid to the estates and may include, but are not limited to, the following:

1. the amount and nature of the consideration, including any assumed liabilities and retention of employees;
2. the type and nature of any modifications to the Stalking Horse APA requested by each Bidder in such Bidder's Modified Asset Purchase Agreement;
3. the extent to which such modifications are likely to delay the consummation of the sale of the applicable asset(s) and the cost to the Sellers of such modifications or delay;
4. the total consideration to be received by the Sellers and the net consideration to be received by the Sellers after taking into account the Stalking Horse Bidder's Bid Protections with respect to each round of bidding;
5. the likelihood of the Bidder's ability to consummate a transaction and the timing thereof, including the ability to obtain, or waive, as applicable, regulatory approvals;
6. the net benefit to the Sellers' estates (collectively, the "**Bid Assessment Criteria**").

##### C. Cancellation of the Auction

If multiple Qualified Bids for the Acquired Assets or Lots have not been timely received, then the Auction for the Acquired Assets or Lots will be canceled.

#### V. PROCEDURES FOR THE AUCTION

If multiple Qualified Bids for the Acquired Assets or Lots have been timely submitted by the Bid Deadline, then the Sellers will commence the Auction for such Acquired Assets or Lots on **September 30, 2019 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Chipman Brown Cicero & Cole, LLP, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington,



Delaware 19801, or such other place and time as the Sellers shall notify all Qualified Bidders, subject to these Bidding Procedures.

The Auction will be conducted according to the following procedures:

A. Participation

Only the Sellers, the United States Trustee, the Stalking Horse Bidder and any other Qualified Bidder, in each case, along with their representatives and counsel, may attend the Auction (such attendance to be in person) and only the Stalking Horse Bidder and any such other Qualified Bidders will be entitled to make any Bids at the Auction.

B. The Sellers Shall Conduct the Auction

The Sellers and their advisors shall direct and preside over the Auction, and the Auction shall be transcribed. The Sellers will conduct the Auction in the manner they reasonably determine will result in the highest and otherwise best Qualified Bid(s), including, without limitation, by requiring separate rounds of bulk and/or Lot bidding and sealed bidding, open outcry, or any other form of Bid submission (including in connection with any bulk or Lot bidding). Any rules developed by the Sellers will provide that each Qualified Bidder will be permitted what the Sellers determine to be an appropriate amount of time to respond to the previous bid at the Auction.

C. Auction Baseline Bids

Prior to commencement of the Auction, the Sellers will provide each Qualified Bidder participating in the Auction with a copy of the Modified Asset Purchase Agreement that is the highest and otherwise best Qualified Bid for the applicable Acquired Assets as determined by the Sellers (such highest and otherwise best Qualified Bid, the “**Auction Baseline Bid**”). In addition, at the start of the Auction, the Sellers will describe the terms of the Auction Baseline Bids to the other Qualified Bidders.

D. Joint Bidding and Anti-Collusion Representations

Each Qualified Bidder participating in the Auction must confirm that it (1) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (2) has reviewed, understands and accepts the Bidding Procedures and (3) has consented to the core jurisdiction of the Court.

Before submitting any Bid with co-bidding or team bidding arrangements, whether formal or informal, among a Qualified Bidder and any third party (including any other Preliminary Interested Purchaser or Qualified Bidder) (such a Bid, a “**Joint Bid**”), each Qualified Bidder must disclose such Joint Bid to the Sellers, and the Sellers may determine whether the Joint Bid constitutes a Qualified Bid for purposes of participating in the Auction. The identity of any and all co-bidders or team bidders involved in submitting any Joint Bid, if the Sellers determine that such Joint Bid constitutes a Qualified Bid, will be disclosed on the record at the Auction.



E. Terms of Overbids

The Sellers will accept Overbids, as further described below. An “**Overbid**” is any bid made at the Auction subsequent to the Sellers’ announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

1. Minimum Overbid Increments: Any Overbid after and above the Auction Baseline Bid shall be made in increments determined by the Sellers valued at not less than such amount as shall be announced at the Auction (in an amount greater than the pro rata amount of any approved bid protections or sale-related administrative expenses), in cash or in cash equivalents or, once the cash (or cash equivalent) amount of such Overbid exceeds the cash (or cash equivalent) amount of the next highest Bid, other forms of consideration acceptable to the Sellers.
2. Credit Bidding: Only the Stalking Horse Bidder may credit bid the amount of any Bid Protections.
3. Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, *provided, however*, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Stalking Horse APA or Modified Asset Purchase Agreement, as the case may be, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.

At the Sellers’ discretion, to the extent not previously provided, a Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Sellers), reasonably demonstrating such Bidder’s ability to consummate the Alternate Transaction proposed by such Overbid.

F. Announcement and Consideration of Overbids

1. Announcement of Overbids: The Sellers will announce at the Auction the material terms of each Overbid, the total amount of consideration and form offered in each such Overbid (including the cash or cash equivalent component thereof), and the basis for calculating such total consideration.
2. Consideration of Overbids: Subject to the deadlines set forth herein, the Sellers reserve the right, in their reasonable business judgment, to make one or more continuances of the Auction to, among other things: facilitate discussions between the Sellers and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; modify or supplement any or all of the Auction procedures or rules; or give Qualified Bidders the opportunity to provide the Sellers with such

additional evidence as the Sellers in their reasonable business judgment may require, that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Alternate Transaction at the prevailing Overbid amount. When comparing Overbids to the immediately preceding Qualified Bid, the Sellers will treat any credit bid as being made in cash or in cash equivalents.

G. Other Procedures

1. Jurisdiction of the Court: All Qualified Bidders (including the Stalking Horse Bidder) at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the determination of what constitutes a Qualified Bid and the procedures used to make that determination, the Auction, and the construction and enforcement of the Qualified Bidder's fully executed sale and transaction documents, as applicable.
2. Stalking Horse Bidder Bid: The Stalking Horse Bidder shall be entitled to (a) credit bid all or a portion of its Bid Protections, consistent with these Bidding Procedures; and (b) submit additional bids and make modifications to the Stalking Horse APA at the Auction consistent with these Bidding Procedures.
3. Additional Bids; Modifications: All Qualified Bidders, including the Stalking Horse Bidder, shall have the right to submit additional bids and make additional modifications to the Stalking Horse APA or Modified Asset Purchase Agreement at the Auction, as applicable, provided that any such modifications to such Stalking Horse APA or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Sellers' business judgment, be less favorable to the Sellers than the terms of such original agreement.
4. Subsequent Bids: Each Qualified Bidder must submit a subsequent Bid that satisfies the minimum bid increment in each round of bidding in order to continue participating in the Auction. Qualified Bidders shall not be allowed to skip rounds of bidding on the Acquired Assets and/or a particular Lot once they participate in the Auction for the Acquired Assets and/or any given Lot.

H. Additional Procedures

The Sellers may at any time establish, at or prior to the Auction, other or additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent in any material respect with the Bidding Procedures or the Stalking Horse APA. Any Auction rules adopted by the Sellers that would modify any of the terms



of the Stalking Horse APA or the rights of the Stalking Horse Bidder under the Bidding Procedures (as may be consensually modified at the Auction) requires the consent of the Stalking Horse Bidder.

I. Sale Is As Is/Where Is

Except as otherwise may be provided in the Stalking Horse APA, any Modified Asset Purchase Agreement, or any order by the Court approving any Sale of the Acquired Assets as contemplated hereunder, the Acquired Assets sold pursuant to the Bidding Procedures shall be conveyed upon the consummation of the purchase and sale in their then-present condition, **“AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.”**

J. Closing the Auction

The Auction will continue in additional rounds of bidding until the Sellers select the Bid(s) that represent the highest and otherwise best offer(s) for the Acquired Assets (a **“Successful Bid,”** and the Bidder(s) submitting such Successful Bid(s), a **“Successful Bidder”**). The Successful Bidders shall have the rights and responsibilities of the purchaser as set forth in the Stalking Horse APA or Modified Asset Purchase Agreement. In selecting each Successful Bid, the Sellers will consider the Bid Assessment Criteria.

The Sellers may close the Auction with respect to the relevant Acquired Assets or Lots when all Successful Bidder(s) submit fully executed sale and transaction documents memorializing the terms of the Successful Bid(s), and the Sellers announce the Successful Bid(s) and the Successful Bidder(s). Promptly after the Auction closes with respect to the relevant Acquired Assets or Lots, the Sellers will file with the Court a notice of the Successful Bid(s) and the Successful Bidder(s) with respect to the relevant Acquired Assets or Lots.

The Sellers shall not consider any Bids for the Acquired Assets and/or any Lot submitted after the conclusion of the Auction with respect to the Acquired Assets and/or any such Lot.

K. Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest and otherwise best Bid at the Auction (other than the Stalking Horse Bidder) with respect to some or substantially all of the Acquired Assets, as determined by the Sellers, in the exercise of their business judgment, will be designated as a backup bidder (a **“Backup Bidder”**). A Backup Bidder shall be required to keep its last submitted Bid (the **“Backup Bid”**) open and irrevocable until the earlier of the consummation of the transaction with the Successful Bidder or the Extended Outside Date.

Following the Sale Hearing, if a Successful Bidder fails to consummate the purchase of the Acquired Assets, the Sellers may deem the Backup Bidder for such assets to have the new Successful Bid, and the Sellers will be authorized, without further order of the Court, to consummate the transaction with such Backup Bidder at the price of its last bid. Such Backup Bidder will be deemed to be the Successful Bidder and the Sellers will be authorized, but not directed, to effectuate a sale to such Backup Bidder subject to the terms of the Backup Bid without



further order of the Court. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Sellers on and as of the date that the Court approves the Bid as the Successful Bid.

For the avoidance of doubt, in the event that there is a Successful Bidder (other than the Stalking Horse Bidder) with respect to some or substantially all of the Acquired Assets or any given Lot or Lots, the Stalking Horse Bidder will NOT be required to be a Backup Bidder and will be permitted to terminate the Stalking Horse APA as provided therein and be entitled to the return of its Deposit as provided in the Stalking Horse APA.

## **VI. BID PROTECTIONS**

The Stalking Horse Bidder is entitled to the Bid Protections (i) in the amounts set forth in, and in accordance with the terms of, the Stalking Horse APA and the Bidding Procedures Order, and (ii) which shall be paid at the Closing of any sale of the Acquired Assets or any Lot(s) to any bidder that is not the Stalking Horse Bidder.

Pursuant to the Bidding Procedures Order, no other party submitting an offer or Bid or a Qualified Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

## **VII. SALE HEARING**

The Successful Bid and Backup Bid (or, if no Qualified Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse APA) will be subject to approval by the Court. The sale hearing to approve the Successful Bids and any Backup Bids shall take place on **October 2, 2019 at \_\_\_\_ a.m./p.m. (prevailing Eastern Time)** before the Court (the “**Sale Hearing**”).

The Sale Hearing may be adjourned by the Sellers with respect to certain Acquired Assets or Lots, subject to the terms herein.

## **VIII. RETURN OF GOOD FAITH DEPOSITS**

The Good Faith Deposits of all Qualified Bidders (except the Stalking Horse Bidder) shall be held in one or more escrow accounts by the Sellers, but shall not become property of the Sellers' estates absent further order of the Court or as expressly provided below. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than three (3) business days after the conclusion of the Sale Hearing. The Good Faith Deposit of a Backup Bidder, if any, shall be returned to such Backup Bidder no later than seventy-two (72) hours after the consummation of the transaction with the Successful Bidder. If the Successful Bidder timely consummates the winning transaction, its Good Faith Deposit shall be credited towards the applicable purchase price. If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate an Alternate Transaction because of a breach or failure to perform on the part of such Successful Bidder (or Backup Bidder, if applicable), the Sellers will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder (or Backup Bidder, if applicable), and such Good Faith Deposit shall irrevocably become property of the Sellers. Notwithstanding anything in this paragraph to the contrary, the Good Faith

Deposit of the Stalking Horse Bidder shall be held as provided in the Stalking Horse APA and shall be returned to the Stalking Horse Bidder in accordance with the Stalking Horse APA.

**IX. RESERVATION OF RIGHTS OF THE SELLERS**

Notwithstanding anything to the contrary herein, the Sellers further reserve the right as they may reasonably determine to be in the best interest of their estates to:

- A. determine which Bidder(s) is a Qualified Bidder(s);
- B. determine which Bid(s) is a Qualified Bid(s);
- C. determine which Qualified Bid is the highest and best proposal for the Acquired Assets and which is the next highest and best proposal for the Acquired Assets;
- D. reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of the Sellers and their estates;
- E. determine any Lots and revise the minimum bid values above with respect to any Lot;
- F. impose additional terms and conditions with respect to all potential Bidders;
- G. extend the deadlines set forth herein; and
- H. modify the Bidding Procedures and implement additional procedural rules that the Sellers determine, in their business judgment, will better promote the goals of the bidding process and discharge the Sellers' fiduciary duties; provided however that any modification or additions to the Bidding Procedures shall not be inconsistent with the Stalking Horse APA, the Bidding Procedures Order or any other Order of the Court, unless agreed in writing by the Stalking Horse Bidder and Sellers or otherwise ordered by the Court.