**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| | ) | |
| Daily Gazette Company, *et al.*, | ) | Case No. 18-20028 |
| | ) | |
| Debtors.[1] | ) | (Jointly Administered) |

**DEBTORS' MOTION TO APPROVE (A) RETENTION
OF AUCTIONEER AND (B) SALE OF REAL ESTATE**

Daily Gazette Company, and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases, hereby move (this "Motion"), pursuant to sections 327, 328 and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2014 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 6004-1, for the entry of an order (a) authorizing the retention of Greenway's Real Estate & Auction, Inc. ("Auctioneer") as auctioneer and (b) approving the sale of certain vacant real estate owned by Debtor Daily Gazette Company ("DGC"), and state as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. This is a core proceeding under 28 U.S.C. § 157(b), and the Debtors consent to 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.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

[1] The Debtors and the last four digits of each Debtor's taxpayer identification number are as follows: Daily Gazette Company (4480); Daily Gazette Holding Company, LLC (2981); Charleston Newspapers Holdings, L.P. (3028); Daily Gazette Publishing Company, LLC (3074); Charleston Newspapers (6079); and G-M Properties, Inc. (4124).

4. The statutory bases for the relief requested herein are sections 327, 328 and 363 of the Bankruptcy Code, Bankruptcy Rules 2014 and 6001 and Local Rule 6004-1.

## BACKGROUND

### A. Chapter 11 Filings And The Debtors' Business

5. On January 30, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code. No trustee, examiner or creditors' committee has been appointed in these cases.

6. Prior to the Court-approved sale of their business and assets, the Debtors collectively operated privately owned information and entertainment businesses consisting of the flagship newspaper, The Charleston Gazette-Mail, as well as a related website, weekly publications, a saturation mail product and the following verticals: www.wvcarfinder.com; www.wvrealestatefinder.com; www.wvjobfinder.com; and www.gazettemailclassifieds.com. As of the Petition Date, the Debtors employed, collectively, approximately 210 people, approximately 170 of which are full-time employees and 40 of which are part-timers.

### B. The Sale Of The Debtors' Business And Assets

7. On March 12, 2018, the Court entered an Order (A) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (B) Authorizing and Approving the Debtors' Performance Under the Asset Purchase Agreement, (C) Approving the Assumption and Assignment of Certain of the Debtors' Executory Contracts and Unexpired Leases Related Thereto, and (D) Granting Related Relief [Dkt. #141] (the "Sale Order"). But for the parcel of real estate that is the subject of this Motion and which is described in more detail below, the Sale Order approved the sale of the Debtors' business and substantially all of their assets (collectively, the "Operating Assets") to HD Media Company, LLC ("HD Media") or its designee.

8. On March 30, 2018, the Debtors and HD Media's designee, ETBN Group, LLC, closed on the sale of the Operating Assets. Since that time, the Debtors have been engaged in an orderly wind-down as described in more detail in Debtor's Motion for Authority to Disburse Net Sale Proceeds [Dkt. #152].

**C. The Timberline Real Estate**

9. The Operating Assets that were the subject of the Sale Order did not include certain unimproved real property in Dry Fork District, Tucker County, West Virginia, which is commonly known as Tract No. 38 in Deer Ridge Section of Timberline Sub-Division and which is owned by DGC (the "Timberline Real Estate"). The Timberline Real Estate is encumbered by a lien in favor of the Pension Benefit Guaranty Corporation ("PBGC") in the amount of $1,627,808.00 (the "PBGC Lien"). The PBGC Lien is evidenced by certain Notices of Federal Lien under I.R.C. §§ 412(n) and/or 430(k) filed by the PBGC in July 2015, October 2015, February 2016, May 2016, and June 2016, copies of which are attached to the proof of claim filed by the PBGC against DGC, which was designated as Claim No. 10 (the "PBGC Claim") and which is attached hereto as **Exhibit A**. The Timberline Real Estate represents the only remaining asset of the Debtors' estates. Moreover, the Debtors are not aware of any other liens, claims or encumbrances against the Timberline Real Estate.

**D. The Auctioneer's Retention And Proposed Sale Of The Timberline Real Estate**

10. As part of their efforts to wind-down in an orderly fashion, the Debtors have elected to sell the Timberline Real Estate pursuant to an auction. In that regard, the Debtors have selected Auctioneer to market and sell at auction the Timberline Real Estate. With locations in Covington, Virginia and Lewisburg, West Virginia, Auctioneer has extensive experience marketing real estate and conducting auctions and is familiar with the Timberline Real Estate and the market in which

it is located. Accordingly, the Debtors believe that Auctioneer is well-equipped to market and sell the Timberline Real Estate on DGC's behalf.

11. The Debtors have consulted extensively with Auctioneer and are informed and believe that a sale of the Timberline Real Estate pursuant to an auction will fetch the highest and best price within a reasonable time. Indeed, the Debtors are informed and believe that it would be impractical for the them to merely list the Timberline Real Estate for sale with a broker and hope for a purchaser to emerge, as owners of similarly situated vacant parcels of real estate in the area have been unsuccessful in such sale efforts.

12. Moreover, the Debtors have consulted with the PBGC and the PBGC is supportive of the Debtors' engagement of Auctioneer and proposed sale of the Timberline Real Estate, provided that, as discussed below, a "reserve" price is met. Since the Timberline Real Estate is believed to be worth far less than the amount of the PBGC Lien, the PBGC has agreed to the Debtors' proposed sale, to release its lien upon closing, and to permit the sale proceeds to be used to pay for the costs of sale, including Auctioneer's compensation described below and the Debtors' reasonable attorneys' fees and costs incurred in pursuing this Motion and selling the Timberline Real Estate.[2]

## <u>RELIEF REQUESTED</u>

13. By this Motion, the Debtors request the entry of an order: (a) authorizing them to (i) retain Auctioneer to market and sell the Timberline Real Estate pursuant to the terms and conditions of an Auction Listing Agreement dated as of August 9, 2018 by and between DGC and Auctioneer (the "<u>Auction Agreement</u>")[3] and (ii) pay Auctioneer its compensation described in the Auction Agreement without any further Court order; and (b) authorizing and approving (i) the sale

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[2] Such attorneys' fees and costs shall remain subject to Court approval.
[3] A true and correct copy of the Auction Agreement is attached hereto as **<u>Exhibit B</u>**.

of the Timberline Real Estate to the winning bidder at an auction free and clear of all liens, claims, encumbrances and interests, and (ii) the payment of net sale proceeds to the PBGC upon closing.

## BASIS FOR RELIEF REQUESTED

### A. The Court Should Approve The Auctioneer's Retention And Compensation

14. As set forth above, the Debtors believe that Auctioneer has the skill and expertise necessary to market and sell the Timberline Real Estate. The Debtors also believe that the terms of the Auction Agreement are market-based and fair and reasonable under the circumstances. Pursuant to the Auction Agreement, Auctioneer will handle all aspects of the Timberline Real Estate's marketing and conduct all aspects of the auction. The Auction Agreement provides that Auctioneer is entitled to a single, non-refundable $1,500 payment to reimburse it for all marketing expenses (the "Expense Payment") and, in lieu of a traditional commission, Auctioneer will charge and receive a "Buyer's Premium" in the amount of ten percent (10%) of the sale price (the "Buyer's Premium" and, together with the Expense Payment, the "Auctioneer Compensation").

15. Although the Auction Agreement provides that the auction shall take place on September 29, 2018, the auction will not occur on that date, but rather will likely occur by the end of October, 2018, to provide Auctioneer with sufficient time to market the Timberline Real Estate. Indeed, Auctioneer has already initiated preparations for the auction and commenced marketing efforts. Moreover, the Auction Agreement further provides for a reserve, which amount must be met to convey title to the Timberline Real Estate. The PBGC requested such a reserve to ensure that the real estate would not be conveyed for an unreasonably low purchase price. The Debtors have redacted the reserve amount from the Auction Agreement that is attached to this Motion to avoid the public and potential buyers from discovering it.

16. The Debtors request that they be authorized to pay the Auctioneer Compensation without any further Court order. Section 328(a) of the Bankruptcy Code provides, in relevant part,

that the Debtors "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the compensation of professionals, including brokers and financial advisors, on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat'l Gypsum (In re Nat'l Gypsum Co.)*, 123 F.3d 861 (5th Cir. 1997):

> Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants "reasonable compensation" based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F.3d at 862 (internal citations and emphasis omitted).

17. The Debtors submit that the Auctioneer Compensation is consistent with Auctioneer's normal and customary fee arrangements for auctions of this size and that the Auctioneer Compensation is market-based and fair and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code.

18. Moreover, as set forth in more detail in the Declaration of Tommy Garten, a copy of which is attached hereto as **Exhibit C**, Auctioneer is disinterested and eligible to be retained by the Debtors. Indeed, Auctioneer is not a creditor of any of the Debtors and does not hold or represent any interest adverse to the Debtors' estates. *See* Ex. C.

19. Accordingly, the Court should approve Auctioneer's retention pursuant to the terms of the Auction Agreement and the Auctioneer Compensation without further Court order.

**B. The Court Should Approve The Auction And Sale Of Timberline Real Estate**

20. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A sale of a debtor's assets pursuant to section 363(b) of the Bankruptcy Code is permissible when "a sound business justification exists." *In re Daufuskie Island Props., LLC*, 431 B.R. 626, 638-39 (Bankr. D. S.C. 2010). The "business purpose" test is satisfied if:

> (1) a sound business reason or emergency justifies a pre-confirmation sale; (2) a sale has been proposed in good faith; (3) adequate and reasonable notice of the sale has been provided to parties-in-interest; and (4) the purchase price is fair and reasonable.

*Id*.

21. Here, a sound business reason exists for selling the Timberline Real Estate, as the Debtors are no longer operating, have no further use for such property, and are not deriving any income or other gain from the Timberline Real Estate. Moreover, the Debtors are proposing the sale in good faith and to maximize the value of the Timberline Real Estate within a reasonable amount of time. Further, as set forth above, the Debtors are informed and believe that an auction to be conducted by Auctioneer is the only practical means by which to dispose of the Timberline Real Estate, as buyers are less likely to emerge if the Debtors merely list the property for sale at a pre-established price. Therefore, in an exercise of their sound business judgment, the Debtors submit that they will be able to maximize the value of the Timberline Real Estate if it is sold by Auctioneer pursuant to an advertised auction.

22. Based upon the foregoing, the Debtors request that the Court approve the proposed auction and sale of the Timberline Real Estate to the winning bidder to be identified following the conclusion of the auction, and to authorize disbursement of the net sale proceeds to the PBGC upon closing without further order of Court.

**C. Relief From Bankruptcy Rule 6004(h)**

23. Under Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Here, to minimize the continuing costs of administering and preserving the Debtors' estates and the Timberline Real Estate, the Debtors request that the Court waive the fourteen-day stay period under Bankruptcy Rule 6004(h).

## CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order approving: (a) the Debtors' retention of the Auctioneer pursuant to the terms and conditions of the Auction Agreement; and (b) the sale of the Timberline Real Estate to the winning bidder following an auction free and clear of all liens, claims, encumbrances and other interests.

Dated: September 20, 2018

**PERKINS COIE LLP**

By: /s/ *Brian A. Audette*
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*Co-Counsel to the Debtors and Debtors in Possession*

# EXHIBIT A

**Fill in this information to identify the case:**

Debtor 1: Daily Gazette Company

Debtor 2 (Spouse, if filing): 

United States Bankruptcy Court for the: Southern District of West Va. (State)

Case number: 18-20028

Official Form 410

# Proof of Claim

12/15

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy** (Form 309) **that you received.**

## Part 1: Identify the Claim

**1. Who is the current creditor?**

Pension Benefit Guaranty Corporation
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor: 

**2. Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? 

**3. Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

| **Where should notices to the creditor be sent?** | **Where should payments to the creditor be sent?** (if different) |
|---|---|
| Name: Office of the General Counsel, Attn: Marc S. Peuffer | Name: |
| Number Street: 1200 K Street, N.W., Suite 340 | Number Street: |
| City State ZIP Code: Washington, DC 20005-4026 | City State ZIP Code: |
| Contact phone: 202-326-4020, x4903 | Contact phone: |
| Contact email: pfeuffer.marc@pbgc.gov | Contact email: |

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

__ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __

**4. Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) ______ Filed on ______ MM / DD / YYYY

**5. Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? ______

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

**6. Do you have any number you use to identify the debtor?**

☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ___ ___ ___ ___

**7. How much is the claim?**

$ 1,627,808.00. **Does this amount include interest or other charges?**

☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

**8. What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Statutory Liability to the Charleston Newspapers Retirement Plan for unpaid minimum funding contributions under 26 U.S.C. §§ 412 and 430, 29 U.S.C. §§ 1082, 1342 and 1362(c). See attached statement.

**9. Is all or part of the claim secured?**

☐ No
☑ Yes. The claim is secured by a lien on property.

**Nature of property:**

☑ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: ____________________

**Basis for perfection:** Statutory lien for missed pension contributions

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property:** $ Unknown

**Amount of the claim that is secured:** $ 1,627,808

**Amount of the claim that is unsecured:** $ Unknown (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** $ n/a

**Annual Interest Rate** (when case was filed) n/a %

☐ Fixed
☐ Variable

**10. Is this claim based on a lease?**

☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $__________

**11. Is this claim subject to a right of setoff?**

☑ No See attached statement.
☐ Yes. Identify the property: ____________________

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**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

- [x] No
- [ ] Yes. *Check all that apply:*

| | Amount entitled to priority |
|---|---|
| ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $ |
| ☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $ |
| ☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $ |
| ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $ |
| ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $ |
| ☐ Other. Specify subsection of 11 U.S.C. § 507(a)(2) that applies. | $ |

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

## Part 3: Sign Below

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

- [ ] I am the creditor.
- [x] I am the creditor's attorney or authorized agent.
- [ ] I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- [ ] I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/17/2018
MM / DD / YYYY

Signature

**Print the name of the person who is completing and signing this claim:**

| | |
|---|---|
| Name | Joel W. Ruderman (First name / Middle name / Last name) |
| Title | Assistant General Counsel |
| Company | Pension Benefit Guaranty Corporation<br>Identify the corporate servicer as the company if the authorized agent is a servicer. |
| Address | 1200 K Street, N.W., Suite 340 (Number / Street)<br>Washington, DC 20005-4026 (City / State / ZIP Code) |
| Contact phone | 202-326-4020 |
| Email | ruderman.joel@pbgc.gov |

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| | ) | |
| Daily Gazette Company | ) | Case No. 18-20028 |
| | ) | |
| | ) | |
| Debtor. | ) | |

**STATEMENT OF THE PENSION BENEFIT GUARANTY CORPORATION IN SUPPORT OF ITS CLAIM FOR MINIMUM FUNDING CONTRIBUTIONS DUE TO THE CHARLESTON NEWSPAPERS PENSION PLAN**

The Pension Benefit Guaranty Corporation ("PBGC"), on behalf of the Charleston Newspapers Retirement Plan (the "Pension Plan"), hereby submits its Statement in Support of its claim for minimum funding contributions that are due to the Pension Plan, against Daily Gazette Company (the "Debtor"), stating:

1. PBGC is a wholly-owned United States government corporation, and an agency of the United States, that administers the defined benefit pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, *as amended*, 29 U.S.C. §§ 1301-1461 (2012, Supp. II 2016) ("ERISA"). PBGC guarantees the payment of certain pension benefits upon the termination of a single-employer pension plan covered by Title IV of ERISA. When an underfunded plan terminates, PBGC generally becomes trustee of the plan and, subject to certain statutory limitations, pays the plan's unfunded benefits with its insurance funds. *See* 29 U.S.C. §§ 1321-1322, 1342, 1361.

2. The Pension Plan is a single-employer defined benefit pension plan covered by Title IV of ERISA. *See* 29 U.S.C. § 1321.

4. The Pension Plan terminated on August 1, 2015, and PBGC was appointed as the Pension Plan's statutory trustee on October 13, 2016, under 29 U.S.C. § 1342.

5. On January 30, 2018, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code.

6. The contributing sponsor of the Pension Plan and each member of its controlled group are jointly and severally liable to the Pension Plan for contributions necessary to satisfy the minimum funding standards under sections 412 and 430 of the Internal Revenue Code ("IRC") and sections 302 and 303 of ERISA. IRC § 412(c)(11) (2007) (effective for pension plan years beginning on or before Dec. 31, 2007); *see also* 29 U.S.C.A. § 1082(c)(11) (2007) (same); and IRC § 412(b)(1) & (2) (2009) (effective for pension plan years beginning after Dec. 31, 2007); *see also* 29 U.S.C.A. § 1082(b)(1) & (2) (2009) (same)..[1] Also, the Debtor may be contractually obligated to contribute to the Pension Plan.

7. This is an estimated claim for contributions that are owed to the Pension Plan. PBGC estimates the claim to be $1,627,008. Because the Pension Plan terminated, this liability is owed to PBGC as the trustee appointed under 29 U.S.C. § 1342. *See* 29 U.S.C. § 1342(d)(1)(B)(ii) (a trustee appointed under § 1342(b) has the power "to collect for the plan any amounts due the plan, including but not limited to the power to collect from the persons obligated to meet the requirements of § 302 or the terms of the plan") and 29 U.S.C. § 1362(c).

[1] References to the IRC, or to 29 U.S.C.A. §§ 1082 and 1083, with a date of 2007 refer to the pre-PPA 2006 provisions in effect for pension plan years beginning *on or before* December 31, 2007. References with a date of 2009 refer to the PPA 2006 provisions in effect for pension plan years beginning *after* December 31, 2007.

8. In July 2015, October 2015, February 2016, May 2016, and June 2016, PBGC filed Notices of Federal Lien under IRC §§ 412(n) and/or 430(k) against the Debtor for unpaid minimum funding contributions and interest. True, complete, and correct copies of the Notices of Federal Liens filed against the Debtor are attached to this proof of claim as Exhibits 1 through 5, and incorporated herein by reference.

9. By filing the Notices of Federal Lien, PBGC perfected the lien described in 29 U.S.C. § 1082(f) (2007), 29 U.S.C. § 1083(k) (2008), IRC § 412(n) (2007) and IRC § 430(k) (2008) against all real property of the Debtor, if any, located in Tucker County, West Virginia.

10. Documents supporting this claim include the Pension Plan document with applicable amendments; relevant collateral agreements, if any; United States Internal Revenue Service Form 5500s; and annual actuarial valuation reports for the Pension Plan. On information and belief, the Debtor or a member of its controlled group has in its possession and control copies or originals of these documents.

11. PBGC is not aware of any other claim for these contributions having been filed by any person with responsibility for administering the affairs of the Pension Plan.

12. PBGC's investigation of this matter is continuing. The agency reserves the right to amend, modify and supplement this proof of claim and/or to file additional proofs of claim. The filing of this proof of claim is not intended to be and shall not be construed as (1) an election of remedy or (2) a waiver or limitation of any rights of PBGC, the Pension Plan or any of its beneficiaries or participants.

Dated: Washington, D.C.
May 17, 2018

Joel W. Ruderman
Assistant General Counsel
Marc S. Pfeuffer
Attorney
Office of the General Counsel
PENSION BENEFIT GUARANTY CORPORATION
1200 K Street, N.W.
Washington, D.C. 20005-4026
(202) 326-4020 ext. 4903
FAX: (202) 326-4112

# <u>Exhibit 1</u>

**Please return a copy of the recorded original to:**
MARC PFEUFFER, ESQ.
OFFICE OF THE CHIEF COUNSEL
PENSION BENEFIT GUARANTY CORPORATION
1200 K ST., N.W.
WASHINGTON, DC 20005-4026
PHONE NO. (202) 326-4020, EXT.4903

BOOK 3 PAGE 60(2) 143251

PBGC
Protecting America's Pensions

# NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k)* PENSION BENEFIT GUARANTY CORPORATION

As provided by Internal Revenue Code (IRC) §412(n) (2007) and/or §430(k) (2008), notice is given by the Pension Benefit Guaranty Corporation, a wholly-owned United States government corporation created by Title IV of the Employee Retirement Income Security Act of 1974, that the pension plan named below has a lien on all property and rights to property of the person named below because that person failed to make contributions to the pension plan required under IRC §§ 412 and/or 430 by the due date specified below. The amount of the lien was determined under IRC §412(n)(3) (2007) and/or §430(k)(3) (2008) and shall be treated as taxes due and owing the United States. The priority of the lien imposed shall be determined in the same manner as are federal taxes under IRC §6323. *See* IRC §412(n)(4)(C) (2007) and §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c).
**IRC §412(n) (2007) applies to pension plan years beginning on or before Dec. 31, 2007. IRC §430(k) (2008) applies to pension plan years beginning after Dec. 31, 2007.*

IMPORTANT FILING INFORMATION:
1. As provided by IRC §412(n)(4)(C) (2007), §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c)(4), this notice shall be filed in the same manner as a lien for federal taxes under IRC §6323(f) and (g).
2. As provided by IRC §412(n)(5) (2007) and §430(k)(5) (2008), the Pension Benefit Guaranty Corporation may perfect a lien that arises under IRC §412(n)(1) (2007) or §430(k)(1) (2008).
3. All prior notices of lien under IRC §412(n) (2007) or §430(k) (2008) filed against this person are listed in columns (d) and (e).
4. RELEASE INFORMATION: Unless a notice of lien is re-filed by the date given in column (b), this notice shall, on the day following such date, operate as a release of this lien.

| Name and Address of Person Liable for Contributions (DEBTOR): | Name of Pension Plan (SECURED PARTY): |
|---|---|
| **The Daily Gazette Company**<br>Lot 38 Deer Ridge<br>Dry Fork District<br>Davis, WV 26260 | **Charleston Newspapers Retirement Plan**<br>c/o Pension Benefit Guaranty Corporation<br>1200 K Street, N.W.<br>Washington, DC 20005 |

| Due Date (a) | Last Day for Refiling (b) | Amount Under IRC §412(n)(3) and/or §430(k)(3) at Due Date** (c) |
|---|---|---|
| 1/15/2015 | 7/19/2021 | $1,341,121.00 |

*** Excludes amounts attributable to any other lien notices listed in columns (d) and (e).*
***Interest accrues until required contributions are made.***

| Place of Filing: | Prior IRC §412(n) and/or §430(k) Notice of Lien Filing Dates (d) | Recording Office File Stamp Number (e) |
|---|---|---|
| Tucker County Clerk<br>211 First Street, Suite 205<br>Parsons, WV 26287 | | |

2015 JUL 14 AM 7: 0?

This notice was prepared and signed at Washington, D.C., on June 29, 2015.

Charles L. Finke — Deputy Chief Counsel, Pension Benefit Guaranty Corporation

PBGC Lien No. 15L-3601

Form 412(n)/430(k)

606589

ACKNOWLEDGEMENT

District of Columbia ) SS.:

On this 29th day of June 2015, CHARLES L. FINKE personally came before me and being known to me, did represent and affirm that he is the Deputy Chief Counsel of the Pension Benefit Guaranty Corporation, that he did affix the seal of the Pension Benefit Guaranty Corporation to the attached NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k), that he signed and sealed the NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k) on behalf of the Pension Benefit Guaranty Corporation as the free act and deed of the Corporation.

MARK F. MADDREY NOTARY PUBLIC MY COMMISSION EXPIRES 9/30/2018 DISTRICT OF COLUMBIA

In Washington, D.C.

NOTARY PUBLIC

Mark F. Maddrey
Notary Public, District of Columbia
My Commission Expires 9/30/2018

My Commission expires:

This document presented and filed:
07/02/2015 12:31:34 PM
Sherry Simmons
Sherry L. Simmons, Tucker County, WV
143251

# Exhibit 2

BOOK 3 PAGE 62(2) 143817

Please return a copy of the recorded original to:
MARC PFEUFFER, ESQ.
OFFICE OF THE CHIEF COUNSEL
PENSION BENEFIT GUARANTY CORPORATION
1200 K ST., N.W.
WASHINGTON, DC 20005-4026
PHONE NO. (202) 326-4020, EXT.4903

2015 OCT 16 AM 9:22

OGC/OCC

PBGC
Protecting America's Pensions

# NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k)* PENSION BENEFIT GUARANTY CORPORATION

As provided by Internal Revenue Code (IRC) §412(n) (2007) and/or §430(k) (2008), notice is given by the Pension Benefit Guaranty Corporation, a wholly-owned United States government corporation created by Title IV of the Employee Retirement Income Security Act of 1974, that the pension plan named below has a lien on all property and rights to property of the person named below because that person failed to make contributions to the pension plan required under IRC §§ 412 and/or 430 by the due date specified below. The amount of the lien was determined under IRC §412(n)(3) (2007) and/or §430(k)(3) (2008) and shall be treated as taxes due and owing the United States. The priority of the lien imposed shall be determined in the same manner as are federal taxes under IRC §6323. *See* IRC §412(n)(4)(C) (2007) and §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c).

**IRC §412(n) (2007) applies to pension plan years beginning on or before Dec. 31, 2007. IRC §430(k) (2008) applies to pension plan years beginning after Dec. 31, 2007.*

IMPORTANT FILING INFORMATION:

1. As provided by IRC §412(n)(4)(C) (2007), §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c)(4), this notice shall be filed in the same manner as a lien for federal taxes under IRC §6323(f) and (g).
2. As provided by IRC §412(n)(5) (2007) and §430(k)(5) (2008), the Pension Benefit Guaranty Corporation may perfect a lien that arises under IRC §412(n)(1) (2007) or §430(k)(1) (2008).
3. All prior notices of lien under IRC §412(n) (2007) or §430(k) (2008) filed against this person are listed in columns (d) and (e).
4. RELEASE INFORMATION: Unless a notice of lien is re-filed by the date given in column (b), this notice shall, on the day following such date, operate as a release of this lien.

| Name and Address of Person Liable for Contributions (DEBTOR): | Name of Pension Plan (SECURED PARTY): |
|---|---|
| **The Daily Gazette Company**<br>Lot 38 Deer Ridge<br>Dry Fork District<br>Davis, WV 26260 | **Charleston Newspapers Retirement Plan**<br>c/o Pension Benefit Guaranty Corporation<br>1200 K Street, N.W.<br>Washington, DC 20005 |

| Due Date (a) | Last Day for Refiling (b) | Amount Under IRC §412(n)(3) and/or §430(k)(3) at Due Date** (c) |
|---|---|---|
| 7/15/2015 | 11/4/2021 | $298,289.00 |

*** Excludes amounts attributable to any other lien notices listed in columns (d) and (e). Interest accrues until required contributions are made.*

| Place of Filing: | Prior IRC §412(n) and/or §430(k) Notice of Lien Filing Dates (d) | Recording Office File Stamp Number (e) |
|---|---|---|
| Tucker County Clerk<br>211 First Street, Suite 205<br>Parsons, WV 26287 | 7/2/2015 | BK 3/PG 60(2) 143251 |

This notice was prepared and signed at Washington, D.C., on October 7, 2015.

Charles L. Finke

Charles L. Finke — Deputy Chief Counsel, Pension Benefit Guaranty Corporation

PBGC Lien No. 15L-3823

Form 412(n)/430(k)

6130068

ACKNOWLEDGEMENT

District of Columbia ) SS.:

On this 7th day of October 2015, CHARLES L. FINKE personally came before me and being known to me, did represent and affirm that he is the Deputy Chief Counsel of the Pension Benefit Guaranty Corporation, that he did affix the seal of the Pension Benefit Guaranty Corporation to the attached NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k), that he signed and sealed the NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k) on behalf of the Pension Benefit Guaranty Corporation as the free act and deed of the Corporation.

In Washington, D.C.

NOTARY PUBLIC

My Commission expires: Mark F. Maddrey
Notary Public, District of Columbia
My Commission Expires 9/30/2018

MARK F. MADDREY NOTARY PUBLIC MY COMMISSION EXPIRES 9/30/2018 DISTRICT OF COLUMBIA

This document presented and filed:
10/08/2015 01:48:43 PM
Sherry Simmons
SHERRY L. SIMMONS, Tucker County, WV
143817

# Exhibit 3

BOOK 3 PAGE 67(2) 144603

Please return a copy of the recorded original to:
MARC PFEUFFER, ESQ.
OFFICE OF THE CHIEF COUNSEL
PENSION BENEFIT GUARANTY CORPORATION
1200 K ST., N.W.
WASHINGTON, DC 20005-4026
PHONE NO. (202) 326-4020, EXT.4903

PBGC
Protecting America's Pensions

# NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k)* PENSION BENEFIT GUARANTY CORPORATION

As provided by Internal Revenue Code (IRC) §412(n) (2007) and/or §430(k) (2008), notice is given by the Pension Benefit Guaranty Corporation, a wholly-owned United States government corporation created by Title IV of the Employee Retirement Income Security Act of 1974, that the pension plan named below has a lien on all property and rights to property of the person named below because that person failed to make contributions to the pension plan required under IRC §§ 412 and/or 430 by the due date specified below. The amount of the lien was determined under IRC §412(n)(3) (2007) and/or §430(k)(3) (2008) and shall be treated as taxes due and owing the United States. The priority of the lien imposed shall be determined in the same manner as are federal taxes under IRC §6323. *See* IRC §412(n)(4)(C) (2007) and §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c).

**IRC §412(n) (2007) applies to pension plan years beginning on or before Dec. 31, 2007. IRC §430(k) (2008) applies to pension plan years beginning after Dec. 31, 2007.*

IMPORTANT FILING INFORMATION:

1. As provided by IRC §412(n)(4)(C) (2007), §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c)(4), this notice shall be filed in the same manner as a lien for federal taxes under IRC §6323(f) and (g).
2. As provided by IRC §412(n)(5) (2007) and §430(k)(5) (2008), the Pension Benefit Guaranty Corporation may perfect a lien that arises under IRC §412(n)(1) (2007) or §430(k)(1) (2008).
3. All prior notices of lien under IRC §412(n) (2007) or §430(k) (2008) filed against this person are listed in columns (d) and (e).
4. RELEASE INFORMATION: Unless a notice of lien is re-filed by the date given in column (b), this notice shall, on the day following such date, operate as a release of this lien.

| Name and Address of Person Liable for Contributions (DEBTOR): | Name of Pension Plan (SECURED PARTY): |
|---|---|
| **The Daily Gazette Company**<br>Lot 38 Deer Ridge<br>Dry Fork District<br>Davis, WV 26260 | **Charleston Newspapers Retirement Plan**<br>c/o Pension Benefit Guaranty Corporation<br>1200 K Street, N.W.<br>Washington, DC 20005 |

| Due Date (a) | Last Day for Refiling (b) | Amount Under IRC §412(n)(3) and/or §430(k)(3) at Due Date** (c) |
|---|---|---|
| 10/15/2015 | 3/14/2022 | $417,718.00 |

*** Excludes amounts attributable to any other lien notices listed in columns (d) and (e).*

***Interest accrues until required contributions are made.***

| Place of Filing: | Prior IRC §412(n) and/or §430(k) Notice of Lien Filing Dates (d) | Recording Office File Stamp Number (e) |
|---|---|---|
| Tucker County Clerk<br>211 First Street, Suite 205<br>Parsons, WV 26287 | 10/8/2015<br>7/2/2015 | BK 3/PG 62(2) 143817<br>BK 3/PG 60(2) 143251 |

2016 FEB 25 AM 9:00

This notice was prepared and signed at Washington, D.C., on February 12, 2016.

Charles L. Finke — Deputy Chief Counsel, Pension Benefit Guaranty Corporation.

PBGC Lien No. 16L-4001 Form 412(n)/430(k)

6186138

ACKNOWLEDGEMENT

District of Columbia ) SS.:

On this 12th day of February 2016, CHARLES L. FINKE personally came before me and being known to me, did represent and affirm that he is the Deputy Chief Counsel of the Pension Benefit Guaranty Corporation, that he did affix the seal of the Pension Benefit Guaranty Corporation to the attached NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k), that he signed and sealed the NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k) on behalf of the Pension Benefit Guaranty Corporation as the free act and deed of the Corporation.

In Washington, D.C.

NOTARY PUBLIC

My Commission expires: Mark F. Maddrey
Notary Public, District of Columbia
My Commission Expires 9/30/2018


This document presented and filed:
02/18/2016 11:57:28 AM
Sherry Simmons
SHERRY L. SIMMONS, Tucker County, WV
144603

# Exhibit 4

BOOK 3 PAGE 73(2) 145162

**Please return a copy of the recorded original to:**
MARC PFEUFFER, ESQ.
OFFICE OF THE CHIEF COUNSEL
PENSION BENEFIT GUARANTY CORPORATION
1200 K ST., N.W.
WASHINGTON, DC 20005-4026
PHONE NO: (202) 326-4020, EXT.4803

PBGC
Protecting America's Pensions

# NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k)* PENSION BENEFIT GUARANTY CORPORATION

As provided by Internal Revenue Code (IRC) §412(n) (2007) and/or §430(k) (2008), notice is given by the Pension Benefit Guaranty Corporation, a wholly-owned United States government corporation created by Title IV of the Employee Retirement Income Security Act of 1974, that the pension plan named below has a lien on all property and rights to property of the person named below because that person failed to make contributions to the pension plan required under IRC §§ 412 and/or 430 by the due date specified below. The amount of the lien was determined under IRC §412(n)(3) (2007) and/or §430(k)(3) (2008) and shall be treated as taxes due and owing the United States. The priority of the lien imposed shall be determined in the same manner as are federal taxes under IRC §6323. *See* IRC §412(n)(4)(C) (2007) and §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c).
***IRC §412(n) (2007) applies to pension plan years beginning on or before Dec. 31, 2007. IRC §430(k) (2008) applies to pension plan years beginning after Dec. 31, 2007.**

OGC/OCC

**IMPORTANT FILING INFORMATION:**
1. As provided by IRC §412(n)(4)(C) (2007), §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c)(4), this notice shall be filed in the same manner as a lien for federal taxes under IRC §6323(f) and (g).
2. As provided by IRC §412(n)(5) (2007) and §430(k)(5) (2008), the Pension Benefit Guaranty Corporation may perfect a lien that arises under IRC §412(n)(1) (2007) or §430(k)(1) (2008).
3. All prior notices of lien under IRC §412(n) (2007) or §430(k) (2008) filed against this person are listed in columns (d) and (e).
4. RELEASE INFORMATION: Unless a notice of lien is re-filed by the date given in column (b), this notice shall, on the day following such date, operate as a release of this lien.

| Name and Address of Person Liable for Contributions (DEBTOR): | Name of Pension Plan (SECURED PARTY): |
|---|---|
| **The Daily Gazette Company**<br>Lot 38 Deer Ridge<br>Dry Fork District<br>Davis, WV 26260 | **Charleston Newspapers Retirement Plan**<br>c/o Pension Benefit Guaranty Corporation<br>1200 K Street, N.W.<br>Washington, DC 20005 |

| Due Date (a) | Last Day for Refiling (b) | Amount Under IRC §412(n)(3) and/or §430(k)(3) at Due Date** (c) |
|---|---|---|
| 1/15/2016 | 6/17/2022 | $155,868.00 |

*** Excludes amounts attributable to any other lien notices listed in columns (d) and (e).*

***Interest accrues until required contributions are made.***

| Place of Filing: | Prior IRC §412(n) and/or §430(k) Notice of Lien Filing Dates (d) | Recording Office File Stamp Number (e) |
|---|---|---|
| Tucker County Clerk<br>211 First Street, Suite 205<br>Parsons, WV 26287 | 2/18/2016<br>10/8/2015<br>7/2/2015 | BK 3/PG 67(2) 144603<br>BK 3/PG 62(2) 143917<br>BK 3/PG 60(2) 143251 |

This notice was prepared and signed at Washington, D.C., on May 18, 2016.

Charles L. Finke — Deputy Chief Counsel, Pension Benefit Guaranty Corporation

PBGC Lien No. 16L-4072

Form 412(n)/430(k)

622915Z

ACKNOWLEDGEMENT

| | | |
|---|---|---|
| District of Columbia | ) ) ) | SS.: |

On this 18th day of May 2016, CHARLES L. FINKE personally came before me and being known to me, did represent and affirm that he is the Deputy Chief Counsel of the Pension Benefit Guaranty Corporation, that he did affix the seal of the Pension Benefit Guaranty Corporation to the attached NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k), that he signed and sealed the NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k) on behalf of the Pension Benefit Guaranty Corporation as the free act and deed of the Corporation.

In Washington, D.C.

NOTARY PUBLIC

My Commission expires: Mark F. Maddrey
Notary Public, District of Columbia
My Commission Expires 9/30/2018

MARK F. MADDREY NOTARY PUBLIC MY COMMISSION EXPIRES 9/30/2018 DISTRICT OF COLUMBIA

This document presented and filed:
05/23/2016 02:41:35 PM
Sherry Simmons
SHERRY L. SIMMONS, Tucker County, WV
145162

# Exhibit 5

BOOK 3 PAGE 75(2) 145224

**Please return a copy of the recorded original to:**
**MARC PFEUFFER, ESQ.**
OFFICE OF THE CHIEF COUNSEL
PENSION BENEFIT GUARANTY CORPORATION
1200 K ST., N.W.
WASHINGTON, DC 20005-4026
PHONE NO. (202) 326-4020, EXT.4903

PBGC
Protecting America's Pensions

# NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k)* PENSION BENEFIT GUARANTY CORPORATION

As provided by Internal Revenue Code (IRC) §412(n) (2007) and/or §430(k) (2008), notice is given by the Pension Benefit Guaranty Corporation, a wholly-owned United States government corporation created by Title IV of the Employee Retirement Income Security Act of 1974, that the pension plan named below has a lien on all property and rights to property of the person named below because that person failed to make contributions to the pension plan required under IRC §§ 412 and/or 430 by the due date specified below. The amount of the lien was determined under IRC §412(n)(3) (2007) and/or §430(k)(3) (2008) and shall be treated as taxes due and owing the United States. The priority of the lien imposed shall be determined in the same manner as are federal taxes under IRC §6323. *See* IRC §412(n)(4)(C) (2007) and §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c).
**IRC §412(n) (2007) applies to pension plan years beginning on or before Dec. 31, 2007. IRC §430(k) (2008) applies to pension plan years beginning after Dec. 31, 2007.*

IMPORTANT FILING INFORMATION:
1. As provided by IRC §412(n)(4)(C) (2007), §430(k)(4)(C) (2008), and 29 U.S.C. §1368(c)(4), this notice shall be filed in the same manner as a lien for federal taxes under IRC §6323(f) and (g).
2. As provided by IRC §412(n)(5) (2007) and §430(k)(5) (2008), the Pension Benefit Guaranty Corporation may perfect a lien that arises under IRC §412(n)(1) (2007) or §430(k)(1) (2008).
3. All prior notices of lien under IRC §412(n) (2007) or §430(k) (2008) filed against this person are listed in columns (d) and (e).
4. RELEASE INFORMATION: Unless a notice of lien is re-filed by the date given in column (b), this notice shall, on the day following such date, operate as a release of this lien.

| Name and Address of Person Liable for Contributions (DEBTOR): | Name of Pension Plan (SECURED PARTY): |
|---|---|
| **The Daily Gazette Company**<br>Lot 38 Deer Ridge<br>Dry Fork District<br>Davis, WV 26260 | **Charleston Newspapers Retirement Plan**<br>c/o Pension Benefit Guaranty Corporation<br>1200 K Street, N.W.<br>Washington, DC 20005 |

| Due Date (a) | Last Day for Refiling (b) | Amount Under IRC §412(n)(3) and/or §430(k)(3) at Due Date** (c) |
|---|---|---|
| **4/15/2016** | **6/29/2022** | **$180,750.00** |

*** Excludes amounts attributable to any other lien notices listed in columns (d) and (e).*

***Interest accrues until required contributions are made.***

| Place of Filing: | Prior IRC §412(n) and/or §430(k) Notice of Lien Filing Dates (d) | Recording Office File Stamp Number (e) |
|---|---|---|
| Tucker County Clerk<br>211 First Street, Suite 205<br>Parsons, WV 26287 | 5/23/2016<br>2/18/2016<br>10/8/2015<br>7/2/2015 | BK 3/PG 73(2) 145162<br>BK 3/PG 67(2) 144603<br>BK 3/PG 62(2) 143817<br>BK 3/PG 60(2) 143261 |

2016 JUN 16 AM 8:05
OGC/OCC

This notice was prepared and signed at Washington, D.C., on June 2, 2016.

Charles L. Finke — Deputy Chief Counsel, Pension Benefit Guaranty Corporation

**PBGC Lien No. 16L-4210** Form 412(n)/430(k)

6236159

ACKNOWLEDGEMENT

District of Columbia ) SS.:

On this 2nd day of June 2016, CHARLES L. FINKE personally came before me and being known to me, did represent and affirm that he is the Deputy Chief Counsel of the Pension Benefit Guaranty Corporation, that he did affix the seal of the Pension Benefit Guaranty Corporation to the attached NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k), that he signed and sealed the NOTICE OF FEDERAL LIEN UNDER IRC § 412(n) AND/OR § 430(k) on behalf of the Pension Benefit Guaranty Corporation as the free act and deed of the Corporation.

In Washington, D.C.

NOTARY PUBLIC

My Commission expires: August 14, 2018

TINA JAI BRADLEY
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 14, 2018

This document presented and filed:
06/03/2016 12:49:47 PM

Sherry Simmons

SHERRY L. SIMMONS, Tucker County, WV
145224

# **EXHIBIT B**

GREENWAY'S
REAL ESTATE & AUCTION, INC.
REAL SOLUTIONS, RIGHT NOW!

**AUCTION LISTING AGREEMENT**
**FOR SALE OF REAL ESTATE AND/OR PERSONAL PROPERTY**

**THIS CONTRACT** made this 9th day in the month of August, 2018 by and between Daily Gazette Company ("Seller") and Greenway's Real Estate & Auction, Inc. ("Auctioneer") in consideration of their mutual promises and covenants herein, for Auctioneer to serve as Seller's agent and sell all that certain property described as Tract No. 38, "Deer Ridge Section" of Timberline Sub-Division for Allegheny Properties, Inc. located in Tucker county, West Virginia ("property") at auction.

1. **Date, Time, and Location** - The auction will be conducted on the 29th day of September, 2018 at 3:00 p.m. on location at the property, or on such other date or at such other time as may be ordered by the United States Bankruptcy Court for the Southern District of West Virginia (the "bankruptcy court"). Auctioneer will have full access to the property beginning on as needed with reasonable prior notice.

2. **Auctioneer Warrants** - (a) to prepare and conduct the auction to Seller's advantage; (b) to provide the equipment, materials, and labor necessary for the auction at Auctioneer's expense, unless otherwise directed in this contract; (c) to receive, disburse, and account for the auction proceeds; (d) to do all other things herein agreed.

3. **Seller Warrants** - (a) to lawfully own and possess the property, or otherwise be vested with the right to sell it and receive the proceeds; (b) to immediately convey possession and merchantable title of ownership to all buyers; (c) the property does not include dangerous, hazardous, harmful, or illegal substances, has no hidden latent or patent defects, and poses no environmental, health, safety, or other hazard; (d) not to interfere with Auctioneer's work; (e) the property is not subject to the Bulk Sales Act (Section 8.6A-101 of the code of Virginia, or replacement) unless disclosed by Seller in a written notice attached to this contract giving all details; (f) the property is not subject to any lien, security interest, dispute of title, or other encumbrances, unless disclosed in a written notice attached to this contract giving all details, except for (i) liens in favor of the Pension Benefit Guaranty Corporation, which will be released at closing; (ii) liens for unpaid real estate taxes and homeowners' assessments, if any, which will be assumed and paid by the buyer, and (iii) easements, covenants and conditions of record, which do not materially interfere with the use of the property; (g) to assist in preparing the property for auction as requested by Auctioneer, and do those things deemed reasonably necessary by Auctioneer to present the property in the most favorable light; (h) to accurately represent the property including, but not limited to, its description, type, composition, quality, condition, and value; (i) to not bid on the property either directly or indirectly; (j) to do all other things herein agreed.

4. **Marketing** - (a) Auctioneer may market property, as it deems advisable, (b) Seller will pay Auctioneer a nonrefundable marketing cost as described herein, and Seller' s written permission will be obtained before any other cost is incurred for Seller's account beyond this amount, (c) Auctioneer may advance such cost and Seller will fully reimburse Auctioneer at settlement or upon cancellation of the auction or termination of this agreement, as the case may be, (d) Seller's name may be used in any marketing to promote the auction, (f) Auctioneer has the right to place auction signs on the property to further advertise the auction and it may remove other signs at its discretion.

5. **No Guarantee** - Auctioneer makes no guarantee of any outcome or result from the auction.

**6. Delivery/Insurance** - It is Seller's responsibility and liability to deliver to the Buyers a good and marketable title to all real and personal property, free and clear of all liens and encumbrances, etc. except for (i) liens for unpaid real estate taxes and homeowners' assessments, if any, which will be assumed and paid by the buyer, and (ii) easements, covenants and conditions of record, which do not materially interfere with the use of the property. Seller is liable for any and all claims, damages, expenses, or theft of any real or personal property prior to delivery of title to the Buyers irrespective of location. Seller is responsible for properly insuring their own interest in the real estate and/or personal property, for any and all damage, liability, loss, theft, etc. Seller understands that Auctioneer specifically does not take care, custody or control of the real and personal property. It is strictly and solely Seller's responsibility and liability, irrespective of location, to insure and protect their real and personal property. Auctioneer is an agent only for Seller and assumes no responsibility or liability for the real and personal property.

**7. Reserves** - It is mutually agreed that all real estate and personal property will be sold to the highest bidder or at a privately negotiated sale with the exception of items herein specified as reserved. If a bid price or offer equals or exceeds the reserve price, or Seller authorizes Auctioneer to accept the bid price or offer, Auctioneer has earned his commission. Also, when the sale price on a reserved item, lot or real estate is above the reserve amount, Auctioneer can apply this excess monetary amount towards the reduction of the reserve amount on other reserved items, lots or real estate thus reducing the other items, lots or real estate reserve price. The Auctioneer may also reduce their commission on a reserved item, lot and real estate and apply that portion of the commission, whether at public or private auction or privately negotiated sale, toward the reserve price, thus reducing that item, lot or real estate reserve price. The entire property will be sold as a single lot. [redacted]

**8. Sole and Exclusive Right** - Seller grants Auctioneer the sole and exclusive right to sell the real estate and/or personal property described herein or on the attached schedules, if any, for so long as this agreement has not been cancelled terminated as provided in Section 9 below. Seller will pay or cause to be paid to Auctioneer (a) a 10% Buyer's Premium upon the closing of the sale of the property if the property is sold at the auction; (b) an amount equal to 10% of the reserve price if this agreement is cancelled by Buyer before the scheduled date of the auction, as extended, or the property is withdrawn from the auction, which payment, in either case, shall be made on or prior to the date which is five days after the scheduled auction date; or (c) if the property is not sold at the auction but is sold within six months after the scheduled auction date to a bidder registered at the auction or otherwise independently produced by Auctioneer, a commission equal to 10% of the sale price upon the closing of such sale of the property.

**9. Cancellation and Termination** - In the event of any cancellation of this agreement or the auction by Seller (direct or indirect), Auctioneer will be reimbursed all costs involved for advertising, advertising retractions, promotion, out of pocket expenditures, labor (including travel time), travel, tents, port-a-john, mobile office, etcetera, including attorney fees and court costs, if necessary. This agreement will terminate (a) if the property is sold at the auction, upon the closing of the sale of the property and payment to Auctioneer of the Buyer's Premium and Auctioneer's expenses, and (b) if the property is not sold at the auction and the scheduled auction date is not extended to a date mutually acceptable to Buyer and Auctioneer, upon written notice by Seller to Auctioneer; provided that Seller shall remain obligated to pay or cause to be paid to Auctioneer the amounts, if any, described in Sections 4 and 9 of this agreement notwithstanding any such termination.

**10. Seller Compliance** - Seller shall execute and deliver any and all required documents to Auctioneer or the intended parties in an efficient and prompt manner. Seller shall comply with all laws including, but not limited to, the Bulk Sales Act, the Uniform (Commercial Code, Seller disclosures, etc.) If requested, Seller will complete and sign any and all disclosure forms pertaining to condition of the real estate and/or personal property. These disclosures will be made available to potential Buyers, upon request or at bidders packets. Seller is responsible for all compliances, all applicable laws and all expenses involved for compliances, but shall not be responsible for unpaid homeowners' assessments or real estate taxes, if any.

11. **Deposits** - Seller agrees all deposits will be held in escrow by Greenway's Auction Company unless stated otherwise in the auction sales agreement. Upon Buyers forfeit of a deposit, Seller will retain the deposit with the exception of expenses due Auctioneer herein. The Auctioneer in no case or manner will be held responsible by Seller for the Buyers performance or non-performance to purchase.

12. **Promotionl/Lotting** - The Auctioneer is granted the authority from Seller to prepare ads, place ads, post on website/s, promote, market, place signs and to set the terms, conditions, date, time and place for the auction in a manner Auctioneer deem necessary.

13. **Indemnify** - Seller indemnifies and saves harmless Auctioneer and their employees, agents, successors or assigns, against any and all claims, loss, liabilities, damages, demands, action or cause of action whatsoever in any manner (collectively, "claims") arising from this auction or privately negotiated sale, whether before, during or after the auction, except to the extent of any claims arising from Auctioneer's fraud, negligence or willful misconduct. Auctioneer is not responsible for accidents. Seller must insure its own liabilities, interests, etcetera in all real estate and/or personal property. Seller also agrees that any and all hazardous materials are strictly and solely Seller's ownership and responsibility, and indemnifies Auctioneer and their employees, agents, successors, assigns, as stated above for the same.

14. **Expenses** - Seller agrees that Auctioneer's fee, commission and all expenses incurred for conduction of the auction as agreed below (such as advertising, promotion, marketing, signage, labor (including travel time), travel, tent, port-a-john, equipment rental, dumpsters, etcetera) shall first be paid from the proceeds realized from the auction or privately negotiated sale before payment and satisfaction of any of the above described liens or encumbrances.

Nonrefundable Marketing Expense: **$1,500.00**

Auctioneer's Fee/Commission: **Real Estate N/A**

Auctioneer's Fee/Commission: **Personal Property N/A**

Labor Fee: **N/A** Persons paid **$N/A** per hour each, not to exceed **$N/A**

15. **Forms of Payments** - Seller agrees that any and all checks or forms of payment made payable to Auctioneer, or taken as payment, are taken subject to collection. Auctioneer assumes no responsibility for collection of payments.

16. **Buyers Premium** - Seller [X] **grants** [ ] **does not grant**, Auctioneer the authority to charge a Buyers Premium. The Buyers Premium on the Real Estate is in the amount of ten percent of the sale price. A Buyers Premium is a flat fee amount or a percentage of the high bid, which is added to the high bid amount to achieve the contract or sales price. The buyer's premium is earned and retained by the auction company.

17. **Binding** - This agreement shall be binding upon the undersigned and their respective heirs, administrators, executors, powers of attorney, trustees, agents, receivers, successors and assigns, etc. The terms and conditions of this agreement shall survive settlement or lack thereof if there is more than one

owner; the obligations imposed by this agreement shall be joint and several. If any term of this agreement is determined by a court to be unenforceable, the remainder of this agreement shall not be affected. This agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same agreement. Delivery of an executed counterpart signature page to this agreement by facsimile or electronic means (i.e., in "pdf" or "tif" format) shall be as effective as delivery of a manually executed counterpart.

**18. Acknowledgement** - Seller and Auctioneer each has had the opportunity to read the foregoing agreement and has had the opportunity to have legal advice as to its contents, requirements and liabilities, and agree to the responsibilities, obligations, and conditions thereof. This agreement is subject to bankruptcy court approval and shall not be effective until such approval is obtained by Seller.

**19. Entire Agreement** - This written agreement constitutes the entire agreement between the parties and no modification of this agreement shall be effective unless made in writing and signed by the parties. Seller acknowledges receipt of a copy of this agreement and attached schedule (if any).

**20. Forum Selection and Applicable Law** - The parties agree that any litigation or dispute concerning enforcement of this contract shall he brought in the State of West Virginia, the jurisdiction shall be in the County of Tucker and that National, State, and Local law shall govern. The prevailing party shall be entitled to an award of court costs and attorney fees incurred.

**Seller acknowledges receiving a copy of this agreement at the time of signing and have executed this agreement in (triplicate) on the date set forth above. Each party acknowledges that it has read, understands, and fully accepted the terms & conditions of this contract and has received a fully executed copy. Initials: ______________**

**The Daily Gazette Company**

**By:** Norman W. Shumate
**Seller(s) Signature**

1 Scott Road
**Address**

Charleston, WV 25314
**City State Zip**

**Phone** 304 395 1135

**Alt Phone or Cell** ____________________

**Greenway's Real Estate & Auction, Inc.**
**201 W. Locust Street, Covington, VA 24426**
**(540) 962-1155 or (800) 420-1155**

By: [signature]
**Auctioneer/Company Representative**

**(VAAF 096) (WVAL 461)**

# EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| | ) | |
| Daily Gazette Company, *et al.*, | ) | Case No. 18-20028 |
| | ) | (Jointly Administered) |
| Debtors.[1] | ) | |

**DECLARATION OF TOMMY GARTEN**

Pursuant to 28 U.S.C. § 1746, Tommy Garten declares as follows:

1. I am an Auctioneer and Broker with Greenway's Real Estate & Auction, Inc. ("Greenway's"), which maintains offices at 201 W. Locust Ave., Covington, Virginia, and 109 W. Main St., White Sulphur Springs, West Virginia. I am authorized to execute this Declaration on behalf of Greenway's and in support of Debtors' Motion to Approve (A) Retention of Auctioneer and (B) Sale of Real Estate (the "Motion").[2]

2. Daily Gazette Company ("DGC") has requested that Greenway's market and conduct a public auction for the sale of the Timberline Real Estate, and Greenway's has agreed to undertake such services on behalf of DGC pursuant to the terms and conditions of the Auction Agreement. The Auction Agreement contains terms and conditions, including compensation, that is usual and customary in the industry for the marketing and sale pursuant to auction of property such as the Timberline Real Estate.

3. Greenway's possesses the necessary expertise and experience needed to market the Timberline Real Estate and conduct a public auction for the sale of the Timberline Real Estate.

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[1] The Debtors in these Chapter 11 Cases and the last four digits of each Debtor's taxpayer identification number are as follows: Daily Gazette Company (4480) (the "Daily Gazette"); Daily Gazette Holding Company, LLC (2981); Charleston Newspapers Holdings, L.P. (3028), Daily Gazette Publishing Company, LLC (3074),Charleston Newspapers (6079), and G-M Properties, Inc. (4124).

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Indeed, Greenway's professionals are familiar with the Timberline Real Estate and the market in which it is located. Although the Auction Agreement provides that the auction shall take place on September 29, 2018, the auction will not occur on that date, but rather will likely occur by the end of October, 2018, to provide Greenway's with sufficient time to market the Timberline Real Estate. Indeed, Greenway's has already initiated preparations for the auction and commenced marketing efforts. This will provide a sufficient amount of time to generate the maximum amount of interest in the Timberline Real Estate.

4. To the best of my knowledge, Greenway's does not hold or represent any interest adverse to the Debtors' estates and Greenway's is not a "Creditor" of any of the Debtors within the meaning of section 101(10) of the Bankruptcy Code.

5. To the best of my knowledge: (a) neither I nor Greenway's has ever been a director, officer, employee or insider of any Debtor; and (b) Greenway's does not have an interest materially adverse to the interest of any Debtor's estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in any Debtor, or for any other reason.

6. No agreement exists, and no agreement will be made, to share any compensation received by Greenway's for its services to the Debtors with any other person or firm.

Executed this 18 day of September, 2018.

Tommy Garten



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