

AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

THIS AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this "Agreement") is made this 30th day of January 2015 (the "effective date") by and between **CAPSTAR TX LLC**, a Texas limited liability company (hereinafter "BUYER") and **WAY MEDIA, INC.**, a Florida non-profit corporation (hereinafter "SELLER"), each a "Party" and collectively the "Parties," and amends and restates that certain Asset Purchase Agreement between the parties dated January 14, 2015.

RECITALS:

- A. SELLER holds the FCC Authorizations issued by the FCC for translator W242BF, 96.3, licensed to Springfield, FL, Facility ID #140060 (hereinafter "SELLER Translator").
- B. With FCC Consent, SELLER desires to assign to BUYER, and BUYER desires to acquire from SELLER the FCC Authorizations and certain associated assets for the SELLER Translator in accordance with all the terms and subject to the conditions set forth in this agreement.

NOW THEREFORE, in consideration of the Recitals and mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

ARTICLE I

DEFINITIONS

- 1.1 **Definitions:** Except as specified otherwise, when used in this agreement, the following terms shall have the meanings specified:

"Agreement" shall mean this Amended and Restated Asset Purchase Agreement, together with the Schedules attached hereto, as the same shall be amended from time to time in accordance with the terms hereof;

"Closing" shall mean the conference or conference call held at a time mutually agreed to by the SELLER and BUYER on the Closing Date at which time the transactions contemplated by this Agreement shall be consummated as indicated herein;

“Closing Date” shall mean (1) the date designated by SELLER upon at least (5) five days prior written notice to BUYER which is no later than (5) five days after Final Order of the FCC approval of the assignment as contemplated by the Agreement, or (2) such other date as the Parties shall agree upon in writing. The Closing shall be deemed effective at 12:01AM on the first day subsequent to the Closing Date;

“FCC” shall mean the Federal Communications Commission;

“FCC Authorizations” shall mean the license(s) and construction permit(s) or other authorizations issued by the FCC to SELLER for the operation of the SELLER Translator, as listed in Schedule A, including any renewals or permitted modifications thereof between the date hereof and Closing.

“FCC Consent” for or related to the FCC Authorizations for the SELLER Translator shall be action by the FCC granting its consent to the assignment of the FCC Authorizations from SELLER to BUYER.

“Final Order” shall mean an FCC approval or grant of the assignments as contemplated in this Agreement with respect to which no action, request for stay, petition for rehearing or reconsideration, appeal or review by the FCC on its own motion is pending and as to which the time for filing or initiation of any such request, petition, appeal, or review has expired;

“Lien” shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien, lease (including any capitalized lease) or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, including any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement and the filing of or agreement to give any financing statement under the Uniform Commercial Code of the States of Colorado or Florida or comparable law of any jurisdiction;

“Person” shall mean any natural person, general or limited partnership, corporation, limited liability company, or other entity;

“Schedules” shall mean those schedules referred to in this Agreement which have been delivered concurrently with the execution of this Agreement;

“SELLER Property” shall mean any item listed in Schedule B.

“SELLER Purchased Assets” shall mean the right, title and interest of SELLER in and to certain assets used or usable in the operation of the SELLER Translator, limited to (a) the FCC Authorizations, (b) the SELLER Property, and (c) the SELLER Records, excluding all of SELLER’s cash and accounts receivable; and

“SELLER Records” shall mean files and records, including technical information and engineering data, and FCC logs relating to the SELLER Translator; provided, however, that the SELLER Records shall not include the financial records of SELLER or records of other businesses or activities of SELLER.

- 1.2 **Singular / Plural – Gender:** Where the context so requires or permits, the use of the singular from includes the plural, and the use of the plural form includes the singular, and the use of the gender includes any and all genders. Except as specifically set forth herein, all Section and Article references are to Sections and Articles of this agreement.

ARTICLE II

PURCHASE AND SALE

- 2.1 **Purchase and Sale:** At the Closing on the Closing Date, and upon all of the terms and subject to all of the conditions of this Agreement, SELLER shall sell, assign, convey, transfer and deliver to BUYER, and BUYER shall purchase all of SELLER’s right, title and interest, legal and equitable, in and to the SELLER Purchased assets.

- 2.2 **Consideration:** The monetary consideration for the assets shall be as follows:

- (a) Upon the execution of this Agreement, BUYER will pay to SELLER the amount of \$5,250.00 (Five Thousand Two Hundred Fifty dollars) by bank draft, transfer or certified check which shall be placed in Escrow with Fowler Media Consulting, LLC, who is the only broker of record on the transaction and Escrow Agent as defined in Schedule C.
- (b) On the Closing Date, BUYER will pay to SELLER the amount of \$69,750.00 (Sixty Nine Thousand Seven Hundred fifty dollars) by bank draft, transfer or certified check.

2.3 **Closing Date Deliveries for SELLER:** At the Closing on the Closing Date, SELLER shall deliver, or cause to be delivered, to BUYER properly executed and delivered as of the Closing Date: (i) an assignment of the FCC Authorizations, (ii) FCC Consummation notice, (iii) transfer of the association of the SELLER Translator FCC FRN from SELLER to BUYER, and (iv) Bill of Sale for the assignment of the SELLER Property and SELLER Records to BUYER.

2.4 **Adjustments to Purchase Price:**

- (a) Prorations: At the Closing the parties shall make all necessary prorations included but not limited to taxes, rent and utility charges.
- (b) Disputes: In the event of any disputes between the parties as to any adjustments under this Section, the amounts not in dispute will be paid at the time provided herein and the dispute will be resolved by an independent Certified Public Accountant ("CPA") who shall be jointly selected by the parties within (30) thirty days after the Closing or after the final settlement on prorations, as the case may be. The decision of the CPA will be binding on each of the parties and enforceable by a court of competent jurisdiction. The fees and expenses of the CPA will be paid one-half by BUYER and one-half by SELLER.

2.5 **Non-Assumption of Liabilities of SELLER:** BUYER does not and shall not assume or become obligated to pay any debt, obligation of any kind or nature of SELLER or the SELLER Translator, except for the assumed liabilities or other such obligations, debts or charges as are specifically allocated to BUYER elsewhere in this Agreement.

ARTICLE III

GOVERNMENTAL APPROVALS AND CONTROL OF STATION

3.1 **FCC Consent:** It is specifically understood and agreed by the Parties that the Closing shall be in all respects subject to, and conditioned upon, the receipt of prior FCC Consent. The Parties shall prepare and file with the FCC as soon as is practicable but in no event later than (5) five days after the execution of this Agreement, all requisite applications and other necessary instruments and documents to request the FCC Consent. The Parties shall prosecute such applications with all reasonable diligence and take all steps necessary to obtain the requisite FCC Consent.

3.2 BUYER and SELLER shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. BUYER and SELLER shall furnish each other with such information and assistance as the other

may reasonably request in connection with their preparation of any governmental filing hereunder.

- 3.3 SELLER shall bear the risk of any loss of or damage to any of the SELLER Purchased Assets at all times until the Closing, and BUYER shall bear the risk of any such loss or damage thereafter.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF BUYER

BUYER represents and warrants to SELLER (which representations and warranties shall survive the Closing for a period of (12) twelve months from the Closing Date) as follows:

- 4.1. **Organization:** BUYER is incorporated in the State of Texas. BUYER has the power and authority to own, lease and operate the SELLER Purchased Assets and to conduct business as it is now being conducted. BUYER has the full corporate power to purchase the SELLER Purchased Assets pursuant to this agreement.
- 4.2. **Authorization; Enforceability:** The execution, delivery and performance of this Agreement and all of the documents and instruments required hereby by BUYER are within the power of BUYER. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by BUYER, the valid and binding obligations of BUYER, enforceable against BUYER in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect effecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.
- 4.3. **Representations as of the Closing Date:** BUYER's representations and warranties set forth in this Agreement shall be true and correct on and as of the Closing Date, as though such representation and warranties were made as of a specific date, which need only be true as of such date or as otherwise provided by this Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

SELLER represents and warrants to BUYER (which representations and warranties shall survive the Closing for a period of (12) twelve months from the Closing Date) as follows:

- 5.1 **Organization:** SELLER is incorporated in the State of Florida. SELLER has the power and authority to own, lease and operate the SELLER Purchased Assets and to conduct the business of the SELLER Translator as it is now being conducted.
- 5.2 **Authorization; Enforceability:** The execution, delivery and performance of this Agreement and all of the documents and instruments required hereby by SELLER are within the power of SELLER. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by SELLER, the valid and binding obligations of SELLER, enforceable against SELLER in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect effecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.
- 5.3 **Title to Purchased Assets; Liens and Encumbrances:** SELLER owns good and marketable title in all of the SELLER Purchased Assets free and clear of any and all Liens and liabilities and the FCC Authorizations for the SELLER Translator is in full force and effect.
- 5.4 **Governmental Authorizations:** SELLER holds, and on the Closing Date SELLER will hold, all valid licenses, permits and other authorizations from the FCC to operate or construct the SELLER Translator. Schedule A includes a true and complete list of the FCC Authorizations for the SELLER Translator. The FCC Authorizations are in full force and effect and SELLER is the authorized legal holder thereof. As of the date hereof, no action or proceeding is pending or threatened before the FCC or any other governmental authority to revoke, refuse to renew or modify such FCC Authorizations or other authorizations of the SELLER Translator.
- 5.5 **Representations as of the Closing Date:** SELLER's representations and warranties set forth in this Agreement shall be true and correct on and as of the Closing Date, as though such representation and warranties were made as of a specific date, which need only be true as of such date or as otherwise provided by this Agreement.

ARTICLE VI

CERTAIN MATTERS PENDING THE CLOSING

From and after the date of this Agreement and until the Closing (unless otherwise provided herein):

- 6.1 **SELLER Operations Pending Closing:** SELLER shall, after the date hereof and prior to Closing:

- (a) hold the FCC Authorizations in accordance with all applicable FCC requirements, rules and regulations; and
- (b) Not sell, lease, mortgage, pledge or otherwise dispose of any of the SELLER Purchased Assets except for transactions in the ordinary and regular course of the operation of the SELLER Translator; and
- (c) Make BUYER requested modification applications for the SELLER Translator to the FCC.

6.2 **Leases:** The Parties agree and acknowledge that BUYER is not assuming any leases related to the SELLER Translator.

6.3 **Cooperation:** BUYER and SELLER will cooperate in all respects in connection with: (a) securing any non-governmental approvals, consents and waivers required of third Parties, and (b) giving notices to any governmental authority, or securing the permission, approval, determination, consent or waiver of any governmental authority, required by law in connection with the transfer of the SELLER Purchased Assets from SELLER to BUYER.

ARTICLE VII

CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER

Each and every obligation of SELLER to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express condition precedent:

- 7.1 **Compliance with Agreement:** BUYER shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with prior to or at the Closing.
- 7.2 **Representations and Warranties:** The representations and warranties made by BUYER in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such warranties and representations were made on the Closing Date, except for changes permitted or contemplated by this Agreement.
- 7.3 **Deliveries at Closing:** BUYER shall have delivered or cause to be delivered to SELLER any closing documents, each properly executed and dated as of the Closing Date as required pursuant to Section 2.3 (as applicable).

If any of the conditions set forth in this Article VII have not been satisfied, SELLER may in its sole discretion nevertheless, may elect to proceed with the consummation of the transactions contemplated hereby.

ARTICLE VII
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER

Each and every obligation of BUYER to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express condition precedent:

- 8.1 **Compliance with Agreement:** SELLER shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with prior to or at the Closing.
- 8.2 **Representations and Warranties:** The representations and warranties made by SELLER in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such warranties and representations were made on the Closing Date, except for changes permitted or contemplated by this Agreement.
- 8.3 **Deliveries at Closing:** SELLER shall have delivered or cause to be delivered to BUYER any closing documents, each properly executed and dated as of the Closing Date as required pursuant to Section 2.3.
- 8.4 **Absence of Investigations and Proceedings:** Except for governmental investigations relating to the broadcast industry, generally there shall be no decree, judgment, order, or litigation at law or in equity, no arbitration proceedings, and no proceedings before or by any commission, agency or other administrative or regulatory body or authority pending to which SELLER is a party and to which the SELLER Translator or SELLER Purchased Assets are subject, including any with respect to condemnation, zoning, use or occupancy, which would materially adversely affect the ability of BUYER to operate the SELLER Translator or to use or acquire the SELLER Purchased Assets in the same manner as operated and used by SELLER. Without limiting the generality of the foregoing, no action or proceeding shall be pending before the FCC or any governmental authority to revoke, modify in any material respect or refuse to renew the FCC Authorizations. No suit, action or other proceeding shall be pending before any court or governmental authority in which it is sought to restrain or prohibit, or obtain any damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby.

8.5 **Governmental Consents:** The FCC Consent shall have been issued, and shall, at Closing, be a Final Order, unless waived by BUYER, and in full force and effect and shall contain no provision materially adverse to BUYER. All other authorizations, consents and approvals of any kind and all governmental regulatory authorities necessary in conjunction with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

If any of the conditions set forth in this Article VII have not been satisfied, BUYER, in its sole discretion, nevertheless may elect to proceed with the consummation of the transactions contemplated hereby.

ARTICLE IX

TERMINATIONS; MISCELLANEOUS

- 9.1 **Entire Agreement; Amendment; and Waiver:** This Agreement and the documents required to be delivered pursuant hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth or referenced herein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision of this Agreement, whether or not similar, unless expressly provided.
- 9.2 **Expenses:** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the Parties shall pay the fees and expenses of its respective counsel, accountants and other experts incident to the negotiation, drafting and execution of this Agreement and consummation of the transactions contemplated hereby. Fowler Media Consulting, LLC is the only broker of record and the Seller is responsible for any fee owed to the broker.
- 9.3 **Benefit; Assignment:** This Agreement shall be binding upon and endure to the benefit of and shall be enforceable by SELLER and BUYER and their respective proper successors and assigns. This Agreement (and any rights, obligations or liabilities hereunder) may not be assigned or delegated in whole or in part by any party without the prior written consent of the

other party. Provided, however, either Party may assign this Agreement to an entity wholly owned by such party, provided such party continues to be fully obligated hereunder.

- 9.4 **Notices:** All communications or notices required or permitted under this Agreement shall be in writing and deemed to have been given (i) on the date of personal delivery to an officer of the other party, or (ii) if sent by telecopy or facsimile machine to the number shown below, on the date of such confirmed telecopy or facsimile transmission, provided a copy is also sent by commercial overnight delivery service, prepaid, at the address and facsimile number below, unless such address or number is changed by written request:

If to SELLER:

Robert D. Augsburg
President
WAY Media Group, Inc.
5540 Tech Center Drive #200
Colorado Springs, CO 80919

If to BUYER:

Richard J. Bressler
President & Chief Financial Officer
Capstar TX LLC
200 East Basse Road
San Antonio, TX 78209

and

Steve Davis
Senior Vice-President, Real Estate, Facilities & Capital Management
Capstar TX LLC
2625 South Memorial Drive #A
Tulsa, OK 74129

- 9.5 **Counterparts; Headings:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one of the same Agreement. This agreement may be executed and delivered in counterpart signature pages executed and delivered by facsimile or e-mail transmission, and any such counterpart executed and delivered via facsimile or e-mail transmission shall be deemed an original for all intents and purposes. The Table of Contents and Article and Section headings in this

Agreement are inserted for convenience of reference only and shall not constitute a part thereof.

- 9.6 **Judicial Interpretation:** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by the reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it is being agreed that the agents of each party have participated in the preparation hereof.
- 9.7 **Saturdays, Sundays and Legal Holidays:** If the time period by which any acts or payments required hereunder must be performed or paid expenses on a Saturday, Sunday or Legal Holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.
- 9.8 **Governing Law:** This Agreement shall be construed and interpreted according to the laws of the State of Delaware, without regard to the conflict of law principles thereof.
- 9.9 **Cure Period:** No breach shall become a material breach unless the breaching party files to remedy such breach within (5) five days of written notice of breach.
- 9.10 **Time is of the essence of this Agreement.** If the FCC has refused or failed to grant the assignment application for FCC Consent (the "Assignment Application") within nine (9) months of the date of filing of the application for assignment thereof, either party may terminate this Agreement by giving the other party ten (10) days' prior written notice of such intent by overnight national courier service, provided that the FCC has not granted the FCC Consent within such 10-day period, and provided further that the party seeking cancellation is not in material breach of this Agreement.
- 9.11 **Termination:** This Agreement may be terminated by either party (i) in the event of a default or breach of warranty by the other party, (ii) under Section 9.10 if the FCC does not timely approve the Assignment Application, (iii) the Closing does not take place on or before the first anniversary of the date of this Agreement. If this Agreement is terminated without a Closing for any reason other than the uncured default of BUYER, the Parties shall jointly instruct Fowler Media Consulting, LLC to return the Escrow Deposit specified in Schedule C to BUYER.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

WAY Media, Inc.

By: 

Robert D. Augsburg

Title: President

CAPSTAR TX LLC

By: _____

Steve Davis

Title: Senior Vice-President, Real Estate, Facilities & Capital Management

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WAY Media, Inc.

By: _____

Robert D. Augsburg

Title: President

CAPSTAR TX LLC

By: _____

Steve Davis

Title: Senior Vice-President, Real Estate, Facilities & Capital Management

Schedule A
SELLER Translator FCC Authorizations

Federal Communications Commission FM Broadcast Translator Station License, File Number
BLFT-20070706ABS, Call Sign W242BF, Springfield, Florida, Facility ID #140060.

Federal Communications Commission FM Broadcast Translator Station Construction Permit, File
Number BPFT-20140128AFU, Springfield, Florida, Facility ID #140060.

Schedule B

SELLER Property

Rights to use the call letters assigned by the FCC to the SELLER Translator and the good will associated therewith.

Schedule C

Escrow Deposit

\$5,250.00 will be deposited with Fowler Media Consulting, LLC.