

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is entered into as of February 23, 2015 (“Effective Date”) between WMGY Radio, Inc., a Georgia corporation (“Seller”), and Terry L. Barber, or his assigns (“Buyer”).

### **Recitals**

- A. Seller owns and operates the radio broadcast station WMGY(AM), Montgomery, Alabama, FCC Facility Id. 73260 (the “Station”), pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”).
- B. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets, as defined below.

### **Agreement**

**NOW, THEREFORE**, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows.

## **ARTICLE 1: SALE AND PURCHASE**

1.1 Station Assets. On the terms and subject to the conditions hereof, on the Closing Date, as defined below, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to all assets, properties, interests and rights of Seller, used in or held for use in the operations of the Station, real and personal, tangible and intangible, except for such assets specifically excluded herein (the “Station Assets”). The Stations Assets are as follows:

- (a) all licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station (the “FCC Licenses”), including those described on *Schedule 1.1(a)*, as well as any renewals or modifications thereof between the Effective Date and Closing, as defined below;
- (b) all of Seller’s broadcast equipment located at the WMGY Transmitter Site (defined below) and at the Station’s studio site, including equipment and assets listed on *Schedule 1.1(b)*, except for any permitted replacements made between the date hereof and Closing Date in the ordinary course of business and consistent with past practices of Seller (the “Tangible Personal Property”);
- (c) Seller’s ownership interest in the real property used as the Station’s transmitter site as described in *Schedule 1.1(c)* (the “WMGY Transmitter Site”);

(d) Seller's rights in and to the Station's call letters and the domain name wmgystudio.com;

(e) Seller's rights in, to or under all the files, documents, records, and books of account (or copies thereof) relating to the operation of the Station (but excluding records related to the Excluded Assets); and

(f) Seller's goodwill in, and the going concern value of, the Station.

The Station Assets shall be transferred to Buyer free and clear of debts, liens, claims and encumbrances, security interests, mortgages, trusts, pledges, conditional sales agreements, equipment leases, and other liabilities and encumbrances of every kind and nature ("Liens"), except for (i) the Assumed Obligations, as defined below, (ii) liens for taxes not yet due, and (iii) with respect to the WMGY Transmitter Site, (A) the "Restrictive Covenant, Easement, and Release to Run with the Land," dated August 22, 2007, a copy of which is included in *Schedule 1.1(c)* and (B) such easements, rights of way, building and use restrictions and other exceptions that do not materially detract from the value of the property subject thereto or impair the use thereof in the ordinary course of business and operation of the Station (collectively, "Permitted Liens").

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets (the "Excluded Assets"):

(a) all cash and cash equivalents of Seller, including certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) real property interests of Seller other than the WMGY Transmitter Site;

(c) all property of Seller other than the Tangible Personal Property;

(d) Seller's trade names not used or held for use in connection with the operation of the Station, charter documents, and books and records relating to the organization, existence or ownership of Seller, duplicate copies of the records of the Station, and all records not relating to the operation of the Station;

(e) contracts of insurance, and all insurance proceeds and claims made thereunder, except as provided by Section 5.2;

(f) all pension, profit sharing and deferred compensation plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller;

(g) the Station's accounts receivable and any other rights to payment of cash consideration for advertising or programming broadcast prior to Closing (the "A/R");

(h) all rights and claims of Seller, whether mature, contingent or otherwise, against third parties with respect to the Station or Station Assets, to the extent arising during or attributable to any period prior to Closing;

(i) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.6;

(j) Mareketron Broadcast Solutions, LLC Software License and Service Agreement dated July 1, 2012

(j) other than this Agreement, all contracts to which Seller is a party, including, but not limited to, all contracts for the sale of broadcast airtime; and

(k) the items described on *Schedule 1.2*.

1.3 Assumed Obligations. On the Closing Date, Buyer shall assume any liabilities of Seller for which Buyer receives a credit under Section 1.6 (collectively, the “Assumed Obligations”). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller (the “Retained Obligations”).

1.4 Purchase Price. The purchase price to be paid for the Station Assets shall be Sixty Thousand Dollars (\$60,000.00), subject to adjustment pursuant to Section 1.6 (the “Purchase Price”). The Buyer will pay the Purchase Price at Closing by authorizing the Escrow Agent, as defined below, to release the Deposit, as defined below, to the Seller, and by wire transfer of immediately available funds, in the amount of the balance of the Purchase Price, to an account identified in the written instructions of Seller to be delivered by Seller to Buyer at least two (2) business days prior to Closing.

1.5 Deposit. Upon the execution of this Agreement, Buyer shall deposit the sum of Three Thousand Dollars (\$3,000.00) (the “Deposit”) with Fletcher, Heald & Hildreth, P.L.C. (the “Escrow Agent”). ~~pursuant to the Escrow Agreement (the “Escrow Agreement”) of even date herewith among Buyer, Seller and the Escrow Agent.~~ At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price. The parties acknowledge that the Deposit will be placed in Escrow Agent’s Virginia IOLTA Trust Account and, pursuant to Virginia law, any interest that accrues with respect to the Deposit shall be for the benefit of the nonprofit Legal Services Corporation of Virginia and not for the benefit of Seller, Buyer or Escrow Agent. If Seller terminates this Agreement under Section 10.1(c), then the Deposit shall be disbursed to Seller as liquidated damages pursuant to Section 10.3. If this Agreement is terminated for any other reason, the Deposit shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure Period

under Section 10.1 does not apply, entitling Seller to immediately terminate this Agreement.

1.6 Prorations.

(a) All income and operating expenses related or attributable to the operation of the Station until 12:01 a.m. on the Closing Date (the “Adjustment Time”) shall be prorated and attributed to the account of Seller and thereafter for the account of Buyer, and income and expenses shall be prorated between Seller and Buyer as of the Adjustment Time in accordance with generally accepted accounting principles, and the Purchase Price shall be adjusted accordingly.

(b) Such prorations shall include all real and personal property taxes (except transfer taxes as provided by Section 11.1), music and other license fees, FCC regulatory fees, utility expenses, and similar prepaid and deferred items. Seller shall receive a credit for all of the Station’s deposits and prepaid expenses to the extent the benefit of the same is transferable to Buyer. Payment of sales commissions owed to employees of the Station for the sale of advertisements booked and broadcast on the Station prior to Closing shall be the responsibility of and paid for by Seller. If Buyer receives payment for any sales of advertisements booked before the Closing and broadcast after the Closing, Buyer will pay any sales commissions owed to employees of the Station relating thereto. Prorations and adjustments shall be made at Closing to the extent practicable. As to those prorations and adjustments not capable of being ascertained at Closing, an adjustment and proration shall be made within ninety (90) calendar days of Closing.

1.7 Allocation. Buyer and Seller shall each allocate the Purchase Price for tax purposes in accordance with their assessment of the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the “Code”). Each of Buyer and Seller shall file a tax return reflecting its allocation as and when required under the Code.

1.8 FCC Consent. Within five (5) business days after the Effective Date, Buyer and Seller shall file an application (the “FCC Application”) requesting FCC consent to the assignment of the FCC Licenses from Seller to Buyer (the “FCC Consent”). Seller and Buyer shall diligently prosecute the FCC Application and use commercially reasonable efforts to obtain the FCC Consent as expeditiously as possible. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC Application, and shall furnish all information required by the FCC. 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, or the Station or its operations. 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.

1.9 Closing. The consummation of the sale and purchase of the Station Assets pursuant to this Agreement (the “Closing”) shall take place on the date ten (10) business days after the later of (a) the date of the FCC Public Notice in its Daily Digest of FCC Consent having been granted, (b) in the event a Petition to Deny or informal objection is filed with the FCC regarding the FCC Application, the date FCC Consent becomes Final (as defined in Section 5.5) and (c) the date of the satisfaction or waiver of the last of the conditions required to be satisfied or waived pursuant to Articles 6 or 7 below (other than those requiring a delivery of a certificate or other document, or the taking of other action, at the Closing). The date on which the Closing is to occur is referred to herein as the “Closing Date.”

## **ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES**

Seller represents and warrants to Buyer as follows:

2.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia and qualified to do business in the State of Alabama. Seller has the requisite power and authority to own and operate the Station, to carry on the Station’s business as now conducted by it, and to execute, deliver and perform this Agreement and the documents to be made pursuant hereto.

2.2 Authorization. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Seller (the “Seller Authorization”) and do not require any further authorization or consent of Seller. This Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Seller enforceable in accordance with their respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 No Conflicts. The execution, delivery and performance by Seller of this Agreement and the documents to be made pursuant hereto do not conflict with any organizational documents of Seller or any law, judgment, order, or decree to which Seller is subject, and does not require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent.

2.4 FCC Licenses. Seller holds the FCC Licenses listed and described on *Schedule 1.1(a)*. Such FCC Licenses constitute all of the authorizations required under the Communications Act of 1934, as amended (the “Communications Act”), or the rules, regulations and policies of the FCC for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending or, to Seller’s knowledge, threatened any action by or before the FCC to revoke, suspend, cancel, rescind or adversely modify any of the FCC Licenses (other than proceedings relating to FCC rules of general applicability) and there is no order to show cause, notice of

violation, notice of apparent liability, or notice of forfeiture or complaint pending or, to Seller's knowledge, threatened against Seller or the Station by or before the FCC.

2.5 Tangible Personal Property. Each item of Tangible Personal Property is being sold WHERE IS, AS IS, as of the Effective Date, nominal wear and tear excluded, without warranty of any kind, except as to title. The Tangible Personal Property constitutes all of the broadcast equipment owned by Seller and used or held for use in the operations of the Station as presently conducted except as specifically excluded on *Schedule 1.2*. No item of Tangible Personal Property being conveyed to Buyer pursuant to this Agreement is leased by Seller, whether as lessor or lessee. Except as listed and described on *Schedule 1.1(b)*, Seller has good, valid and marketable title to all Tangible Personal Property free and clear of all Liens (other than Permitted Liens).

2.6 WMGY Transmitter Site. Seller's sole stockholder, the George H. Buck, Jr. Trust (the "Trust"), currently holds fee simple title to the WMGY Transmitter Site. The Trustee of the Trust may effectuate the conveyance of the WMGY Transmitter Site to Seller prior to Closing. At Closing, Seller will either itself convey, or cause the Trust, to convey to Buyer fee simple title to the WMGY Transmitter Site. To Seller's knowledge, the description of the WMGY Transmitter Site attached as Schedule 1.1(c) is a complete and accurate description of the WMGY Transmitter Site. There are no proceedings in eminent domain or any similar proceeding pending, or, to Seller's knowledge, threatened, regarding the WMGY Transmitter Site. Except for any litigation that may be in progress at this time and that may be commenced in the future with respect to the Coliseum Boulevard Plume, there exists no writ, injunction, decree, order, or judgment outstanding, nor any litigation pending, nor, to Seller's knowledge, threatened, relating to the use or occupancy of the WMGY Transmitter Site. All electric utility lines which are required in connection with the operation of the Station on the WMGY Transmitter Site have been installed; and no labor, material, or services have been furnished by or at the direction of Seller or any predecessor to Seller in or about the WMGY Transmitter Site or any part thereof, as a result of which any mechanics', laborers', or materialmen's liens or claims might arise. To Seller's knowledge, all of the tower guy wires, anchor points and ground radials for the tower structure used in the operation of the Station are completely contained within the WMGY Transmitter Site and to Seller's knowledge all such facilities as currently used are in material compliance as legal conforming uses pursuant to all applicable zoning or similar land use laws.

2.7 [Intentionally Omitted.]

2.8 Employees. Seller has provided to Buyer a true and complete list of all employees who perform services for the Station, their position and the rate of compensation. Buyer may, but is not obligated to, offer employment to any or the Station's employees.

2.9 Station Assets. At Closing, Seller will transfer to Buyer good and marketable title to the Station Assets, free and clear of Liens, except for Permitted Liens. Seller maintains sufficient insurance policies with respect to the Station and the Station Assets and will maintain such policies in full force and effect until Closing.

2.10 Compliance with Law. Except as set forth in *Schedule 2.10*, (a) Seller has complied in all material respects and is in compliance in all material respects with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any court or of any foreign, federal, state, municipal or other governmental authority (collectively, "Laws") which are applicable to the Station or the Station Assets, (b) there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station or the Station Assets, and (c) to Seller's knowledge, there are no complaints, claims or investigations pending or threatened against Seller in respect of the Station or the Station Assets.

2.11 Tax Matters. There are no deficiencies or notices of claims or assessments of federal, state, county or local income, excise, import or export taxes, interest or penalties by any federal, state, county, local or other taxing authority against Seller, and Seller is not a party to any action for the collection of taxes and, to Seller's knowledge, there is no threatened or contemplated action for the collection of taxes from Seller which might impede the parties' ability to consummate the transactions contemplated in this Agreement, obligate the Buyer, or affect the operations of the Station subsequent to Closing.

2.12 No Finder. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or any party acting on Seller's behalf.

2.13 Disclaimer of Other Express and Implied Representations and Warranties. Except for the representations and warranties expressly made by Seller in this Agreement, Seller makes no other representations or warranties, express or implied, whether statutory or by common law regarding Seller or the Station Assets.

### ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller as follows:

3.1 Organization. Buyer is an individual qualified to do business in the State of Alabama. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and the documents to be made pursuant hereto.

3.2 Authority. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Buyer (the "Buyer Authorization") and do not require any further authorization or consent of Buyer. This Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Buyer enforceable in accordance with their respective terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflicts. The execution, delivery and performance by Buyer of this Agreement and the documents to be made pursuant hereto does not conflict with any organizational documents of Buyer or any law, judgment, order, or decree to which Buyer is subject, and does not require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent.

3.4 Qualification. Buyer is legally and financially qualified to hold the FCC Licenses and operate the Station under the Communications Act and the rules, regulations and policies of the FCC as they exist on the date of this Agreement. Buyer is not aware of any facts related to Buyer that would, under existing law, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station. No waiver of or exemption from any existing FCC rule or policy on the part of Buyer is necessary for the FCC Consent to be obtained.

3.5 No Finder. No broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Buyer or any party acting on Buyer's behalf.

3.6 Financing. Buyer has on hand or from committed funds financial resources sufficient to consummate the transactions contemplated by this Agreement. Buyer's obligations hereunder are not subject to or conditioned upon it obtaining financing or a financing commitment of any nature.

3.7 Disclaimer of Other Express and Implied Representations and Warranties. Except for the representations and warranties expressly made by Buyer in this Agreement, Buyer makes no other representations or warranties, express or implied, whether statutory or by common law.

#### ARTICLE 4: SELLER COVENANTS

4.1 Covenants. From the date hereof until Closing, Seller shall:

(a) maintain the FCC Licenses in full force and effect, provided however that Seller may, with appropriate notifications and authority of the Commission, take the Station silent pending Closing;

(b) maintain in effect its current insurance policies with respect to the Station and the Station Assets;



(c) prepare at Buyer's expense and deliver UCC judgment and state and federal tax lien search reports (showing searches in the name of Seller and the call letters of Station) conducted no earlier than fifteen (15) days prior to the Closing Date, and take all steps necessary to insure that as of the Closing Date there are no Liens are filed or recorded against the Station's Assets;

(d) deliver to Buyer evidence of the full payment by Seller of all required FCC regulatory fees owed for Station in the past five federal fiscal years;

(e) deliver, within 30 days of the Effective Date of this Agreement, copies of all soil, engineering and environmental reports and studies with respect to the ownership, maintenance, use, occupancy and operation of the WMGY Transmitter Site that are in Seller's possession or control, and any existing surveys and plats, title insurance commitments and title insurance policies, the real property tax bill for the current fiscal year, and any permits issued by any government agency for the WMGY Transmitter Site;

(f) not, without the prior written consent of Buyer:

(i) sell, lease or otherwise dispose of any Station Assets, except for non-material dispositions in the ordinary course of business of items which are replaced by assets of comparable or superior kind, condition and value;

(ii) create, assume or permit to exist any Liens on the Station Assets (other than Liens in effect on the Effective Date which will be released at Closing and Permitted Liens), and not dissolve, liquidate, merge or consolidate with any other entity;

(iii) modify any of the FCC Licenses; or

(iv) enter into any contract, lease or agreement with respect to the Station, except for (a) contracts for the sale and broadcast of airtime which shall either be fully performed, or cancelled, by Seller prior to Closing and (b) contracts that Seller shall retain after Closing and that will have no bearing on Buyer's ownership or operation of the Station or the Station Assets after Closing.

## ARTICLE 5: JOINT COVENANTS

5.1 Control. Consistent with FCC rules, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.2 Risk of Loss. Seller shall bear the risk of any loss of, damage to, or malfunction of any of the Station Assets at all times prior to the Closing, and Buyer shall bear the risk of any such loss or damage thereafter. If prior to Closing, one or more items of Tangible Personal Property are damaged or destroyed or malfunction, Seller shall use commercially reasonable efforts to repair or replace such item in all material respects in

the ordinary course of business. Notwithstanding the immediately previous sentence, if the aggregate cost of such repair or replacement shall exceed Three Thousand Dollars (\$3,000.00), Seller may elect to terminate this Agreement, in which case the Deposit shall be returned to Buyer, unless Buyer elects, in its sole discretion, to proceed to Closing without repair or replacement of the affected Station Assets in question, in which case (a) the proceeds of any insurance covering such damage, destruction or malfunction shall be assigned to Buyer at Closing as Buyer's sole remedy and compensation for such damage, destruction or malfunction and (b) Seller's representations and warranties, and Buyer's pre-Closing termination rights and post-Closing indemnification rights, with respect to the affected Station Assets will thereby be deemed qualified solely to the extent necessary to take into account such damage or destruction and its remedy. To the extent Seller complies with this Section 5.2 and Buyer opts to proceed to Closing, Seller shall not be in breach of this Agreement with respect to such damaged or destroyed item of Tangible Personal Property.

5.3 [Intentionally Omitted.]

5.4 Receivables. The A/R shall remain the property of Seller, and Buyer shall not acquire any right or interest therein. Any payments for A/R delivered to Buyer subsequent to Closing shall be immediately remitted to Seller.

5.5 Final Order.

(a) For purposes of this Agreement, the term "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(b) If the Closing occurs prior to FCC Consent becoming Final the FCC Consent is reversed or otherwise set aside, and there is a Final order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Licenses to Seller, then the purchase and sale of the Station Assets shall be rescinded. In such event, Buyer shall reconvey to Seller the Station Assets, and Seller shall pay to Buyer the aggregate amount of the Purchase Price and the cost of any capital expenditures made by Buyer with respect to the Station Assets.

(c) Any such rescission shall be consummated on a mutually agreeable date within thirty (30) days of such Final order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Station Assets to Seller and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

5.6 WMGY Transmitter Site. Within forty-five (45) calendar days after the Effective Date, Buyer may, at its sole expense, obtain customary title commitments, Phase I site assessments, and surveys with respect to the WMGY Transmitter Site. Seller shall cooperate with any reasonable requests by the title company or environmental consultant and shall provide access for such surveys or site assessments upon reasonable prior notice. To the extent the Phase I assessment identifies a potential environmental hazard other than specifically disclosed in *Schedule 1.1(c)* with respect to the WMGY Transmitter Site, Buyer may conduct a Phase II assessment, at Buyer's sole cost and expense. In the event that any Phase I or Phase II environmental audit identifies one or more conditions other than that specifically disclosed in *Schedule 1.1(c)* requiring remediation under applicable federal, state or local environmental law, regulation or ordinance, notwithstanding anything to the contrary set forth in this Agreement, if the reasonably estimated cost to remedy all such conditions is:

- (a) less than \$3,000 ("Remediation Amount"), then Seller, shall remediate such condition(s) in all material respects; or
- (b) the Remediation Amount or more, then Seller may (but is not obligated to) elect to remediate such condition(s) in all material respects by written notice to Buyer within ten (10) business days after completion of all assessments and determination of remediation costs, and if Seller does not make such election within such time then Buyer, in its sole discretion, shall have the right to (a) terminate this Agreement and upon such termination, the Deposit shall be returned to Buyer or (b) proceed to Closing and agree in writing that it will pay for all remediation above the Remediation Amount, in which case, the Remediation Amount shall be a credit in favor of Buyer against the Purchase Price, and Seller shall be relieved from all other liability for such environmental condition, and at Closing, this Agreement shall be modified to exclude any representation, warranty, indemnity or other obligation with respect to such condition(s).

If remediation is required under clause (a) above or elected by Seller under clause (b), then Closing shall be postponed until such remediation is complete in all material respects, subject to Section 10.1.

#### ARTICLE 6: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing is subject to satisfaction of the following conditions at or prior to Closing:

##### 6.1 Bringdown.

- (a) Each of the representations and warranties of Buyer contained in this Agreement was true and correct in all material respects as of the date when made and is deemed to be made again at Closing and is then true and correct in all material respects, except with respect to changes that are contemplated or permitted by this Agreement, and except where the failure to be true and correct has not precluded, or

would not reasonably be expected to preclude, Buyer from consummating the transactions on the terms provided in this Agreement.

(b) Buyer shall have performed and complied in all material respects with each and every covenant and agreement required by the Agreement to be performed or complied with by Buyer prior to or at Closing.

(c) Seller shall have received a certificate, dated as of Closing Date, from Buyer to the effect that the conditions set forth in Sections 6.1(a) and 6.1(b) have been satisfied (the “Buyer Bringdown Certificate”).

6.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Consent. The FCC Consent has been granted and, if a Petition to Deny or informal objection is filed, has become Final.

6.4 Deliveries. Buyer shall have made the deliveries to be made by it at Closing under this Agreement.

#### ARTICLE 7: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing is subject to satisfaction of the following conditions at or prior to the Closing:

##### 7.1 Bringdown.

(a) Each of the representations and warranties of Seller contained in this Agreement was true and correct in all material respects as of the date when made and is deemed to be made again at Closing and is then true and correct in all material respects, except with respect to changes that are contemplated or permitted by this Agreement, and except where the failure to be true and correct has not had, and would not reasonably be expected to have, a material adverse effect.

(b) Seller shall have performed and complied in all material respects with each and every covenant and agreement required by this Agreement to be performed or complied with by Seller prior to or at Closing except where the failure to perform or comply with such covenant or agreement has not had, and would not reasonably be expected to have, a material adverse effect.

(c) Buyer shall have received a certificate dated as of Closing from Buyer (executed by an authorized officer) to the effect that the conditions set forth in Sections 7.1(a) and 7.1(b) have been satisfied (the “Seller Bringdown Certificate”).

7.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Consent. The FCC Consent has been granted and, if a Petition to Deny or informal objection is filed, has become Final.

7.4 Deliveries. Seller shall have made the deliveries to be made by it at Closing under this Agreement.

#### ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Deliveries. At Closing, Seller shall deliver or cause to be delivered:

- (a) a good standing certificate issued by Seller's jurisdiction of incorporation;
- (b) a certified copy of the Seller Authorization;
- (c) the Seller Bringdown Certificate;
- (d) an Assignment and Assumption of FCC Licenses, in form and substance reasonably acceptable to Buyer, assigning the FCC Licenses from Seller to Buyer ("FCC Assignment");
- (e) a special warranty deed (or similar deed) for the WMGY Transmitter Site to Buyer, together with any additional documents (such as an affidavit of title or residency certification) requested by Buyer's title company;
- (f) a bill of sale, in form and substance reasonably acceptable to Buyer, conveying all Station Assets to Buyer;
- (g) signed joint instructions to the Escrow Agent to release the Deposit to Seller; and
- (h) any other documents and instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Deliveries. At the Closing, Buyer shall deliver to Seller:

- (a) the Purchase Price in accordance with the terms of this Agreement;
- (b) the Buyer Bringdown Certificate;
- (c) the FCC Assignment; and
- (d) signed joint instructions to the Escrow Agent to release the Deposit to Seller.

## ARTICLE 9: SURVIVAL AND INDEMNIFICATION

9.1 Survival. The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date at which time they shall expire and be of no further force or effect, except that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the resolution of such claim. The covenants and agreements in this Agreement shall survive Closing until performed.

### 9.2 Indemnification.

(a) From and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Buyer arising out of or resulting from:

- (i) any breach by Seller of its representations and warranties under this Agreement;
- (ii) any default by Seller of its covenants and agreements under this Agreement;
- (iii) the Retained Obligations; and
- (iv) without limiting the foregoing, the business or operation of the Station prior to Closing (including any third party claim arising from such operations).

(b) From and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

- (i) any breach by Buyer of its representations and warranties under this Agreement;
- (ii) any default by Buyer of its covenants and agreements under this Agreement;
- (iii) the Assumed Obligations; and
- (iv) without limiting the foregoing, the business or operation of the Station after Closing (including any third party claim arising from such operations).

(c) After Closing, with respect to any Damages, except for third party claims (with third party claims being defined as a "Claim" below), (i) Seller shall have no

liability to Buyer under Section 9.2(a) until Buyer's aggregate Damages exceed \$3,000 ("Basket") (at which point Seller shall be liable for all Damages incurred by Buyer up to the Cap) and (ii) the maximum aggregate liability of Seller under Section 9.2(a) shall be Twenty-Five Thousand Dollars (\$25,000) ("Cap").

### 9.3 Procedures.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by a third party that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations, except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel reasonably satisfactory to the parties. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost, provided, however, that except as permitted by Section 9.3(c), there shall be no settlement or compromise with respect to such claim without the prior written consent of the indemnifying party. If the indemnifying party does not agree to such settlement or compromise, it will undertake all costs of defending the claim and the other party shall not agree to such settlement or compromise.

(c) Notwithstanding anything herein to the contrary:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of any Claim, and shall have the right to consult with the indemnifying party and its counsel concerning any Claim, and the indemnifying party and the indemnified party shall cooperate in good faith with respect to any Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include a release of the indemnified party from all liability in respect of such Claim; and

(iii) the indemnified party shall not, without the indemnifying party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include a release of the indemnifying party from all liability in respect of such Claim.

## **ARTICLE 10: TERMINATION AND REMEDIES**

10.1 Termination. This Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller:
  - (i) does not perform or comply with any of the obligations to be performed or complied with by it under this Agreement within the Cure Period (defined below); or
  - (ii) breaches any of its representations or warranties contained in this Agreement which have not been cured within the Cure Period;
- (c) by written notice of Seller to Buyer if Buyer:
  - (i) does not perform or comply with any of the obligations to be performed or complied with by it under this Agreement within the Cure Period; or
  - (ii) breaches any of its representations or warranties contained in this Agreement which breach has not been cured within the Cure Period;
- (d) by written notice of Buyer to Seller, or by Seller to Buyer, if the FCC denies the FCC Application and such denial becomes Final; or
- (e) by written notice of Buyer to Seller, or by Seller to Buyer, if the Closing does not occur on or before January 31, 2016.

The term “Cure Period” as used herein means a period commencing the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) thirty (30) calendar days thereafter or (ii) the Closing Date determined under Section 1.9; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date determined under Section 1.9, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date determined under Section 1.9. Termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 1.5 (Deposit), 10.3 (Liquidated Damages), 10.4 (Attorneys’ Fees) and 11.1 (Expenses) shall survive any termination of this Agreement.

**10.2 Specific Performance.** In the event of a material breach by Seller of any representation, warranty, covenant or agreement under this Agreement, at Buyer’s election, Buyer shall be entitled to an injunction restraining any such breach or threatened breach and to enforcement of this Agreement by a decree of specific performance requiring Seller, after receipt of all required governmental consents, to fulfill its obligations under this Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required. In the event that this Agreement is terminated as a result of the breach of its terms by Buyer, including Buyer’s wrongful refusal to close, then Seller’s sole remedy



for Buyer's breach of this Agreement shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to Section 10.3.

10.3 Liquidated Damages. If this Agreement is terminated by Seller pursuant to Section 10.1(c), then upon written notice by Seller to Buyer, Buyer shall pay Seller the sum of Three Thousand Dollars (\$3,000.00), by wire transfer of immediately available funds (which, if the Deposit has been made, shall be satisfied by disbursement of the Deposit by the Escrow Agent to Seller under Section 1.5) and such funds will constitute liquidated damages and be the sole remedy of Seller for a breach by Buyer of this Agreement. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer's material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

10.4. Attorneys' Fees. In any proceeding brought under the terms of this Agreement, the party that substantially prevails on the merits shall be entitled to receive, in addition to the receipt of any damages or other relief as set forth herein, reasonable attorneys' fees and costs incurred in bringing such action.

#### **ARTICLE 11: MISCELLANEOUS.**

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement, except that (i) the party customarily paying such fees in Montgomery, Alabama shall pay the fees for recordation, transfer and documentary taxes, and any excise, sales or use taxes, and conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with or imposed by reason of the consummation of the transactions contemplated by this Agreement and (ii) Buyer and Seller shall share equally the fees required to be paid to the FCC for the FCC Application.

11.2 Further Assurances. After Closing, each party hereto shall execute all such instruments and take all such actions as any other party may reasonably request, to effect the transactions contemplated by this Agreement, including the execution and delivery of confirmatory and other transfer documents in addition to those to be delivered at Closing.

11.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Seller may not assign any of its rights or delegate any of its obligations hereunder, and any such attempted assignment or delegation without such consent shall be void. So long as an assignment does not delay obtaining the FCC Consent, Buyer may assign its right to acquire the Station Assets (in whole or in part) without Seller's consent, but any such assignment shall not relieve Buyer of any obligations under this Agreement.

11.4 Notices. Any notice pursuant to this Agreement shall be in writing, shall be sent by a nationally recognized overnight courier service, shall be deemed delivered on the next business day, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to Seller, then to:

Jacob E. Bogan  
WMGY Radio, Inc.  
1955 Cliff Valley Way NE  
Suite 200  
Atlanta, GA 30329-2437

with a copy (which shall not constitute notice) to:

Matthew H. McCormick, Esquire  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209-3801

if to Buyer, then to:

Terry L. Barber  
4131 Carmichael Road  
Montgomery, Alabama 36106

with a copy (which shall not constitute notice) to:

John F. Garziglia, Esquire  
Womble Carlyle Sandridge & Rice, LLP  
1200 19<sup>th</sup> Street, N.W. Suite 500  
Washington, DC 20036

11.5 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

11.6 Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Alabama, without giving effect to the choice of law provisions thereof. Any action brought to enforce the terms of this Agreement shall be brought in either the state or federal courts having jurisdiction over disputes arising in Montgomery, Alabama.

11.7 Miscellaneous. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and

understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their respective successors and permitted assigns. This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together constitute one and the same agreement. Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refer to the specified article or section of this Agreement; (v) the terms "Exhibit," "Appendix," and "Schedule," whether or not capitalized, refer to the exhibits, appendices and schedules to this Agreement; (vi) the word "or" will be deemed to include both its disjunctive and conjunctive meanings; (vii) the term "including" and similar or derivative words will be deemed to be followed by the words "without limitation"; and (viii) the term "knowledge" with respect to Seller shall mean the actual knowledge, without a duty of specific inquiry, of Seller's officers and directors. Whenever this Agreement refers to a number of days, that number will refer to calendar days unless business days are specified. As used herein, (x) "business day" means any day other than Saturday, Sunday or any day on which the FCC located in Washington, D.C. is closed, and (y) "affiliate" means, with respect to any natural person or entity, any other natural person or entity that controls, is controlled by, or is under common control with, such natural person or entity.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

**BUYER:**

**TERRY L. BARBER**

By: 

Name: Terry L. Barber

**SELLER:**

**WMGY RADIO, INC.**

By: 

Name: Jacob E. Bogan

Title: Secretary/Treasurer