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**ASSET PURCHASE AGREEMENT**

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by and between

**AIR AUGUSTINE, INC., SELLER**

and

**FLAGLER BROADCASTING, LLC, BUYER**

for the sale and purchase of

Station WALE, Facility ID 53672, St. Augustine Beach, FL

Dated as of October \_\_, 2014

LIST OF EXHIBITS AND SCHEDULES

Exhibit A - Escrow Agreement

- SCHEDULE 2.1 -- FCC Licenses
- SCHEDULE 2.2 - Tangible Personal Property
- SCHEDULE 2.3 - Contracts
- SCHEDULE 2.4 - Real Property Leases
- SCHEDULE 9.7 - Permission to File Contingent  
Application

## **ASSET PURCHASE AGREEMENT**

**This Agreement**, made and entered into as of this \_\_\_ day of October, 2014, by and between **AIR AUGUSTINE, INC.** ("Seller"), and **FLAGLER BROADCASTING, LLC** ("Buyer").

### **WITNESSETH THAT:**

WHEREAS, Seller is the licensee of Radio Station WALE, Facility ID 53672 licensed to St. Augustine Beach, Florida (the "Station");

WHEREAS, Buyer desires to purchase all of the assets used or useful in and for the operation of the Station and to acquire the license and other authorizations issued by the Federal Communications Commission (the "FCC") for the operation of the Station, and,

WHEREAS, Seller desire to sell the Station's assets and transfer the Station's licenses and other authorizations to Buyer, and

WHEREAS, the Station's licenses and authorizations may not be assigned to Buyer without the FCC's prior consent.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties, intending to be legally bound, agree as follows:

### **1. RULES OF CONSTRUCTION**

#### **1.1. Defined Terms.**

- "Assignment Application" means the application on FCC Form 314 that Seller and Buyer shall join in and file with the FCC requesting its consent to the assignment of the FCC Licenses from Seller to Buyer.
- "Closing" means the consummation of the Transaction.
- "Closing Date" means the date on which the Closing takes place, as determined pursuant to Section 11 hereof.

- "Deposit" means the sum of One Hundred Thousand Dollars (\$100,000.00) that Buyer is delivering to Escrow Agent contemporaneously with the execution of this Agreement as security for the performance of Buyer's obligations hereunder.
- "Escrow Agent" means David Tillotson, Attorney at Law and Smithwick & Belendiuk, jointly.
- "Escrow Agreement" means the Escrow Agreement between Buyer, Seller and Escrow Agent dated as of the date of this Agreement attached as Exhibit A hereto.
- "Final Order" means any FCC action that, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay.
- "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- "Knowledge" when used in connection with any representation or warranty by a person or entity means the actual knowledge of such person or entity at the time the representation is made without any requirement or expectation that such person or entity has made any investigation or inquiry regarding the matter at issue.
- "Time Brokerage Agreement" means the Time Brokerage Agreement between Seller and Buyer with respect to the Station of even date herewith (the "TBA");
- "Transaction" means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of Seller and Buyer set forth herein.

**1.2. Other Definitions.** Other capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

**1.3. Number and Gender.** Whenever the context so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

**1.4. Headings and Cross-References.** The headings of the Sections and Paragraphs hereof have been included for convenience of reference only, and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to Sections or Paragraphs herein shall mean the Sections or Paragraphs of this Agreement unless otherwise stated or clearly required by the context. All references to Exhibits and Schedules herein shall mean the Exhibits and Schedules to this Agreement which have been separately initialed for identification by Seller and Buyer. Words such as "herein" and "hereof" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise stated or clearly required by the context.

**1.5. Computation of Time.** Whenever any time period provided for in this Agreement is measured in "business days" there shall be excluded from such time period each day that is a Saturday, Sunday, recognized federal legal holiday, or other day on which the FCC's offices are closed and are not reopened prior to 5:30 p.m. Washington, D.C. time. In all other cases all days shall be counted.

**2. ASSETS TO BE CONVEYED.** On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Buyer, the following assets of Seller that are used or held for use in the operation of the Station (the "Assets") free and clear of all liens and encumbrances whatsoever except for statutory liens for taxes not yet due:

**2.1. Licenses.** The licenses, permits and other authorizations issued by the FCC for the operation of the Station listed in Schedule 2.1 hereof (the "FCC Licenses"), and all other transferable licenses, permits and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station as presently operated by Seller.

**2.2. Tangible Property.** All tangible personal property and fixtures owned by Seller that are used or held for use in connection with the operation of the Station, including, without limitation, the property listed in Schedule 2.2 hereof, together with replacements thereof and improvements and additions thereto made between the date hereof and the Closing Date (the "Tangible Property").

**2.3. Contracts.** All contracts for the sale of time on the Station for cash that are cancelable on thirty (30) days' notice and the contracts, agreements and leases listed in Schedule 2.3 hereto (the "Contracts").

**2.4. Real Property Leases.** All of Seller's right, title and interest under the leases which are described in Schedule 2.4 hereto (the "Leases").

**2.5. Intangible Property.** All Seller's right, title and interest in and to the call signs, slogans, logos, trademarks, copyrights, and similar materials and rights and the goodwill and other intangible assets used in or arising from the business of the Station (the "Intangible Property").

**2.6. Business Records.** All business records of Seller (including without limitation customer lists, logs, public file materials, and engineering records) relating to or used in the operation of the Station.

**3. EXCLUDED ASSETS.** The following assets are expressly excluded from the Assets being conveyed hereunder and shall be retained by Seller:

(a) the Seller's cash, cash equivalents and accounts receivable subject, however, to the assignment of accounts receivable, for collection purposes only, as provided for herein;

(b) any claims that Seller may have under any insurance policies or contracts and any other claims that Seller may have against third parties;

(c) Seller's internal books and records which do not relate to the ownership or operation of the Station.

**4. PURCHASE PRICE, OTHER CONSIDERATION AND ALLOCATION OF PURCHASE PRICE.**

**4.1. Purchase Price and Method of Payment.** The purchase price for the Assets is Four Hundred Thousand Dollars (\$400,000.00) (the "Purchase Price"). The Purchase Price shall be paid as follows:

(a) On the Closing Date, Buyer and Seller shall jointly instruct the Escrow Agent to deliver the Deposit, but not the interest thereon to Seller; and

(b) Buyer shall deliver to Seller the sum of Three Hundred Thousand Dollars (\$300,000.00) in immediately available funds.

**4.2. Allocation of Purchase Price.** The Purchase Price shall be allocated between the Tangible Property and the FCC license and Goodwill as follows:

|                          |           |
|--------------------------|-----------|
| Tangible Property        | \$170,000 |
| FCC License and Goodwill | \$230,000 |

Seller and Buyer shall use such allocation for all purposes related to the valuation of the Assets, including, without limitation, in connection with any federal, state, county or local tax returns and, unless required to do so in accordance with a "determination" as defined in Section 1313(a)(1) of the Internal Revenue Code, neither Seller nor Buyer shall take any position in any tax return, tax proceeding, tax audit or otherwise that is inconsistent with such allocation. In the event that the parties fail to agree to allocation of the Purchase Price, the allocation shall be made by an accountant mutually acceptable to the parties whose fee for preparing the allocation will be borne equally by the parties.

**5. PRORATIONS.** Subject to the TBA, Seller shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of the operation of the Station until 11:59 p.m. on the Closing Date and Buyer shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of, the operation of the Station after 11:59 p.m. on the Closing Date. All overlapping items of income or expense customarily subject to prorations in broadcast Station transactions shall be prorated, or reimbursed, as the

case may be, as of 11:59 p.m. on the Closing Date (the "Prorations"). In the event that the exact amount of any personal or real property taxes or the Annual FCC Regulatory Fee which are to be prorated is not known on the Closing Date, such taxes or fee shall be prorated on the basis of the most recent tax or fee assessment and such proration shall be final. To the extent practical, the Prorations shall be made on the Closing Date and any net amount due as a result of the Prorations shall be added to, or subtracted from, the Purchase Price. Within 30 days after the Closing Date, Buyer's accountant and Seller's accountant shall agree to any final Prorations that are necessary to carry out the parties' intentions as reflected in this Section and any final amount due Seller, or Buyer, shall be paid promptly by check from the party owning the final amount made payable to the party to whom the payment is due.

**6. SELLER'S LIABILITIES.** Buyer does not and shall not assume or be deemed to assume, pursuant to this Agreement or otherwise, any liabilities, obligations, or commitments of Seller of any nature whatsoever except for obligations under the contracts, if any, that Buyer expressly agrees herein to assume.

**7. SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Seller hereby makes the following representations, warranties, and covenants:

**7.1 Existence and Power.** Seller is a corporation validly existing and in good standing under the laws of the State of Florida with the full power to enter into, deliver and perform this Agreement.

**7.2. Binding Agreement.** The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary action of Seller's stockholders and directors. This Agreement has been duly executed and delivered to Buyer by Seller and constitutes a legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms except as such enforceability may be limited by bankruptcy, 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.

**7.3. No Violation.** The execution and performance of this Agreement by Seller will not violate Seller's articles of



incorporation or by-laws or any material order, rule, judgment or decree to which Seller or any of Seller's principals are subject, or breach any contract, agreement or other commitment to which Seller or its principals are a party or are bound.

**7.4. Conveyance of Assets.** At Closing, Seller shall convey to Buyer good and marketable title to all the Assets, free and clear of all liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions and encumbrances or other defects of title except for the lien of any personal or real property taxes that will not become due until after the Closing Date.

**7.5. Governmental Authorizations.** Except for the FCC Licenses, Seller is unaware of any material licenses, permits, or authorizations from any Governmental Authority which are required to operate the Station. Except for the fact that the Station's STL license does not specify the correct and current fixed locations and path, the FCC Licenses are all the FCC authorizations held by Seller with respect to the Station, and are all the FCC authorizations used in or necessary for the lawful operation of the Station. The FCC Licenses are in full force and effect, are subject to no unusual or materially adverse conditions or restrictions, and are unimpaired by any acts or omissions of Seller or Seller's employees or agents.

**7.6. Condition of Tangible Property.** The Tangible Property together with all improvements and additions thereto and replacements thereof, is now and on the Closing Date will be in good operating condition, ordinary wear and tear excepted. Between the date hereof and the Closing Date the Tangible Property will be maintained in accordance with generally accepted standards in the broadcast industry and in material compliance with all applicable rules and regulations of the FCC and all applicable laws, regulations and ordinances issued by any Governmental Authority. On the Closing Date the Station's facilities will be operating in material compliance with the terms and conditions of the FCC Licenses and all conditions of the construction permits underlying such licenses, which are expressly or by operation of the FCC's rules or policies, carried forward in the licenses. If within ten (10) days after the Closing Date, Buyer gives Seller written notice of any defects in the Station's technical facilities which existed on the Closing Date and which constituted a material breach of Seller's representations set forth in the this paragraph, Buyer

shall have the right, subject to Seller's right to dispute Buyer's claim that any item of equipment was defective on the Closing Date, to require Seller to make such repairs and/or adjustments as may be necessary to bring the Station's technical facilities into substantial compliance with such representations or, in the alternative, to make whatever repairs and/or adjustments or to replace any equipment at Seller's expense as may be necessary to correct such defects; provided, however, that Seller will be given reasonable opportunity, within thirty (30) days of the day of the mailing of written notice from Buyer to Seller, to effect such repairs, replacements or adjustments at Seller's cost.

**7.7. Contracts and Leases.** The Contracts and Leases constitute all contracts and leases necessary for the operation of the Station as it is currently operated by Seller. Inasmuch as Buyer does not desire to continue any of the Contracts in their current form, Seller agrees that immediately after the execution of this Agreement it shall notify each Contract vendor (other than the Enco Services and RCS Contracts) of Seller's intent to terminate the Contract at the earliest time such Contract is terminable. If any Lease requires the consent of any third party in order for Seller to assign that contract or lease to Buyer, Seller will use its reasonable best efforts to obtain such consent prior to Closing. Seller shall, at least ten (10) days prior to Closing, furnish to Buyer estoppel letters from lessors specifying the nature and duration of occupancy, rental rates, advanced rent and security deposits paid by Seller and certifying a true and correct copy of the lease and all amendments thereto ("Estoppel Letters"). If Seller is unable to obtain such Estoppel Letters the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit and Buyer may thereafter contact lessors to confirm such information. If Estoppel Letters or Seller's affidavit, if any, differ materially from Seller's representations and leases provided pursuant to this Agreement, Buyer may deliver written notice to Seller within 5 days after receipt of such information terminating this Agreement and receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Agreement. Seller shall, at Closing, deliver and assign all leases to Buyer who shall assume Seller's obligations thereunder.

**7.8. Leased Real Property.** Seller has, and after Closing Buyer will have, all legal and practical access to the real property which is the subject of the Leases ("the Leased Property"). To Seller's knowledge, none of the buildings, structures or improvements that are constructed on the Leased Property (including without limitation all guy wires and guy anchors) encroaches upon adjoining real estate and, to Seller's Knowledge, all such buildings, structures and improvements are constructed in conformity with all "set-back" lines, easements and other restrictions or rights of record, and all applicable building or safety codes and zoning ordinances. There are not pending or, to Seller's Knowledge, threatened condemnation or eminent domain proceedings that may have a material adverse effect on Buyer's use of the Leased Property for the operation of the Station after Closing. Seller has no knowledge of any structural or other material defects in the towers, buildings, structures and other improvements located on the Leased Property.

**7.9 Environmental Matters.** No hazardous or toxic waste, substance or material, as those or similar terms are defined in or for purposes of applicable federal, state and local environmental laws, and including without limitation any asbestos or asbestos-related products, oils or petroleum-derived compounds, CFCs, or PCBs (collectively "Hazardous Substances") are contained in structures or equipment used in the operation of the Station unless, in the case of equipment containing CFCs and PCBs, such CFCs and PCBs are properly contained and labeled. No "underground storage tank" (as that term is defined in regulations promulgated by the federal Environmental Protection Agency) is used in the operation of the Station. To Seller's Knowledge: (i) no Hazardous Substances are located on the Leased Property; (ii) the Leased Property has not previously been used for the manufacture, refining, treatment, storage, or disposal of any Hazardous Substances; (iii) none of the soil, ground water, or surface water of the Leased Property is contaminated by any Hazardous Substances and there is no reasonable potential for such contamination from neighboring real estate; (iii) no Hazardous Substances are being emitted, discharged or released from the Leased Property, directly or indirectly, into the environment; (iv) neither Seller nor any former owner or operator of the Leased Property is liable for cleanup or response costs with respect to the emission, discharge, or release of any Hazardous Substances due to its ownership, occupation, use or operation of the Leased Property. The

present operation of the Station complies in all applicable federal, state and local laws relating to electrical transformers and human exposure to radio frequency radiation and, to Seller's Knowledge, complies in all material respects with all other applicable federal, state and local environmental laws.

**7.10. Litigation.** Except for proceedings affecting radio broadcasters generally, there is no complaint, investigation, or proceeding pending or, to Seller's Knowledge, threatened before or by the FCC, any other Governmental Authority, or any other person or entity relating to the business or operations of the Station. There is no other litigation, action, suit, investigation or proceeding pending or, to the best of Seller's Knowledge, threatened that may give rise to any claim against any of the Assets or adversely affect Seller's ability to consummate the Transaction as provided herein. Seller is not aware of any facts that could reasonably result in any such proceedings.

**7.11. Insurance.** Seller has in effect casualty insurance policies covering the Assets to their full replacement value and shall continue such policies of insurance in effect until the Closing Date.

**7.12. Compliance with Law.** (a) Seller has in its conduct of the Station's business complied in all respects material to this transaction with all applicable statutes, regulations and orders relating to the employment of labor, including those concerning wages, hours, equal employment opportunity, collective bargaining, and pension and welfare benefit plans.

(b) On or before the Closing Date, Seller will pay and discharge all taxes, assessments, excises and other levies relating to the Assets, including all FCC Regulatory Fees, which, if due and not paid, could result in a tax lien attaching to the Assets or otherwise would interfere with Buyer's full enjoyment and use of the Assets after Closing, except for such taxes, assessments, and other levies as will not be due until after the Closing Date.

**7.13. Insolvency Proceedings.** No insolvency proceedings of any character, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with

creditors, voluntary or involuntary, affecting Seller or the Assets are pending or threatened. Seller have not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any insolvency proceedings. Upon consummation of the transactions provided for herein, Seller (i) will have sufficient capital to carry on their business and transactions, (ii) will be able to pay its debts as they mature or become due, and (iii) will own assets the fair market value of which will be greater than the sum of all liabilities of Seller not specifically assumed by Buyer pursuant to the terms of this Agreement.

**8. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Buyer hereby makes the following representations, warranties and covenants:

**8.1 Existence and Power.** Buyer is a limited liability company validly existing and in good standing under the laws of the State of Florida with the full power to enter into, deliver and perform this Agreement.

**8.2. Binding Agreement.** The execution, delivery, and performance of this Agreement by Buyer has been duly authorized by all necessary action of Buyer's members. This Agreement has been duly executed and delivered to Seller by Buyer and constitutes a legal, valid, and binding obligation of Buyer enforceable against Buyer in accordance with its terms except as such enforceability may be limited by bankruptcy, 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.

**8.3. No Violation.** The execution and performance of this Agreement by Buyer will not violate Buyer's articles of organization or operating agreement or any material order, rule, judgment or decree to which Buyer or any of Buyer's principals are subject, or breach any contract, agreement or other commitment to which Buyer or its principals are a party or are bound.

**8.4. Licensee Qualifications.** Buyer is legally, financially, and otherwise qualified under the Communications

Act of 1934, as amended, and the rules and regulations of the FCC to be the licensee of the Station.

**8.5. Litigation.** There is no action, suit, investigation or other proceeding pending or to Buyer's Knowledge threatened that may adversely affect Buyer's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Buyer is not aware of any facts that could reasonably result in any such proceeding.

**9. PRE-CLOSING RIGHTS AND OBLIGATIONS.** The parties covenant and agree as follows with respect to the period prior to Closing:

**9.1. Application for FCC Consent.** Within five (5) business days after the execution of this Agreement, Seller and Buyer shall join in and file the Assignment Application, and they shall diligently take all steps necessary or desirable and proper expeditiously to prosecute the Assignment Application and to obtain the FCC's determination that grant of the Assignment Application will serve the public interest, convenience and necessity.

**9.2. Access.** Between the date hereof and the Closing Date, Seller shall give Buyer and representatives of Buyer reasonable access during normal business hours to the Assets and to the books and records of Seller relating to the business of the Station. No inspection or investigation made by or on behalf of Buyer or Buyer's failure to make any inspection or investigation shall affect Seller's representations, warranties, and covenants hereunder or be deemed to constitute a waiver of any of those representations, warranties, and covenants.

**9.3. Administrative Violations.** If Seller receive any finding, order, complaint, citation or notice prior to Closing which states that any aspect of the Station's operations violates any rule, regulation or order of the FCC or of any other Governmental Authority which affects the Assets (an "Administrative Violation"), including without limitation any rule, regulation or order concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall use its best efforts to remove or correct the Administrative Violation and shall be solely responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed.

**9.4. Risk of Loss.** The risk of loss or damage to the Assets shall be upon Seller at all times prior to Closing. In the event of material loss or damage, Seller shall promptly notify Buyer thereof and use its best efforts to repair, replace or restore the lost or damaged property to its former condition as soon as possible. In the event that any loss, damage or destruction to the Assets has not been repaired, restored and/or replaced prior to the Closing Date, the Closing shall nevertheless take place and Seller shall assign their rights to receive any insurance proceeds with respect to the damaged, lost, or destroyed assets to Buyer and, to the extent that the insurance proceeds so assigned are insufficient to cover all of the costs of repairing and/or replacing the assets that were damaged, lost or destroyed, the Purchase Price shall be adjusted to cover such shortfall.

**9.5. Operations Prior to Closing.** Subject to the TBA, between the date of this Agreement and the Closing Date:

(a) Seller shall use its best efforts to (i) maintain all of the Assets in good operating condition, ordinary wear and tear excepted; and (ii) comply in all material respects with all laws, rules and regulations of all Governmental Authorities.

(b) Seller shall not ((i) sell or otherwise dispose of any of the Assets except in the ordinary course of business and only if any material property disposed of is replaced by property of like or better kind, quality, and utility prior to Closing; (ii) enter into any contract, lease, or agreement that will impose any material obligation on Buyer after Closing except for contracts for the sale of advertising time entered into in the ordinary course of business which may be cancelled on thirty (30) days' notice; (iii) change the Station's current call sign; or (iv) cause or permit any of the FCC Licenses to be revoked, suspended or materially.

**9.6. Control of Station.** This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operations of the Station. Such operations shall be the sole responsibility of Seller. Notwithstanding the foregoing, nothing

in this Section shall be construed as limiting Buyer's rights to broadcast programming over the Station and to sell advertising time in such programming for Buyer's own account pursuant to the TBA.

**9.7. Modification Application.** Concurrent with the execution of this Agreement, Seller shall authorize Buyer in writing (in the form of Schedule 9.7) to file with the FCC an application ("Modification Application") or applications to modify the license of Station, as a contingent application pursuant to 47 CFR Section 73.3517. Closing shall NOT be conditioned on FCC action on the Modification Application. Buyer shall pay (or promptly reimburse Seller for) all fees, costs and expenses related to the Modification Application.

## **10. CONDITIONS PRECEDENT.**

**10.1. Mutual Conditions.** The obligation of both Buyer and Seller to consummate the Transaction is subject to the satisfaction of each of the following conditions:

**(a) Approval of Assignment Application.** The FCC shall have granted the Assignment Application and such action (the "FCC Consent") shall be in full force and effect on the Closing Date.

**(b) Absence of Litigation.** As of the Closing Date, no action, suit or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction shall be pending before any court, the FCC, or any other Governmental Authority; provided, however, that this Paragraph may not be invoked by a party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of, such party.

**10.2. Conditions to Buyer's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Buyer to consummate the Transaction is subject, at Buyer's option, to the satisfaction of each of the following conditions:

**(a) Representations and Warranties.** The representations and warranties of Seller to Buyer shall be true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made.



**(b) Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been duly complied with and performed in all material respects.

**(c) Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer all of the closing documents specified in Paragraph 11.2.1, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably acceptable to Buyer.

**10.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Seller to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

**(a) Representations and Warranties.** The representations and warranties of Buyer to Seller shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as if then made.

**(b) Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Buyer on or before the Closing Date shall have been duly complied with and performed in all material respects.

**(c) Payment.** Buyer shall have delivered to Seller the Purchase Price.

**(d) Closing Documents.** Buyer shall have delivered to Seller all the closing documents specified in Paragraph 11.2.2, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably satisfactory to Seller.

## **11. CLOSING.**

**11.1. Closing Date and Method.** Unless Seller and Buyer agree otherwise: (i) the Closing Date shall be on the fifth (5<sup>th</sup>) business day after all of the conditions precedent other than the deliveries to be made on the Closing Date have been satisfied or waived and (ii) the Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing

documents as the parties may reasonably require in person, by mail or air courier, by facsimile or by electronic exchange.

**11.2. Performance at Closing.** The following documents shall be delivered at Closing:

**11.2.1. By Seller.** Seller shall deliver or cause to be delivered to Buyer:

(a) A certificate executed by Seller's President attesting to Seller's compliance with the matters set forth in Section 10.2 (a).

(b) Assignments in form and substance reasonably satisfactory to Buyer transferring to Buyer all of the interests of Seller in and to the FCC Licenses and all other transferable licenses, permits, and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station.

(c) Bills of sale in form and substance reasonably satisfactory to Buyer conveying to Buyer all of the Tangible and Intangible Property of the Station.

(d) One or more assignments assigning to Buyer all of Seller's right, title and interest in and to the Contracts and Leases.

(e) Resolutions of Seller's Board of Directors and Shareholders approving the transactions contemplated by this Agreement and authorizing the execution and delivery of documents anticipated hereby.

**11.2.2. By Buyer.** Buyer shall deliver to Seller:

(a) A certificate executed by Buyer attesting to Buyer's compliance with the matters set forth in Section 10.3 (a).

(b) Such assumption agreements and other instruments and documents as are required to evidence Buyer's assumption of and obligation to pay, perform, and discharge Seller's obligations under the Contracts.

**12. INDEMNIFICATION.** The parties agree as follows with respect to the period subsequent to Closing:

**12.1. Buyer's Right to Indemnification.** For a period of one (1) year following the Closing Seller undertake and agree to indemnify and hold Buyer harmless against (i) any breach, misrepresentation, or violation of any of Seller's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Seller not assumed by Buyer; and (iii) any claims by third parties against Buyer attributable to Seller's ownership or operation of the Assets prior to Closing and not otherwise assumed by Buyer under this Agreement. This indemnity is intended by Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising within said one (1) year period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.2 Seller's Right to Indemnification.** For a period of one (1) year following the Closing Buyer undertakes and agrees to indemnify and hold Seller harmless against (i) any breach, misrepresentation, or violation of any of Buyer's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Buyer; and (iii) any claims by third parties against Seller attributable to Buyer's operation of the Station after Closing. This indemnity is intended by Buyer to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising during said one (1) year period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.3 Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(1) The party claiming indemnification (the "Claimant") shall give written notice to the party from which indemnification is sought (the "Indemnitor") promptly after the Claimant learns of any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless; provided, however, that the Claimant's failure to give the Indemnitor

prompt notice shall not bar the Claimant's right to indemnification unless such failure has materially prejudiced the Indemnitor's ability to investigate or defend against the claim or proceeding.

(2) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have thirty (30) days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purpose of this investigation, the Claimant agrees to make available to the Indemnitor and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension hereof), the Claimant may seek appropriate legal remedies.

(3) With respect to any third-party claims as to which the Claimant is entitled to indemnification, the Indemnitor shall have the right to employ counsel reasonable acceptable to the Claimant to defend against any such claim or proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor. The parties will fully cooperate in any such action, and shall make available to each other any books or records useful for the defense of any such claim or proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such claim or proceeding within twenty (20) days after receiving notice thereof from the Claimant (or such shorter time specified in the notice as the circumstances of the matter may dictate) the Claimant shall be free to engage counsel of its choice and defend against or settle the matter, all at the expense of the Indemnitor.

**12.4 Indemnification Not Sole Remedy.** The right to indemnification hereunder shall not be the exclusive remedy of either party in connection with any breach by the other party of its representations, warranties, or covenants, nor shall such indemnification be deemed to prejudice or operate as a waiver of any remedy to which either party may otherwise be entitled as a result of any such breach by the other party.

### **13. DEFAULT AND REMEDIES.**

**13.1. Opportunity to Cure.** If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured within ten (10) days after delivery of that notice, then the party giving such notice may exercise the remedies available to such party pursuant to this Section, subject to the right of the other party to contest such action through appropriate proceedings. If a notice of default is given ten (10) days or less prior to the Closing Date, the Closing Date shall be automatically extended to first business day following the last day of the "cure" period.

**13.2. Seller's Remedies.** Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach of this Agreement, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated receive from Buyer the Deposit as liquidated damages in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Transaction.

**13.3. Buyer's Remedies.** Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, as Buyer's sole remedy in the event of a breach by Seller of its obligations hereunder, Buyer shall have the right, if Buyer is not in material default in its obligations hereunder, specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

#### **14. TERMINATION.**

**14.1. Failure to Obtain FCC Consent.** This Agreement may be terminated at the option of either party upon written notice to the other if the Closing has not occurred within four (4) months after the date on which the FCC releases a public notice that the Assignment Application has been accepted for filing; provided, however, that a party may not terminate this

Agreement if such party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has been caused or materially contributed to (i) by any failure of such party to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by such party of incorrect, inaccurate or incomplete information to the FCC; or (iii) by any other action taken by such party for the purpose of delaying the FCC's decision or determination respecting the Assignment Application.

**14.2. Termination Due to Breach.** This Agreement may be terminated by either party due to a material breach of this Agreement by the nonbreaching party giving written notice of such termination. In such event, the nonbreaching party shall be entitled to the remedies specified in Sections 13.2 and 13.3 hereof.

**15. ENFORCEMENT OF REMEDIES; DISPUTES.** Except for the right of Buyer to seek specific performance of this Agreement which shall be pursued in an appropriate court and the right of either party to enforce the provisions of or any determination made pursuant to this section, the parties agree to resolve any disputes arising out of or in connection with this Agreement as provided in this section.

**15.1. Appointment of Dispute Panel.** If any dispute is not resolved in the time permitted by this Agreement or, if no time is specified, within five (5) days of the date either party gives the other notice that it intends to invoke the provisions of this section, each party will immediately name one arbitrator who shall be a person with one of the following qualifications (a) substantial experience in radio ownership or management, (b) an attorney with substantial experience in performing legal services for broadcasting licensees, or (c) a radio broadcasting consultant, and, within five (5) days of their appointment, the two arbitrators so selected shall select a third arbitrator with similar qualifications (the "Dispute Panel"). In the event one party names an arbitrator within the time period specified herein and the other party fails to do so, the Dispute Panel shall be comprised of the sole arbitrator who was timely named who shall have the full power and authority to resolve the dispute pursuant to the provisions of this Article 15.

**15.2. Decision Process.** Each party may submit

such materials as it may elect to the Dispute Panel provided that a copy of such material is delivered by hand or overnight courier to the other party. Neither party will contact any member of the Dispute Panel to discuss the dispute unless the other party is present in person or by conference telephone call or the other party consents. The Dispute Panel will request and review such information as its members deem necessary to resolve the dispute. The Dispute Panel and each party will treat all information received by it as confidential and will destroy such information when the dispute is resolved. The Dispute Panel will resolve the matters presented to it so as to give each Party the benefit of its bargain by applying the provisions of this Agreement and, to the extent the Agreement is not dispositive, the customs and practices which, in the view of Dispute Panel, are common to transactions of this nature. The Dispute Panel will render its decision as soon as possible, but in any event, within sixty (60) days of the appointment of the third expert. The decision will be in writing and signed by each member of the dispute panel. The decision may include an award of damages as permitted by this agreement. Any third party may rely upon an original copy of the written decision or a copy of the decision certified by any member of the Dispute Panel as evidence of the decision.

**15.3. Binding Effect.** The decision of a majority of the members of the Dispute Panel will be binding and final with respect to both parties and may be enforced by seeking preliminary and permanent injunctive relief or entry of a judgment by a court of competent jurisdiction.

**15.4. Costs and Fees.** Each party will bear the costs and fees of the expert appointed by it plus half of the costs and expenses of the third expert. If the Dispute Panel determines by majority decision that the position of a party lacks substantial merit or was taken primarily to delay or otherwise impair the business efforts of the other party, then that party will pay the costs and fees of all the members of the panel plus the other party's reasonable attorney's fees.

**15.5. Venue.** The parties agree that the exclusive venue for any proceedings of the Disputes Panel shall be Jacksonville, Florida.

## **16. GENERAL PROVISIONS.**

**16.1. Brokerage.** Seller has engaged Media Services Group, Inc. ("Broker") as its broker in connection with this Transaction and Seller shall be solely responsible for any brokerage fees due to Broker in connection with this Transaction. Except as stated in the preceding sentence, each party represents to the other that it has not employed any broker or finder in connection with the Transaction and agrees to indemnify the other party and hold it harmless against any claim from any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Seller or Buyer, as the case may be.

**16.2. Expenses.** The FCC filing fee for the Assignment Application and any sales, use or transfer taxes applicable to this Transaction shall be paid equally by Buyer and Seller. Except as otherwise provided herein, all other expenses incurred in connection with this Agreement or the Transaction shall be paid by the party incurring those expenses whether or not the Transaction is consummated.

**16.3. Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or on the date of delivery by email with a "read receipt" or other confirmation of delivery, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses, or to such other address as a party may request. Notice made in accordance with this section shall be deemed delivered upon receipt.

To Buyer:           Flagler Broadcasting, LLC  
                      2405 East Moody Blvd  
                      Suite 402  
                      Bunnell, FL 32110  
                      Email: david@wnzf.com

With copy that will not constitute notice to:

Gary S. Smithwick, Esq.  
Smithwick & Belenduik, PC  
5028 Wisconsin Ave, NW  
Suite 301



Washington, DC 20016  
Email: [gsmithwick@fccworld.com](mailto:gsmithwick@fccworld.com)

And

Jack O. Hackett II  
Farr Law Firm  
99 Nesbit Street  
Punta Gorda, FL 33950  
Email: [jhackett@farr.com](mailto:jhackett@farr.com)

To Seller: Air Augustine, Inc.  
2261 Piper Way  
Keswick, VA 22947  
Email: [mixworxm@aol.com](mailto:mixworxm@aol.com)  
Attn: David Mitchell, President

With a copy that shall not constitute notice sent to:

David Tillotson, Esq.  
4606 Charleston Ter NW  
Washington, DC 20007  
Email: [dtlaw67@starpower.net](mailto:dtlaw67@starpower.net)

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

**16.4. Assignment.** Buyer may assign its rights and obligations under this Agreement to any entity controlled by Buyer without Seller's consent provided that such assignment will not delay FCC action on the Assignment Application, and further provided that Buyer shall also remain liable for all of Buyer's obligations hereunder. Except as stated in the preceding sentence, neither party may assign its rights and obligations hereunder without the written consent of the other party which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assignees.

**16.5. Exclusive Dealings.** For so long as this Agreement remains in effect, neither Seller nor any person acting on Seller's behalf shall solicit, initiate, or accept any offer

from, or conduct any negotiations with, any person concerning the acquisition of the Station or the Assets, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

**16.6. Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

**16.7. Indulgences.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of a party at any time to require performance by another party of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by the another party shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by a party for the performance of any obligation or act by another party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**16.8. Survival of Representations and Warranties.** The several representations, warranties, and covenants of the parties contained herein shall survive the Closing for a period of one (1) year ; provided, however, that those specific matters as to which claims for indemnification have been duly made before the expiration of such one-year period shall survive until those claims have been resolved.

**16.9. Prior Negotiations.** This Agreement supersedes in all respects all prior and contemporaneous oral and written negotiations, understandings and agreements between the parties with respect to the subject matter hereof. All of said prior and contemporaneous negotiations, understandings and agreements are merged herein and superseded hereby.

**16.10. Schedules.** The Exhibits and Schedules attached hereto or referred to herein are a material part of this Agreement, as if set forth in full herein.

**16.11. Entire Agreement; Amendment.** This Agreement sets forth the entire understanding between the parties in connection with the Transaction, and there are no terms, conditions, warranties or representations other than those contained, referred to or provided for herein and therein. Neither this Agreement nor any term or provision hereof may be waived, altered or amended in any manner except by an instrument in writing signed by the party against whom the enforcement of any such change is sought.

**16.12. Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provisions of this Agreement shall be interpreted or construed against the party whose counsel drafted the provision.

**16.13. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Florida without regard to the choice of law rules utilized in that jurisdiction.

**16.14. Severability.** If any term of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

**16.15. Waiver of Jury Trial; Attorney's Fees.** If, notwithstanding the provisions of Section 15, any law suit is filed to resolve an issue as to the interpretation or enforcement of this agreement and is not dismissed on the basis of Section 15, each party irrevocably waives trial by jury and the right thereto in any and all litigation in any court with respect to, in connection with, or arising out of this Agreement.

**16.16. Counterparts.** This Agreement may be signed in any

number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument. Each fully executed set of counterparts shall be deemed to be an original, and all of the signed counterparts together shall be deemed to be one and the same instrument.

**IN WITNESS WHEREOF**, and to evidence their assent to the foregoing, Seller and Buyer have executed this Asset Purchase Agreement as of the date first written above.

**AIR AUGUSTINE, INC.**

By: \_\_\_\_\_  
David Mitchell, President

**FLAGLER BROADCASTING, LLC**

By: \_\_\_\_\_  
David Ayres, Vice President

## **SCHEDULE 2.1**

### **FCC LICENSES AND AUTHORIZATIONS**

License for Station WALE, Facility ID 53672, St. Augustine  
Beach, Florida

WPOM729 Aural Intercity Relay