

# **ASSET PURCHASE AGREEMENT**

*by and between*

**ADX COMMUNICATIONS OF PENSACOLA**

*and*

**MARY ELIZABETH HOXENG REVOCABLE TRUST**

*for the Sale and Purchase of  
Station WYCT(FM) Pensacola, Florida*

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** ("Agreement"), made and entered into as of this 15<sup>th</sup> day of June, 2021, by and between **ADX COMMUNICATIONS OF PENSACOLA**, a d/b/a sole proprietorship owned by David Hoxeng ("Seller"), and **MARY ELIZABETH HOXENG REVOCABLE TRUST**, a trust organized under the laws of the State of Florida ("Buyer").

### **WITNESSETH:**

**WHEREAS**, Seller is the holder of a license issued by the Federal Communications Commission (the "Commission") for the operation of WYCT, Pensacola, Florida, FCC Facility No. 539 (the "Station"); and

**WHEREAS**, Buyer wishes to acquire the license for the Station; and

**WHEREAS**, the assignment of the license for the Station is subject to the prior approval of the Commission.

**NOW, THEREFORE**, the parties, intending to be legally bound, agree as follows:

### **SECTION 1** **ASSETS TO BE SOLD**

1.1 On the Closing Date, Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment of the following (hereinafter collectively the "Assets") free and clear of any security interests, claims, encumbrances, liens or liabilities.

1.1.1 **Authorizations**. All licenses, permits and authorizations issued or granted by the Commission for the operation of, or used in connection with the operation of the Station (the "Commission Authorizations"), including any renewals or modifications thereof between the date hereof and Closing. In the event the Station is linked to any additional license or facility at the time of Closing, the Commission Authorizations shall include Seller's rights to such additional license or facility.

1.1.2 **Books and Records**. Seller's engineering records exclusively related to the Station, reports of engineers, consultants, or independent contractors relating to the engineering of the Station, and the Station's Online Public File required to be maintained pursuant to 47 C.F.R. §73.3526 (the "Books and Records"); and

1.2 **Excluded Assets**. The Assets shall not include the following assets along with all rights, title and interest therein which shall be referred to as the "Excluded Assets":

1.2.1 All cash, cash equivalents, or similar type investments of Seller, such as certificates of deposit, Treasury bills and other marketable securities on hand and/or in banks;

1.2.2 All claims, rights and interest of Seller to any (i) refunds of taxes or fees of any nature whatsoever or (ii) deposits or utility deposits, which in each case relate solely to the period prior to the Closing Date;

1.2.3 All contracts that have terminated or expired prior to the Closing Date in the ordinary course of business or as permitted hereunder;

1.2.4 All contracts of Seller not assumed by Buyer;

1.2.5 Seller's minute books, charter documents, corporate records, and such other books and records as pertain to the organization, existence, or share capitalization of Seller, as well as any other records or materials relating to Seller generally and not involving the assets or operation of the Station;

1.2.5 Contracts of insurance, including the cash surrender value thereof, and all insurance proceeds or claims made by Seller prior to the Closing Date; and

1.2.6 All pension, profit sharing, or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller.

1.2.7 All assets, including tangible personal property and lease agreements not listed in Section 1.1.

## **SECTION 2**

### **PURCHASE PRICE AND FINANCING**

2.1 **Purchase Price**. In consideration of Seller's performance of this Agreement, the total purchase price (the "Purchase Price") to be paid by Buyer shall be the real estate assets listed on Schedule A attached hereto.

## **SECTION 3**

### **APPLICATION TO AND CONSENT BY COMMISSION**

(a) The assignment of the Station's Licenses issued by the FCC from Seller to Buyer as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent") pursuant to an application by Seller and Buyer (the "Assignment Application"). The Assignment Application shall be filed by Seller and Buyer within five (5) business days of the date of this Agreement and thereafter Buyer and Seller shall each fully prosecute the Assignment Application with all diligence and shall otherwise use their commercially reasonable efforts to obtain the grant of such application as expeditiously as practicable.

(b) Each party shall bear its own expenses incurred for the preparation, filing, and prosecution of the Assignment Application, provided that Buyer shall pay the Commission filing fee.

(c) Each party agrees to comply with any condition imposed on it by the Commission, except that no party shall be required to comply with a condition that would have a material adverse effect upon it unless the condition was imposed as the result of circumstances which constitute a breach by that party of any of its representations, warranties, or covenants in this Agreement.

#### **SECTION 4** **ASSUMPTIONS**

4.1 **Liabilities.** The Assets shall be sold and conveyed to Buyer free and clear of all liabilities (absolute or contingent), obligations, liens (including tax, mechanics' and materialmen's liens), pledges, conditional sales agreements, charges, mortgages, security interests, encumbrances and restrictions of any type or amount created or suffered by Seller prior to the Closing Date, whether existing now or in the future, except for Permitted Liens.

#### **SECTION 5** **REPRESENTATIONS WARRANTIES AND COVENANTS OF SELLER**

5.1 **Seller's Best Knowledge.** "To the best of Seller's knowledge" shall mean the actual knowledge of Seller's management personnel directly responsible for supervision of operation of the Station.

5.2 **Standing.** Seller is a sole proprietorship. Seller has full rights to execute this Agreement.

5.3 **Binding Effect of Agreement.** This Agreement constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this Agreement. Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms except as may be limited by laws affecting the enforcement of creditor's rights or equitable principles generally.

5.4 **Authorizations.** Seller is the authorized legal holder of all licenses, permits, and authorizations necessary to operate the Station lawfully as it is now being conducted including, without limitation, all Commission Authorizations and all Other Authorizations. The Commission Licenses are in full force and effect, and there is no action pending nor to Seller's knowledge, threatened, before the Commission or other body to revoke, refuse to renew, suspend, or modify any of the Commission Authorizations or any Other Authorization, or any action which may result in the denial of any pending applications, the issuance of any cease and desist orders, or the imposition of any administrative sanctions whatsoever with respect to the Station or its operation.

5.5 **Operation.** Seller is operating the Station in compliance with the FCC Authorizations, the Communications Act of 1934, as amended, and all regulations and published policies of the Commission. The Station is not transmitting or receiving any objectionable interference to or from any other station.

5.6 **Litigation and Insurance.** Seller certifies there is no litigation pending with regard to any of the assets being assigned as a part of this transaction.

5.7 **Other Matters.**

5.7.1 **Bankruptcy.** No voluntary or, to Seller's knowledge, involuntary petition in bankruptcy, receivership, insolvency, or reorganization with respect to Seller, or petition to appoint a receiver or trustee of Seller's property, has been filed by or, to Seller's knowledge, against Seller. Seller has not made any assignment for the benefit of its creditors, and has not permitted any judgment, execution, attachment or levy against it or against any of its properties to remain outstanding or unsatisfied for more than thirty (30) days.

5.7.2 **No Liabilities Attaching to Buyer.** Except as expressly provided in this Agreement, there are no liabilities of any kind or nature whatsoever of Seller that attach or will, after the consummation of the transaction contemplated hereby, attach to Buyer, including, without limitation, any liability for or arising out of: (a) employee withholding, (b) worker's compensation, or (c) unemployment compensation.

5.7.4 **No Untrue Statements or Omission.** No representation or warranty made by Seller in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished by Seller, or on its behalf, to Buyer and pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statements contained therein not misleading. All representations and warranties of Seller set forth in this Agreement shall be true, complete and accurate in all material respects as of the Closing Date as if made on that date.

## **SECTION 6**

### **WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER**

Buyer covenants, represents, and warrants as follows:

6.1 **Organization and Standing.** Buyer is a trust organized and in good standing in the State of Florida.

6.2 **Authorization and Binding Obligation.** This Agreement constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this Agreement.

6.3 **No Contravention.** The execution, delivery, and performance of this Agreement or any of the Closing Documents do not and will not violate any provision of Buyer's Trust

documents, or any contract provision or other commitment to which Buyer is a party or under which it or its property is bound, or any judgment or order, and, except as contemplated herein.

6.4 **Litigation.** Except for administrative rule making or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation, or complaint threatened against or affecting it which would affect Buyer's authority or ability to carry out this Agreement.

6.5 **Buyer's Qualifications.** There is no fact that would, under present law (including the Communications Act of 1934, as amended) and the present rules and regulations of the Commission, disqualify Buyer from being the assignee of the Station. Buyer is legally, financially, and technically qualified, as that expression is defined by the Commission, to truthfully make the certifications in and to file with the Commission the Assignment Application and to consummate the transaction contemplated herein.

6.6 **No Untrue Statements or Omission.** No representation or warranty made by Buyer in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Seller and pursuant to this Agreement or in connection with the transaction contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material fact necessary to make the statement contained therein not misleading.

## **SECTION 8**

### **CONDITIONS FOR CLOSING**

8.1 **Closing.** Unless waived by Buyer in his sole discretion, the Closing of the transactions contemplated by this Agreement (the "Closing") shall take place within ten (10) business days after the date on which the Commission order (the "Order") approving the assignment of the FCC Licenses from Seller to Buyer has been granted and has become a Final Order, *i.e.*, no longer subject to administrative or judicial appeal; and *provided further*, that the parties shall not be obligated to proceed to Closing if (1) the Order includes conditions materially adverse to Buyer or Seller; or (2) the conditions precedent to Closing have not been satisfied or waived.

8.2 **Conditions Precedent to Obligations of Buyer.** The obligations of the Buyer under this Agreement are subject to the satisfaction of each of the following express conditions precedent (provided that Buyer may, at its election, waive any of such conditions on the Closing Date, notwithstanding that such condition is not fulfilled) on the Closing Date:

8.2.1 Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

8.2.2 Each of the Seller's representations and warranties contained in this Agreement or in any Schedule, certificate, or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true and correct in

all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty were made at and as of such time.

8.2.3 Seller shall have performed and complied in all material respects with all covenants, agreements and obligations required by this Agreement to be performed or complied with by it prior to the Closing Date and shall be in full compliance therewith on the Closing Date.

8.2.4 Seller shall be the holder of the Commission Authorizations.

8.2.5 Seller shall have taken all internal and other actions necessary to consummate this transaction.

8.2.6 The Commission shall have granted its written consent to the Assignment Application, and such consent shall be in full force and effect and shall contain no conditions that are materially adverse to Buyer.

8.3 **Conditions Precedent to Obligations of Seller.** The performance of the obligations of the Seller under this Agreement is subject to the satisfaction of each of the following express conditions precedent, provided that Seller may, at its election, waive any of such conditions at Closing, notwithstanding that such condition is not fulfilled on the Closing Date:

8.3.1 Each of Buyer's representations and warranties contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof, or in connection with the transactions contemplated hereby, shall be true in all material respects at and as of Closing Date, as though each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this Agreement.

8.3.2 Buyer shall perform all of the obligations set forth in Section 2 of this Agreement with respect to the payment of the Purchase Price and shall have paid to Seller the Purchase Price.

8.3.3 The Commission shall have granted its written consent to the Assignment Application, and such consent shall be in full force and effect and shall contain no conditions that are materially adverse to Seller.

8.4 **Failure of Conditions Precedent to Obligations of Buyer.** In case of the failure of any of the conditions precedent described in Section 8.2 hereof, and if Seller, after having received written notice of such failure from Buyer and having had fifteen (15) calendar days has failed to cure same, Buyer shall have the right to terminate this Agreement without liability. Buyer shall not be deemed to have waived any failure by Seller to fulfill any of the conditions precedent described in Section 8.2 if Buyer does not have actual knowledge of such failure at the time of Closing.

8.5 **Failure of Conditions Precedent to Obligations of Seller.** In case of the failure of any of the conditions precedent described in Section 8.3 hereof, and if Buyer, after having received notice of such failure from Seller and having had a reasonable opportunity, has failed to cure the same, Seller shall have the right to terminate this Agreement without liability. In addition, if the failure of such condition precedent results from a material default by Buyer, Seller shall have the right to retain the Escrow Deposit as its sole and exclusive remedy for Buyer's breach. Seller shall not be deemed to have waived any failure by Buyer to fulfill any of the conditions precedent described in Section 8.3 if Seller does not have actual knowledge of such failure at the time of Closing.

## **SECTION 9**

### **OBLIGATIONS AT CLOSING**

9.1 **Closing Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Buyer the following ("Seller's Closing Documents"):

9.1.1 An executed Bill of Sale in form and substance reasonably satisfactory to Buyer.

9.1.3 An executed Assignment of Licenses in form and substance reasonably satisfactory to counsel for Buyer assigning all the Commission Authorizations to Buyer.

9.1.5 A certificate executed by Seller stating that (a) all of the representations and warranties of Seller set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Seller on or prior to the Closing Date have been performed in all material respects.

9.1.6 Possession and/or ownership of and all right, title and/or interest in and to the Assets.

9.1.7 Further instruments and documents as Buyer may reasonably request to effect the transactions contemplated under this Agreement.

9.2 **Closing Documents to be Delivered by Buyer.** Buyer shall deliver to Seller the following ("Buyer's Closing Documents"):

9.2.1 A certificate executed by Buyer stating that: (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects.

9.2.2 An executed Assignment/Assumption Agreement assuming Seller's rights in the Contracts being assigned under this Agreement.



## **SECTION 10**

### **BROKERAGE**

Seller and Buyer each represent and warrant to the other that it knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this Agreement or who might be entitled to a fee or commission upon the consummation of such transactions. Buyer and Seller hereby agree to indemnify each other from and against any claim of any such obligation or liability by any person, and any expense incurred in defending against any such claim, including reasonable attorneys' fees, that shall have resulted from any conduct, activity, or action taken, or allegedly taken, by the indemnifying party.

## **SECTION 13**

### **FEES AND EXPENSES**

Each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this Agreement. Buyer shall pay the Commission Filing Fee, associated with the Assignment Application. All other expenses incurred in connection with this transaction shall be borne by the party incurring same.

## **SECTION 14**

### **DEFAULT AND TERMINATION**

14.1 **Termination**. This Agreement may be terminated prior to the Closing by either Buyer or Seller, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other upon the occurrence of any of the following:

(a) if the other is in material breach or default of its respective covenants, agreements, or other obligations herein, or if any of its representations herein are not true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate;

(b) if the Commission denies the Assignment Application or any part thereof or designates any part thereof for a trial-type hearing;

(c) if the grant of the Assignment Application by the Commission has not been granted within six (6) months after the Assignment Application is accepted for filing by the Commission; or

(d) on the Closing Date, Seller or Buyer, as the case may be, have failed to comply with its obligations under Section 8.2 or 8.3 of this Agreement, and does not cure such failure within 15 calendar days of the Closing Date.

14.3 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, in the event of failure or threatened failure by Seller to comply

with the terms of this Agreement, Buyer shall have the right specifically to enforce Seller's performance under this Agreement, subject to obtaining any necessary Commission consent, 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.

## **SECTION 15** **SURVIVAL OF WARRANTIES**

15.1 All representations and warranties made by the parties in this Agreement shall be deemed made for the purpose of inducing the other to enter into this Agreement, and shall survive the Closing and remain operative and in full force and effect, for a period of six (6) months.

15.2 Neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this Agreement, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this Agreement and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors and assigns.

## **SECTION 16** **NOTICES**

16.1 All notices, requests, demands, waivers, consents and other communications required or permitted hereunder shall be in writing and be deemed to have been duly given when delivered in person (against receipt) to the party to be notified at the address set out below or sent by registered or certified mail, or by express mail or courier, postage prepaid, return receipt requested, addressed to the party to be notified, as follows:

If to Seller:

ADX COMMUNICATIONS OF PENSACOLA  
Attn: David Hoxeng  
7251 Plantation Rd.  
Pensacola, FL 32504

If to Buyer:

Mary E. Hoxeng, Trustee  
MARY ELIZABETH HOXENG REVOCABLE TRUST  
1700 Scenic Highway, #701  
Pensacola, FL 32503

With copy to (which shall not constitute notice) to:

Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201  
Fax: 703-539-5418

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 provided in this Section shall be invalid and shall have no force or effect.

## **SECTION 17** **MISCELLANEOUS**

17.1 **Headings.** The headings of the Sections of this Agreement are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret, or construe the meaning of the sections themselves or the intentions of the parties.

17.2 **Entire Agreement.** This Agreement sets forth the entire agreement of the parties and is intended to supersede all prior negotiations, understandings, and agreements and cannot be altered, amended, changed, or modified in any respect or particular unless each such alteration, amendment, change or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and signed and delivered by each party. No provision, condition, or covenant of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver.

17.3 **Binding Effect and Assignment.** This Agreement may be assigned by Buyer only with prior consent of Seller, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

17.4 **Additional Documents.** The parties hereto agree to execute, acknowledge and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement, the effective vesting in Buyer of title to the Assets, and/or the successful processing by the Commission of the application to be filed with it, as provided in Section 4.2.

17.5 **Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, all of which together shall comprise one and the same instrument. This Agreement shall be legally binding and effective upon delivery of signatures by facsimile or electronic transmission.

17.6 **Legal Actions.** If either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any

appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of its provisions shall include an award of prejudgment interest from the date of the breach at the maximum rate of interest allowed by law.

17.7 **Governing Law.** The parties agree that this Agreement and the transaction herein contemplated shall be interpreted, construed, and enforced, but without application application of the principles of conflicts or choice of laws, under and according to the laws of the State of Florida.

17.8 **Time is of the Essence.** Time shall be of the essence in this Agreement and the performance of each and every provision hereof.

17.9 **Severability.** If any term or provision of this Agreement or its application shall, to any extent, declared to be invalid or unenforceable, the remaining terms and provisions shall not be affected and shall remain in full force and effect and to such extent are severable; provided, however, neither party shall have any obligation to consummate the transactions contemplated by this Agreement if it is adversely affected in any respect whatsoever and regardless of immateriality by a determination that nay term or provision of this Agreement or its application shall, to any extent, be invalid or unenforceable.

17.10 **Choice of Forum.** The parties agree that that the only and exclusive forum for any action brought to resolve any dispute arising out of this Agreement shall be the state court having jurisdiction over Escambia County, Florida. No party shall oppose or assert a defense against such litigation in said courts on the grounds that the court lacks personal jurisdiction.

**[the remainder of this page is intentionally left blank]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be signed and executed by their proper officers thereunto duly authorized as of the day and year first above written.

**SELLER:**

**ADX COMMUNICATIONS OF PENSACOLA**

By: \_\_\_\_\_

David E. Hoxeng  
Owner

**BUYER:**

**MARY ELIZABETH HOXENG REVOCABLE TRUST**

By: \_\_\_\_\_

Mary E. Hoxeng  
Trustee

**Attachment A**

Purchase Price to be Paid by Buyer to Seller:

Buyer's interest in the following properties-

3 Ensenada Marbella, Pensacola, Florida 32561

100 Ft. Pickens Road-#108, Pensacola, Florida 32561

1401 Via deLuna, Pensacola, Florida 32561