

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (this “Agreement”) is made as of this 12th day of August, 2021, by and between **SUN MOUNTAIN, INC.** (“Seller”), and **MONTANA RADIO BROADCAST GROUP LLC** (“Buyer”).

Recitals

A. Seller owns the following radio broadcast station (the “Station”) pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”):

KHDN(AM), Hardin, Montana, Facility No. 5298

B. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to assign to Buyer, and Buyer desires to obtain 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: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (defined below), except as set forth in Sections 1.2, Seller shall assign, transfer, convey, and deliver to Buyer, and Buyer shall acquire from Seller, all right, title, and interest of Seller in and to certain assets of Seller, specifically, the broadcast equipment and rights to the FCC License (the “Station Assets”), including the following:

(a) all licenses, permits, and other authorizations issued to Seller by the FCC with respect to the Station (the “FCC Licenses”);

(b) all of Seller’s equipment used in conjunction with the operation of the Station (“the “Tangible Personal Property”); and

(c) all of Seller’s rights in and to the Station call letters “KHDN”; and

(d) Seller’s rights to the Station’s public files, but excluding records relating to any Excluded Assets.

The Station Assets shall be transferred to Buyer free and clear of liens, claims, and encumbrances (“Liens”).

1.2 Consideration. In consideration of Seller’s performance of this Agreement, the Assets will be assigned for no monetary consideration.

1.3 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the "Closing") will take place within five (5) business days of FCC initial approval (the "Closing Date").

1.4 FCC Consent.

(a) Within five (5) business days of the date of this Agreement, Buyer and Seller shall file an application with the FCC (the "FCC Application") requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the "FCC Consent". Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

2.1 Organization. Seller is duly organized, validly existing and in good standing under the laws of the State of Montana. Seller has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the "Seller Ancillary Agreements") and to consummate the transactions contemplated hereby.

2.2 Authorization. The execution, delivery, and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller.

2.3 No Conflicts. Except for the FCC Consent and consents to assign certain of the Station Contracts, the execution, delivery, and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby does not conflict with any organizational documents of Seller, any contract or agreement to which Seller is a party or by which it is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

2.4 FCC Licenses. Seller is the holder of the FCC Licenses. The FCC License is in full force and effect.

2.5 Personal Property. Seller has good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. The Tangible Personal Property is sold as-is-where-is condition. No warranties of condition are given.

ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the “Buyer Ancillary Agreements”) and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery, and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by the Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid, and binding agreement of Buyer enforceable in accordance with its 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. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Litigation. There is no action, suit, or proceeding pending or, to Buyer’s knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

3.5 Qualification. Buyer is legally, financially, and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the rules, regulations and policies of the FCC.

ARTICLE 4: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

4.1 Confidentiality. Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the parties’ representatives and lenders for the purpose of consummating the transactions contemplated by this Agreement.

4.2 Announcements. Prior to Closing, no party shall, without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), issue any press release or

make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement, and except as necessary to enforce rights under or in connection with this Agreement. Notwithstanding the foregoing, the parties acknowledge that this Agreement and the terms hereof will be filed with the FCC Application and thereby become public.

4.3 Control. Buyer shall not, directly or indirectly, control, supervise, or direct the operation of the Station prior to Closing.

ARTICLE 5: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

5.1 Representations and Covenants.

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

5.2 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.

5.3 FCC Authorization. The FCC Consent shall have been obtained.

ARTICLE 6: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

6.1 Representations and Covenants.

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

6.2 FCC Authorization. The FCC Consent shall have been obtained.

ARTICLE 7: CLOSING DELIVERIES

7.1 Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

- (i) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;
- (ii) an assignment of intangibles (*i.e.*, Call Sign "~~KHQR~~"^{KHDW});
- (iii) a bill of sale conveying the other Station Assets from Seller to Buyer; and
- (iv) any other instruments of conveyance, assignment, and transfer that may be reasonably necessary to convey, transfer, and assign the Station Assets from Seller to Buyer.

7.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) any other instruments of conveyance, assignment, and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer.

ARTICLE 8: SURVIVAL; INDEMNIFICATION

8.1 Survival. The representations and warranties in this Agreement shall survive Closing for a period of six (6) months from the Closing Date.

8.2 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 or default by Seller under this Agreement; or (ii) the business or operation of the Station before Closing.~~

~~(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 or default by Buyer under this Agreement; or (ii) the Assumed Obligations or the business or operation of the Station after Closing.~~

ARTICLE 9: TERMINATION AND REMEDIES

9.1 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 breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below);

(c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance in any fashion of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; or

(d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date twelve (12) months after the date of this Agreement (unless extended by the Parties);

9.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date determined under Section 1.8; *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 1.8, 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 1.8.

9.3 Specific Performance. In the event of failure or threatened failure by Seller to comply with the terms of this Agreement, the Buyer shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement.

ARTICLE 10: MISCELLANEOUS

10.1 Expenses. All FCC filing fees shall be paid by Buyer.

10.2 Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute, and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

10.3 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to Seller: Sun Mountain Broadcasters, LLC
274 Sandbrook Drive
Noblesville, IN 46062-9326

if to Buyer: Montana Radio Broadcast Group LLC
10024th St. W
Suite 1-109
Billings, MT 59102

With copy to:

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 21st Rd. N
Arlington, VA 22201

10.4 Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

10.5 Entire Agreement. This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Station, which shall remain in full force and effect.

10.6 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.

10.7 No Beneficiaries. 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 successors and permitted assigns.

10.8 Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Montana.

10.9 Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

SIGNATURE PAGE TO ASSIGNMENT AGREEMENT

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

SELLER:

SUN MOUNTAIN, INC.

By: 

Richard Solberg
President

BUYER:

MONTANA RADIO BROADCAST GROUP LLC

By: 

Chris Kortlander
Managing Member