

## ASSET PURCHASE AGREEMENT

THIS **ASSET PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of October 14, 2022, by and among Fusion Radio, LLC, an Illinois limited liability company ("Seller"), and Relevant Radio, Inc., a Wisconsin not-for-profit corporation ("Buyer").

### WITNESSETH:

**WHEREAS**, Seller owns the following radio stations (collectively, "Stations") pursuant to licenses, permits and authorizations issued by the Federal Communications Commission ("FCC");

WPAY(AM), 1520 kHz, Rossford, Ohio (Facility No. 40858)  
FM Translator W231EF, 94.1 MHz, Toledo, Ohio (Facility No. 138974) ("W231EF")

**WHEREAS**, concurrently on the date of this Agreement, Buyer and Seller will enter into a Time Brokerage Agreement ("TBA") pursuant to which Buyer will provide programming to the Station pending the consummation of the transactions contemplated by this Agreement.

**WHEREAS**, on the terms and conditions described herein, Seller desires to sell and Buyer desires to acquire the assets as set forth in this Agreement owned or leased by Seller and used or held for use in connection with the operation of the Stations; and

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for good and valuable consideration, the receipt and adequacy of which is acknowledged by the parties, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 PURCHASE OF ASSETS

**1.1 Transfer of Assets.** On the Closing Date (as hereinafter defined), subject to the provisions hereof, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase and assume from Seller, the below-listed assets, properties, interests and rights of Seller (collectively, "Assets");

(a) All licenses, permits and other authorizations, including pending applications with respect thereto, relating to the Stations issued to Seller by the FCC on or prior to the Closing Date, as set forth on Schedule 1.1(a) ("FCC Licenses");

(b) All equipment, buildings, and related items located at the Stations' tower sites associated in any way whatsoever with the Stations, together with any additions thereto or replacements thereof made between the date hereof and the Closing Date, and less any retirements or dispositions of old or obsolete assets made between the date hereof and the Closing Date, including the items as set forth on Schedule 1.1(b) ("Tangible Personal Property");

(c) Seller's right, title and interest in and to all contracts and agreements associated with the Stations ("Station Contracts"), including as set forth on Schedule 1.1(c);

(d) All of Seller's right, title and interest in and to the Stations' intangible personal property, as set forth on Schedule 1.1(d) hereto ("Intellectual Property"); and

(e) all fee simple or leasehold interests in real property (including, without limitation, land, easements, air rights, ground rents, mineral rights, rights of way and fee ownership, buildings, towers, guy wires, anchors, structures, fixtures and improvements) relating to the Station identified and as more fully described on Schedule 1.1(e) ("Real Property").

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the Assets shall not include the following assets along with all right, title and interest therein ("Excluded Assets"):

(a) All accounts receivable, 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 financial institutions, existing as of the Adjustment Time (defined below);

(b) All contracts or agreements to which Seller is a party that are not listed on Schedule 1.1(c);

(c) Seller's corporate seal, minute books, charter documents, corporate stock record books and such other books and records relating to the organization, existence or capitalization of Seller;

(d) Contracts of insurance and all insurance proceeds or claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date;

(e) Any and all claims made by Seller with respect to transactions prior to the Closing Date and the proceeds thereof, except claims with respect to obligations to be assumed by Buyer pursuant to **Section 2.1** hereof;

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

(g) All tangible personal property disposed of or consumed between the date hereof and the Closing Date in accordance with the terms and provisions of this Agreement and in the ordinary course of business.

**1.3 No Liens.** The Assets shall be transferred to Buyer free and clear of all liens, encumbrances, debts, security interests, mortgages, trusts, claims, pledges, charges, covenants, conditions, defects in title or restrictions of any kind ("Liens"), except for (a) the Assumed Liabilities (defined below); (b) Liens for taxes, assessments and other governmental charges not yet due and payable; (c) in the case of any leased asset, the rights of any lessor under the applicable lease agreement or any Lien granted by any lessor; (d) materialmen's, mechanics', workmen's, repairmen's or other Liens arising in the ordinary course of business, which are released at or prior to Closing; (e) Liens that do not affect in any material manner the use or value of the Asset to which they are attached; (f) zoning laws and ordinances and similar laws; (g) rights reserved to any governmental authority to regulate the affected property; (h) any easements, rights-of-way, servitudes, permits, restrictions and minor imperfections or irregularities in title that are reflected

in the public records and that do not individually or in the aggregate materially interfere with the right or ability to own, use, lease or operate any Real Property used in the operation of the Stations as presently utilized; and (i) the rights of any lessor or grantor under any applicable lease agreement or easement, respectively (including any Liens held thereunder) (collectively, “Permitted Liens”).

**1.4 Assignment of Station Contracts.** If any third-party consent or approval for the assignment or transfer of a Station Contract is not obtained before the Closing, Seller shall cooperate with Buyer in any reasonable arrangement designed to provide for Buyer after the Closing the benefits intended to be assigned to Buyer under the applicable Station Contract. Enforcement of any and all rights of Seller against the other party thereto arising out of the breach thereof by such other party or otherwise prior to the Closing shall be at the cost of Seller. Enforcement of any and all rights of Seller against the other party thereto arising out of the breach thereof by such other party or otherwise after the Closing shall be at the cost of Buyer, but only to the extent that Buyer has enjoyed the full benefits of such Station Contract as if such consent, waiver or approval had been obtained. Buyer shall indemnify and hold harmless Seller for any costs, expenses or liabilities (including legal fees and expenses) incurred by it in connection with the enforcement of such Station Contract at the request of Buyer. Upon receipt of any third-party consent or approval after Closing, the applicable Station Contract shall be automatically assigned to, and assumed by, Buyer on the terms hereof without further action by Buyer or Seller.

## ARTICLE 2 ASSUMPTION OF OBLIGATIONS

**2.1 Assumption of Obligations.** Subject to **Section 2.2**, on the Closing Date, Buyer shall assume and undertake to pay, satisfy and discharge all of the liabilities and obligations of Seller arising or to be performed on or after the Adjustment Time under the Station Contracts, together with all obligations incurred by Buyer in the operation of the Stations on or after the Adjustment Time. All of the foregoing assumed liabilities and obligations shall be referred to herein collectively as the “Assumed Liabilities.” Other than the Assumed Liabilities, Buyer shall not assume or be liable for, and does not undertake or attempt to assume or discharge any obligation of Seller.

**2.2 Retained Liabilities.** Except as set forth in **Section 2.1**, Buyer expressly does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liability, obligation, commitment, undertaking, expense or agreement of Seller of any nature whatsoever, mortgage or other agreement for borrowed money, whether known or unknown or absolute or contingent. All of such liabilities and obligations shall be referred to herein collectively as the “Retained Liabilities.” Without limiting the generality of the foregoing, it is understood and agreed that Buyer is not agreeing to assume, and shall not assume, any liability or obligation of Seller to Seller’s employees, including without limitation any such liability or obligation, including relating to taxes, in respect of wages, salaries, bonuses, accrued vacation or sick pay.

## ARTICLE 3 CONSIDERATION

**3.1 Purchase Price.** The purchase price for the sale, assignment, transfer and

conveyance of the Assets shall be Five Hundred Thousand U.S. Dollars (\$500,000.00) ("Purchase Price"), set forth as follows:

(a) Concurrently with the execution of this Agreement, Buyer shall deliver Twenty Five Thousand Dollars (\$25,000.00) ("Deposit") to Seller in cash via wire transfer from immediately available funds;

(b) At the Closing (defined below), Seller shall retain the Deposit, the amount thereof credited to Buyer, and applied to the Purchase Price.

(c) At the Closing, Buyer shall deliver to Seller Four Hundred Seventy Five Thousand Dollars (475,000.00) by wire transfer or other immediately available funds, subject to any adjustments as set forth herein or as may be agreed to by Seller and Buyer;

**3.2 Deposit.** Within two (2) business days of the date of this Agreement, Buyer shall deliver the Deposit to Seller. Concurrently therewith, Buyer and Seller shall execute a Promissory Note ("Note") with respect to the Deposit. The Note shall provide, among other things, that: (a) the Deposit shall be secured by Seller's interests in the Assets (except for the FCC Licenses); (b) Buyer shall be permitted to place a first priority lien upon the Real Property; and (c) if this Agreement is terminated by Seller pursuant to **Section 13.1(e)** hereof, the Deposit shall be retained by Seller, and if this Agreement is terminated for any other reason, then Seller shall promptly repay the full amount of the Deposit to Buyer, plus an additional ten percent (10%) of the amount of the Deposit. The Deposit shall be the sole and exclusive recourse of Seller for any breach of this Agreement by Buyer prior to Closing.

**3.3 Proration of Income and Expenses.** Except as otherwise provided herein or in the TBA, all income and expenses arising from Seller's ownership of the Assets to be conveyed hereunder shall be prorated between Buyer and Seller in accordance with U.S. generally accepted accounting principles as of 12:01 a.m., Eastern time, on the Closing Date ("Adjustment Time"), on the basis that all income and expenses which accrue prior to the Adjustment Time are for the account of Seller, and all income and expenses which accrue after the Adjustment Time are for the account of Buyer. Such prorations shall include, without limitation, all rent, utility charges, business and license fees, real estate taxes and assessments, music and other license fees currently paid by Seller, accrued but unpaid commissions and similar prepaid and deferred items attributable to the ownership of the Stations or the Assets. All revenues, expenses, costs and liabilities earned or incurred in connection with particular programs and announcements shall be allocated to the time of performance of such programs and announcements without regard to the date of payment therefor. It is understood and agreed that all salaries, wages, sales commissions, fringe benefit accruals and termination or severance pay for employees of Seller shall be the sole responsibility of Seller.

**3.4 Title Commitment.** Within fourteen (14) days after the full execution of this Agreement, Seller shall deliver to Buyer an ALTA title commitment dated prior to the Closing Date ("Title Commitment") in an amount to be determined, issued by the Fidelity National Title Insurance Company, c/o Suzanne Rippel, 399 Sturges Ave, Mansfield, Ohio 44903 ("Title Company"), which Title Commitment shall contain a commitment of the Title Company to issue a Title Policy.

## ARTICLE 4 FCC CONSENT

**4.1 FCC Consent.** The transactions contemplated hereby are expressly conditioned on and subject to the prior consent and approval of the FCC to an application seeking consent to the assignment of the FCC Licenses from Seller to Buyer ("FCC Application") without the imposition of any conditions on the assignment of the FCC Licenses which would reasonably be expected to have a material adverse effect on the results of operations of Buyer or the Stations ("FCC Consent").

### **4.2 FCC Application.**

(a) Within ten (10) business days after the date of this Agreement, each party shall prepare, execute and submit its respective portion of the FCC Application and all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such FCC Application. Each party further agrees expeditiously to prepare amendments to the FCC Application whenever such amendments are required by the Communications Act of 1934, as amended and the rules and published policies of the FCC promulgated thereunder (collectively, "Communications Laws"). Each party shall submit its portion of the FCC Application to the FCC electronically, consistent with the FCC's procedures. The parties shall prosecute the FCC Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Application as expeditiously as reasonably practicable (but no party shall have any obligation to satisfy complainants or the FCC by taking any steps that would have a material adverse effect on the results of operations of a party or any affiliated entity, unless a failure to take such action would constitute or perpetuate a breach of such party's representations, warranties or covenants herein). Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the FCC Application. The fee to be paid to the FCC in conjunction with the filing of the FCC Application ("FCC Fee") will be shared equally by Seller and Buyer. Buyer will pay the FCC Fee upon submission of the FCC Application and will be reimbursed for one-half of the FCC Fee at the Closing.

(b) Neither Buyer nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent. Each party agrees to comply with any condition imposed on it by the FCC; provided, however, that no party shall be required hereunder to comply with any condition that would have a material adverse effect on the results of operations of such party or any affiliated entity, unless the absence of such compliance would constitute or perpetuate a breach of such party's representations, warranties or covenants herein. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, such party shall not be required to take any action that would have a material adverse effect on the results of operations of such party or any affiliated entity.

(c) Either party at its option may terminate this Agreement upon five (5) business days' prior written notice to the other party, and without liability to the other party, if the FCC has not granted the FCC Application by the nine (9) month anniversary of the date hereof,

provided that the failure to obtain the FCC Consent shall not have been due to the action or inaction of the party seeking to exercise such termination right. In addition, either party may at its option terminate this Agreement upon five (5) business days' prior written notice to the other party in the event that the FCC should designate a hearing regarding the transaction proposed herein, and such termination shall be without liability to the other party unless the designation of such hearing is the result of the breach of any representation, warranty or covenant contained herein by the terminating party. In the event of termination pursuant to this **Section 4.2(c)**, each party shall bear its own expenses. Nothing in this **Section 4.2(c)** shall be construed to limit a party's right to terminate this Agreement pursuant to Article 13 hereof.

## **ARTICLE 5 CLOSING**

**5.1 Closing Date.** Except as otherwise mutually agreed upon by Seller and Buyer, the consummation of the transactions contemplated herein ("Closing" and the date on which such Closing is held, "Closing Date") shall occur within ten (10) business days after the date of the initial FCC Consent, provided all conditions precedent to the obligations of Buyer and Seller have been met or properly waived. All actions taken at the Closing will be considered as having been taken simultaneously and no such actions will be considered to be completed until all such actions have been completed. Notwithstanding any provision herein to the contrary, in the event that any petitions to deny or other informal objections are filed against or with respect to the FCC Application, then Buyer shall have the option, at its sole discretion, to postpone the Closing Date until a date that is within ten (10) business days after the date that the FCC Consent has become a "Final Order." For purposes of this Agreement, the term "Final Order" shall mean an order of the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which is not reversed, stayed, enjoined or set aside, and with respect to which no timely application for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the FCC, and for any reconsideration, stay or setting aside by the FCC on its own motion or initiative has expired;

**5.2 Closing Location.** The Closing shall be held at such location as shall be mutually agreed upon by Seller and Buyer. At the election of Buyer and Seller, mutually agreed in writing, the Closing may be performed by mail, electronically and/or courier service.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby makes the following representations and warranties to Buyer, as of the date hereof and on each day until the completion of the Closing:

**6.1 Organization and Qualification.** Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is qualified to do business in each jurisdiction in which the Assets are located. Seller has all necessary corporate power to carry on its business as it is now being conducted.

## 6.2 Authority.

(a) Seller has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates and instruments delivered or to be delivered hereunder by Seller (collectively, "Seller Documents"), to perform each of its obligations thereunder, and to consummate the transactions contemplated thereby, and the person executing this Agreement on behalf of Seller has been duly authorized by all requisite corporate action of Seller. Each of the Seller Documents has been, or at or prior to the Closing will be, as the case may be, duly executed and delivered by Seller and constitutes, or will constitute at the Closing, as the case may be, a valid and binding obligation of Seller, enforceable against Seller in accordance with its respective terms.

(b) The execution and delivery by Seller of the Seller Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of Seller's organizational documents; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Seller is bound; (iii) create any Lien, other than Permitted Liens, upon any of the Assets; or (iv) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Seller or any of the Assets.

## 6.3 FCC Licenses.

(a) Schedule 1.1(a) hereto contains a true and complete list of the FCC Licenses (which Schedule shall be updated as of the Closing Date, and the following representations of **Section 6.3** shall then apply to all such FCC Licenses). Seller is the authorized legal holder of the FCC Licenses. The FCC Licenses are in full force and effect, unimpaired by any act or omission of Seller. The FCC Licenses are all of the licenses, permits or other authorizations issued by the FCC necessary to operate each Station in the manner as such operations currently are conducted and there are no conditions upon the FCC Licenses except those conditions stated thereon or generally applicable to broadcast stations comparable to the Stations. No proceedings are pending or to Seller's knowledge, threatened (other than proceedings applicable to the radio industry as a whole) nor, to Seller's knowledge, do any facts exist which may reasonably result in the revocation, materially adverse modification, non-renewal or suspension of any of the FCC Licenses, the denial of any pending material applications related to the FCC Licenses, or, in any material respect, the issuance of any cease and desist order related to the FCC Licenses, the imposition of any administrative actions by the FCC with respect to the FCC Licenses or which as of the Closing Date may affect Buyer's ability to operate each Station in accordance with the provisions of the Communications Laws. To Seller's knowledge, no facts, events or circumstances exist or have occurred with respect to Seller or either Station that would reasonably be likely to cause the FCC not to renew the FCC Licenses in the ordinary course and without undue delay, adverse condition or modification. Seller is not delinquent on any fees owed to the FCC and its status under the FCC's "red light" system is "green."

(b) Except as disclosed on Schedule 1.1(a) hereof, each Station is operating in

material compliance with its FCC Licenses and the Communications Laws. Seller has filed with the FCC all material reports or applications with respect to the FCC Licenses and the Stations.

**6.4 Tangible Personal Property.** Schedule 1.1(b) contains a correct and complete list of the Tangible Personal Property. Seller (a) is the owner of all of the Tangible Personal Property it purports to own, (b) to Seller's knowledge, has a valid leasehold interest in the Tangible Personal Property it purports to lease, and (c) has a valid license right (whether as a licensor or licensee) in the Tangible Personal Property it purports to license, in all cases free and clear of any Liens, except for Permitted Liens. The Tangible Personal Property is in good condition and working order and is fit and suitable for its intended purposes in the ordinary course of business.

**6.5 Station Contracts.** Schedule 1.1(c) sets forth a correct and complete list of each Station Contract. Seller is not in violation or breach of, nor has Seller received in writing any claim or threat that it has breached any of the terms and conditions of, any Station Contract. Seller has performed its obligations under each of the Station Contracts in all material respects, and Seller is not in material default thereunder, and to Seller's knowledge, no other party to any of the Station Contracts is in default thereunder in any material respect. Each Station Contract is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Except as set forth on Schedule 1.1(c), neither Seller nor any Station is a party to or bound by any agreement, contract or commitment which is material to any Station that obligates it to provide advertising time on such Station on or after the Adjustment Time as a result of the failure of such Station to satisfy specified ratings or any other performance criteria, guarantee or similar representation or warranty.

**6.6 Intellectual Property.** Schedule 1.1(d) sets forth a correct and complete list of all Intellectual Property. Except as set forth on Schedule 1.1(d), (a) to Seller's knowledge, Seller's use of the Intellectual Property does not infringe upon any third party rights in any material respect; (b) no material Intellectual Property is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use; and (c) Seller has not received any written notice that its use of any material Intellectual Property is unauthorized or infringes upon the rights of any other person.

**6.7 Real Property.** Schedule 1.1(e) contains a description of all Real Property to be transferred to Buyer at the Closing. No part of any Real Property is subject to any pending or, to Seller's knowledge, threatened suit for condemnation or other taking by any public authority. Except as set forth on Schedule 1.1(e), to the knowledge of Seller, all buildings and other improvements included in the Real Property are in reasonable operating condition, ordinary wear and tear excepted, and comply in all material respects with applicable zoning, health, disability and safety laws and codes. Seller has good, valid and marketable fee simple title to each item of Real Property and, except as set forth on Schedule 1.1(e), there are no easements, rights of way, building and use restrictions, exceptions, encroachments, reservations, limitations that, individually or in the aggregate, in any material respect, impair the current use thereof of the Stations. In addition:

- (a) The Real Property is free and clear of all Liens.

(b) Seller has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the Real Property.

(c) Seller is the sole occupant of the Real Property; and

(d) There are no outstanding options, rights of first offer or rights of first refusal to purchase the Real Property or any portion thereof or interest therein. The Real Property constitutes all of the real property used or held for use in the operation of the Stations as currently conducted. Seller is not party to any lease, sublease, license, easement, occupancy agreement and similar agreement, whether written or oral, including all amendments, extensions, renewals, guaranties, or any other agreement with respect thereto by which Seller, as lessee, lessor, sublessee, sublessor, licensor, licensee, grantee or grantor, leases, uses or occupies, or otherwise has a right in or relating to, real property used or held for use in the operation of the Stations. The operation and use of the buildings and other improvements constituting the Real Property does not violate any laws or any certificate of occupancy issued with respect to the Real Property.

**6.8 Environmental, Etc.** To the best knowledge of Seller:

(a) No hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the Real Property, including any real property associated with leases that are Station Contracts ("Leased Property"), other than in compliance with federal, state or local law.

(b) All Leased Property and Seller's activities and operations on any such Leased Property are in material compliance with all applicable environmental laws and regulations and zoning, building and other laws and regulations of all governmental authorities having jurisdiction thereof.

(c) The buildings and fixtures used in the operation of any Station on any Real Property or Leased Property are suitable for their intended use as currently used by Seller.

(d) All utilities necessary for Seller's use of any Real Property or Leased Property are installed and in working order and are subject to valid easements.

(e) Seller has received no notice that any condemnation proceedings have been instituted or threatened against any Real Property or Leased Property.

**6.9 Litigation.** (a) Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree with respect to or affecting any Station or the Assets; (b) there is no third party claim, litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against Seller with respect to any Station in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes; (c) there is no third party claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller with respect to any Station, which is reasonably likely to have a material adverse effect upon the business, assets or condition, financial or otherwise, of such Station or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

**6.10 No Other Agreements to Sell the Stations; No Undisclosed Liabilities.** Seller has no legal obligation, absolute or contingent, to any other person or firm to sell, assign, or transfer the Assets (whether through a merger, reorganization or sale of stock or otherwise) or to enter into any agreement with respect thereto. To the knowledge of Seller, there are no liabilities or obligations of Seller with respect to any Station that will be binding upon Buyer after the Adjustment Time, other than the Assumed Liabilities.

**6.11 Brokers.** Other than Kozacko Media Services, the broker fee for which Seller shall be solely responsible to pay at the Closing, there is no broker, finder or other person or entity (collectively, "Broker") who would have any valid claim through Seller against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, Seller. Seller agrees to indemnify Buyer for all costs incurred by Buyer arising from the claim of any Broker reasonably related to the transactions contemplated by this Agreement.

**6.12 Taxes.** (a) Seller has paid all taxes required to be paid with respect to the Stations; (b) there are no pending or, to the best knowledge of Seller, threatened, investigations or claims against Seller for or relating to any liability in respect of taxes and, to the best knowledge of Seller, no facts or circumstances exist which indicate that any such investigations or claims in respect of taxes may be brought or are under discussion with any governmental authorities; and (c) all taxes required to be withheld by Seller on or before the date hereof have been withheld and paid when due to the appropriate agency or authority.

**6.13 Bankruptcy.** No insolvency proceedings in the nature of bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, by or against Seller or the Assets, are pending or threatened, and Seller has not made any assignment for the benefit of creditors or taken any action in contemplation or in furtherance of the institution of such insolvency proceedings.

**6.14 Insurance.** Seller maintains insurance policies with respect to the Stations and the Assets in commercially reasonable amounts.

**6.15 Compliance with Laws.** At all times before the Closing Date, Seller has complied with all laws, order, regulations, rules, decrees, and ordinances affecting to any extent or in any manner any aspects of the Stations or the Assets.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby makes the following representations and warranties to Seller, as of the date hereof and on each day until the completion of the Closing:

**7.1 Organization, Standing and Power.** Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is qualified to do business in each jurisdiction in which the Assets are located. Buyer has all necessary corporate power to carry on its business as it is now being conducted.

## 7.2 **Authority.**

(a) Buyer has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates and instruments delivered or to be delivered hereunder by Buyer (collectively, "Buyer Documents"), to perform its obligations thereunder and to consummate the transactions contemplated thereby, and the person executing this Agreement on behalf of Buyer has been duly authorized by all requisite corporate action of Buyer. Each of the Buyer Documents has been, or will be at the Closing, as the case may be, duly executed and delivered by Buyer and constitutes, or will constitute at the Closing, as the case may be, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms.

(b) The execution and delivery by Buyer of the Buyer Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of Buyer's organizational documents; (ii) constitute or result in a breach or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Buyer is bound; or (iii) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Buyer.

(c) Other than the FCC Consent, no consent, approval, order or authorization of, notice to, or registration, declaration or filing with, any governmental entity is necessary in connection with the execution and delivery of any of the Buyer Documents by Buyer or the consummation by Buyer of the transactions contemplated thereby, except filings with the FCC.

**7.3 Litigation.** Except for administrative rule makings or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation or complaint before the FCC, other governmental body or court of any nature, including, without limitation, a grievance, arbitration or insolvency or bankruptcy proceeding, pending or, to Buyer's knowledge, threatened against or affecting Buyer which would restrain or enjoin the Closing or the consummation of the transactions contemplated hereby.

**7.4 Qualification.** To Buyer's knowledge, there is no fact that would, under present law, including the Communications Laws: (a) disqualify Buyer from being the assignee of the Assets or owner of the Stations; (b) reasonably be expected to cause any delay in the processing of the FCC Application by the FCC; or (c) reasonably be expected to cause any delay to the issuance of the FCC Consent. Should Buyer become aware of any such fact, it will so inform Seller and will use its best efforts to remove any such impediment or disqualification. Buyer will not take, or fail to take, any action that Buyer knows, or has reason to believe, would result in such impediment or disqualification.

**7.5 No Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Buyer are pending or, to the knowledge of Buyer, threatened, and Buyer has made no assignment for the benefit of creditors, nor taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings. As

of the Closing Date, Buyer will have readily available funds in the amount of the Purchase Price in the form of cash on deposit or a loan from a conventional lender.

## **ARTICLE 8 COVENANTS**

Seller and Buyer, as applicable, covenant and agree that, from the date hereof until the completion of the Closing, subject to the TBA:

### **8.1 Operations of the Business.**

(a) Before the Closing Date, Seller shall not, without the prior written consent of Buyer:

(i) Sell, lease or transfer or agree to sell, lease or transfer, or make any material change to, any Asset except for incidental sales or leases, in the ordinary course of business, or Assets which are being replaced by assets of comparable or superior kind, condition and value, or create, assume or permit to exist any Liens upon the Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(ii) Make any change in any Station's buildings, leasehold improvements or fixtures except in the ordinary course of business;

(iii) Make or attempt to make any change in the FCC Licenses, other than to keep the FCC Licenses in full force and effect;

(iv) Consent to the execution, placement, creation or amendment of easements, restrictions, rights-of-way or other matters adversely affecting title to the Real Property;

(v) Enter into any contract, lease or commitment relating to the Stations or the Assets or incur any other obligation with respect to the Stations or the Assets, except for: (A) contracts made in the ordinary course of business that are terminable on ninety (90) days' notice or less without penalty; and (B) other contracts made with Buyer's prior consent;

(vi) Take any action that would make the consummation of this transaction contrary to the Communications Laws or require a waiver of the Communications Laws; or

(vii) Authorize or permit any officer, director or employee of Seller, or any investment banker, attorney, accountant or other advisor or representative retained by Seller to, solicit, initiate, encourage (including by way of furnishing information), endorse or enter into any agreement with respect to, or take any other action to facilitate, any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any proposal to purchase, directly or indirectly, the Stations.

(b) Before the Closing Date, Seller shall:

(i) Maintain and preserve Seller's rights under the FCC Licenses and operate the Stations in the ordinary course of business, in accordance with past practice and in all material respects in accordance with the Communications Laws and with all other applicable laws, regulations, rules and orders and good engineering practices;

(ii) Use commercially reasonable efforts to maintain the Tangible Personal Property and the Real Property in the ordinary course of business

(iii) Use commercially-reasonable efforts to finalize a Lease with the landlord of the W231EF transmitter site, which Lease shall be acceptable to Buyer in its sole discretion ("W231EF Lease");

(iv) Maintain in full force and effect policies of liability and casualty insurance of the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Stations; and

(v) Use commercially reasonable efforts to provide Buyer with (and Buyer shall use commercially reasonable efforts to assist Seller to obtain) all necessary consents of the applicable parties identified on Schedule 1.1(c) and the consents of all third parties to the Station Contracts which are necessary for assignment to Buyer of such agreements at the Closing. All Station Contracts requiring consent to assignment to Buyer prior to Closing are indicated on Schedule 1.1(c) by a plus sign (+). All Station Contracts requiring consents to assignment to Buyer that are conditions to Buyer's obligation to close ("Required Consents") are also indicated on Schedule 1.1(c) by an asterisk (\*).

**8.2 Notice of Proceedings.** Either party will promptly notify the other party in writing on: (a) receiving notice of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement or the transactions contemplated hereunder; or (b) receiving any notice from any governmental department, court, agency or commission of its intention (i) to institute an investigation into, or institute a suit or proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated.

**8.3 Publicity.** Except insofar as required to comply with the Communications Laws or other law or legal process, neither Seller nor Buyer, nor any of their respective affiliates shall issue or cause the publication of any press release or any other public statement or any correspondence or other communication with respect to the execution and Closing of this Agreement unless the other party shall have had the prior opportunity to review and comment thereon and such release or statement has been consented to by such party.

**8.4 Access to Information.** From the date hereof to the Closing Date Seller shall: (a) afford, and shall cause its officers, directors, employees and agents to afford, to Buyer and the officers, employees and agents of Buyer reasonable access at all reasonable times to the Stations, provided, however, that all such access shall require the express consent of Seller; (b) furnish the Buyer with information relating to the business that Buyer may reasonably request, including copies of the Station Contracts, financial information and other books, records and documents, and information regarding employment and regulatory matters; and (c) otherwise provide such

reasonable assistance and cooperation as may be requested by Buyer from time to time prior to the Closing Date to reasonably facilitate the transition of the business, including facilities, operations and applicable data, to Buyer upon and effective on the Closing Date.

## **8.5 Confidentiality.**

(a) Each party shall hold, and shall exercise its commercially reasonable efforts to cause its officers, employees, agents and representatives, including, without limitation, attorneys, accountants, consultants and financial advisors who obtain such information to hold, in confidence, and not use for any purpose other than evaluating the transactions contemplated by this Agreement, any confidential information of another party obtained through the investigations permitted hereunder, which for the purposes hereof shall not include any information which (i) is or becomes generally available to the public other than as a result of disclosure by the party which alleges the information is confidential or its affiliates, (ii) becomes available to a party on a non-confidential basis from a source, other than the party which alleges the information is confidential or its affiliates, which has represented that such source is entitled to disclose it, or (iii) was known to a party on a non-confidential basis prior to its disclosure to such party hereunder, as evidenced by written records. If this Agreement is terminated, each party shall deliver, and cause its officers, employees, agents, and representatives, including, without limitation, attorneys, accountants, consultants and financial advisors who obtain confidential information of another party pursuant to investigations permitted hereunder to deliver to such other party all such confidential information that is written (including copies or extracts thereof), whether such confidential information was obtained before or after the execution hereof and shall continue to preserve, and shall use its reasonable efforts to cause its officers, employees, agents and representatives to continue to preserve, the confidentiality of all such information. All information concerning the Assets or operations of the Stations obtained by Buyer or its affiliates pursuant to or in connection with negotiation of this Agreement will be used by Buyer and its affiliates solely for purposes related to this Agreement and, in the case of nonpublic information, will be kept in strict confidence by Buyer and its affiliates and will not be disclosed except as provided for above.

(b) If a party or a person to whom a party transmits confidential information of another party is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, criminal or civil investigative demand or similar process) to disclose any of such confidential information, such party or person will provide the other applicable party with prompt written notice so that such party may seek a protective order or other appropriate remedy or waive compliance with **Section 8.5(a)**. If such protective order or other remedy is not obtained, or if the applicable party waives compliance with **Section 8.5(a)**, the party subject to the request will furnish only that portion of such confidential information which is legally required and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded such confidential information.

**8.6 Notification of Certain Matters.** Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to Seller, of: (i) any oral or written communication from the FCC concerning the FCC Application; (ii) any material inaccuracy in any representation or warranty made by such party, or (iii) any failure of the party to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by such party under this Agreement; provided, however, that no such notification or failure to give notice shall affect the representations

or warranties or covenants or agreements of the parties or the conditions to the obligations of the parties hereunder.

**8.7 Control of Stations.** Between the date of this Agreement and the Closing Date, Buyer shall not control, manage or supervise the operation of the Stations or conduct of its business, all of which shall remain the sole responsibility and under the control of Seller.

**8.8 Actions.** After Closing, Buyer shall reasonably cooperate with Seller, at Seller's sole cost and expense, in the investigation, defense or prosecution of any action which is pending or threatened against Seller or its affiliates with respect to the Stations, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, Buyer shall make available its employees to give depositions or testimony and shall furnish all documentary or other evidence that Seller may reasonably request.

## **ARTICLE 9 CONDITIONS**

**9.1 Conditions Precedent to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Buyer shall have waived in writing satisfaction of such condition:

(a) The representations and warranties made by Seller in this Agreement 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, except in respect of such changes as are contemplated or permitted by this Agreement or changes that are not materially adverse to the Stations or the Assets taken as a whole.

(b) Seller shall have performed and complied in all material respects with all covenants, agreements, representations, warranties and undertakings required by this Agreement to be performed or complied with by Seller prior to the Closing.

(c) No governmental or judicial authority shall have enacted, enforced, issued or entered any law, rule, regulation or order, including in connection with any action or proceeding brought by a third party (not subsequently dismissed, settled or otherwise terminated), which prohibits or invalidates the transactions contemplated by this Agreement or any other Seller Document or prevents, limits, restricts or impairs the ownership, use or operation of the Assets by Buyer, other than an action or proceeding instituted by Buyer.

(d) Buyer shall have reviewed the Title Commitment and a proforma Title Policy and been satisfied with the same, in Buyer's sole discretion.

(e) Buyer shall, at Buyer's election and cost, have obtained a current ALTA survey of the Real Property and been satisfied with the form and contents of the same.

(f) Seller shall have delivered to Buyer all of the documents required by **Section 10.1** hereof.

(g) The FCC Consent shall have been issued by the FCC without any condition materially adverse to Buyer.

(h) All Required Consents shall have been obtained.

(i) Each Station shall be operating with at least ninety percent (90%) of its licensed effective radiated power

(j) The W231EF Lease shall be delivered in form and substance acceptable to Buyer in its sole discretion.

(k) All Liens, other than Permitted Liens, shall have been released, as evidenced by payoff letters from any party holding a Lien to be released at the Closing, and releases or UCC-3 termination statements sufficient to terminate Liens on the Assets acquired at such Closing.

**9.2 Conditions Precedent to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Seller shall have waived in writing satisfaction of such condition:

(a) The representations and warranties made by Buyer in this Agreement 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, except in respect of such changes as are contemplated or permitted by this Agreement or changes that are not materially adverse to Seller.

(b) Buyer shall have performed and complied in all material respects with all covenants, agreements, representations, warranties and undertakings required by this Agreement to be performed or complied with by it prior to the Closing.

(c) No governmental or judicial authority shall have enacted, enforced, issued or entered any law, rule, regulation or order, including in connection with any action or proceeding brought by a third party, (not subsequently dismissed, settled, or otherwise terminated) which prohibits or invalidates the transactions contemplated by this Agreement or any other Buyer Document, other than an action or proceeding instituted by Seller.

(d) The FCC Consent shall have been issued by the FCC without any condition materially adverse to Seller.

(e) Buyer shall have delivered to the documents required by **Section 10.2** hereof and Seller shall have received payment of the Purchase Price.

## **ARTICLE 10 CLOSING DELIVERIES**

**10.1 Seller's Deliveries.** At the Closing, Seller shall deliver or cause to be delivered the following:

- (a) a Bill of Sale for the Tangible Personal Property and Intellectual Property;
- (b) an Assignment and Assumption of the FCC Licenses;
- (c) an Assignment and Assumption of Station Contracts;
- (d) a certificate of an officer of Seller certifying that the representations and warranties set forth in **Sections 9.1(a)** and **9.1(b)** are true and correct as of the Closing Date;
- (e) updated Schedules to the Agreement reflecting any changes necessary to render the certification contained in such certificate true and accurate on the Closing Date;
- (f) a Warranty Deed(s) ("Deed(s)") associated with the Real Property;
- (g) the W231EF Lease;
- (h) an owner's title insurance policy on the most current form of ALTA fee owner's title insurance policy ("Title Policy"), without standard exceptions and with extended coverage, insuring the good and marketable fee simple title of Buyer (or its designee) in the Real Property, with liability in the amount of the approximated fair market value of the Real Property as agreed to by Buyer, together with legible and complete copies of all exceptions and matters referred to therein, and with such affirmative coverages and endorsements as may be required by Buyer, including such endorsements as Buyer may require.
- (i) such other documents to be delivered by Seller hereunder as are reasonably necessary for Buyer to effectuate, document, and receive the benefit of the transactions contemplated hereby.

**10.2 Buyer's Deliveries.** At the Closing, Buyer shall deliver or cause to be delivered the following:

- (a) an Assignment and Assumption of the FCC Licenses;
- (b) an Assignment and Assumption of Station Contracts;
- (c) a certificate of and officer of Buyer certifying that the representations and warranties set forth in **Sections 9.2(a)** and **9.2(b)** are true and correct as of the Closing Date;
- (d) the Purchase Price; and
- (e) such other documents to be delivered by Buyer hereunder as are reasonably necessary for Seller to effectuate, document, and receive the benefit of the transactions contemplated hereby.

## **ARTICLE 11 FEES AND EXPENSES**

**11.1 Expenses.** Each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation and preparation of the Agreement and the

transactions contemplated thereby.

**11.2 Transfer Taxes and Similar Charges.** Except as set forth below, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation and preparation of this Agreement and the transactions contemplated thereby. Buyer shall pay all fees for recordation, transfer, stamp and documentary taxes, and any excise, sales or use taxes imposed by reason of the transfer of the Assets in accordance with this Agreement.

## ARTICLE 12 SURVIVAL AND INDEMNIFICATION

**12.1 Survival of Representations and Warranties.** All representations and warranties made in this Agreement shall survive the Closing for a period of twelve (12) months from the Closing Date, except (a) those under **Sections 6.1** and **6.2** (Seller Organization and Authority), and **Section 6.12** (Taxes), all of which shall survive until the expiration of any applicable statute of limitations; (b) those with respect to title to the Assets, which shall survive indefinitely, and (c) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The right of any party to recover Damages (as hereinafter defined) on any Claim (as hereinafter defined) shall not be affected by the termination of any representations and warranties as set forth above, provided that notice of the existence of such claim has been given by the Indemnified Party (as hereinafter defined) to the Indemnifying Party (as hereinafter defined) prior to such termination. The term “Claim” means any demand, suit, claim or assertion of liability by the Parties or a third party that is subject to indemnification by the indemnifying party under this Agreement. Notwithstanding anything contained herein to the contrary, **Sections 8.5** (Confidentiality) and **13.2** (relating to expenses) shall survive any termination of this Agreement.

### **12.2 Indemnification.**

(a) From and after Closing, Seller shall indemnify and hold harmless Buyer and its shareholders, officers, managers, agents, employees and affiliates (hereafter collectively “Agents”) from and against any liability, loss, cost, expense, judgment, order, settlement, obligation, deficiency, claim, suit, proceeding (whether formal or informal), investigation, Lien or other damage, including reasonable attorney’s fees and expenses (all of the foregoing items for purposes of this Agreement are referred to as “Damages” and are not limited to matters asserted by third-parties against a party, but includes Damages incurred or sustained by a party caused by breach or default by the other party), resulting from, arising out of or incurred with respect to:

(i) a breach of any warranty, representation of Seller contained in this Agreement or in any certificate or other instrument furnished to Buyer pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(ii) a breach of any covenant or agreement of Seller contained in this Agreement;

(iii) operation of the Stations by Seller prior to the Adjustment Time;

(iv) any Retained Liabilities;

(v) Noncompliance by Seller with the provisions of the Bulk Sales Act and similar laws of any state or jurisdiction, if applicable, in connection with the transactions contemplated hereby; or

(vi) any and all actions, suits or proceedings incident to any of the foregoing.

(b) From and after Closing, Buyer shall indemnify and hold Seller and its Agents harmless from and against any Damages resulting from, arising out of, or incurred with respect to:

(i) a breach of any warranty, representation of Buyer contained in this Agreement or in any certificate or other instrument furnished to Seller pursuant to this Agreement or in connection with any of the transactions contemplated hereby;

(ii) a breach of any covenant or agreement of Buyer contained in this Agreement;

(iii) any Assumed Liabilities;

(iv) operation of the Stations by Buyer after the Adjustment Time; or

(v) any and all actions, suits or proceedings incident to any of the foregoing.

### **12.3 Procedures.**

(a) Promptly after the receipt by Buyer, Seller or any of their respective Agents (“Indemnified Party”) of notice of (a) any Claim or (b) the commencement of any action or proceeding which may entitle such party to indemnification under this Section, such Indemnified Party shall give the other party hereto, as applicable (“Indemnifying Party”), written notice of such Claim or the commencement of such action or proceeding and shall permit the Indemnifying Party to assume the defense of any such Claim, or any litigation or proceeding resulting from such Claim. The failure to give the Indemnifying Party timely notice under this subsection shall not preclude the Indemnified Party from seeking indemnification from the Indemnifying Party unless, and then only to the extent, such failure has materially prejudiced the Indemnifying Party’s ability to defend the Claim, litigation or proceeding. Notwithstanding the foregoing, notice must be given to the Indemnifying Party within the applicable survival period specified in **Section 12.1** for the Indemnified Party to be entitled to indemnification. Failure by the Indemnifying Party to notify an Indemnified Party of its election to defend any such claim, litigation or proceeding by a third party within thirty (30) days after notice thereof shall have been given to the Indemnifying Party shall be deemed a waiver by the Indemnifying Party of its rights to defend such Claim, litigation or proceeding.

(b) If the Indemnifying Party assumes the defense of any such Claim, litigation or proceeding resulting therefrom, the Indemnifying Party shall take all steps necessary in the

defense or settlement of such Claim, litigation or proceeding resulting therefrom and hold the Indemnified Party harmless from and against any Damages caused by or arising out of any settlement approved by the Indemnifying Party or any judgment in connection with such Claim, litigation or proceeding resulting therefrom; however, the Indemnified Party may participate, at its own cost and expense, in the defense of such Claim, litigation or proceeding provided that the Indemnifying Party shall direct and control the defense of such Claim, litigation or proceeding. The Indemnified Party shall cooperate and make available all books and records reasonably necessary and useful in connection with the defense. Except with the prior written consent of the Indemnified Party, the Indemnifying Party shall not, in the defense of such Claim, or any litigation or proceeding resulting therefrom, consent to the entry of any judgment (other than a judgment of dismissal on the merits without cost) or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Damages in respect of such Claim, litigation or proceeding.

(c) If the Indemnifying Party shall not assume the defense of any such Claim, litigation or proceeding resulting therefrom, the Indemnified Party may, but shall have no obligation to, defend against such Claim, litigation or proceeding in such manner as it may deem appropriate, and the Indemnified Party; provided, however, that the Indemnified Party may not compromise or settle such Claim, litigation or proceeding without the Indemnifying Party's prior written consent.

(d) Except as provided to the contrary in this Agreement, after the Closing the right to indemnification pursuant to Article 12 shall be the sole and exclusive remedy of each party in connection with any breach or other violation by the other party of its representations, warranties, or covenants contained in this Agreement, unless such breach or violation was the result of intentional misconduct or gross negligence.

### **ARTICLE 13 TERMINATION RIGHTS**

**13.1 Termination.** In addition to any termination rights provided for in other sections of this Agreement, this Agreement may be terminated, by written notice given by any party (provided such party is not then in material breach of any of its representations, warranties, covenants or duties hereunder) to the other party hereto, at any time prior to the Closing Date as follows:

- (a) By mutual written consent of the parties;
- (b) By either Buyer or Seller if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become a Final Order;
- (c) By either Buyer or Seller, as specifically provided in **Section 4.2(c)** hereof;
- (d) By Buyer, if Seller fails to perform in any material respect or materially breaches any of its material representations, warranties, covenants or duties under this Agreement,

and Seller has not cured such failure to perform or breach within thirty (30) days after delivery of written notice from Buyer (a “Seller’s Breach”), and there also is not a Buyer’s Breach (defined below) at the time of the purported termination by Buyer;

(e) By Seller, if Buyer fails to perform in any material respect or materially breaches any of its material obligations, representations, warranties, covenants or duties under this Agreement, and Buyer has not cured such failure to perform or breach within thirty (30) days after delivery of written notice from Seller, (a “Buyer’s Breach”), and there also is not a Seller’s Breach at the time of the purported termination by Seller;

(f) By Buyer (provided it is not in default hereunder), if the conditions set forth in **Section 9.1** have not been satisfied by a date that is six (6) months from the date of the FCC Consent, provided that Buyer’s right to terminate this Agreement under this **Section 13.1(f)** shall not apply if Seller’s inability to fulfill all of the conditions set forth in **Section 9.1** are due to the action or inaction of Buyer; or

(g) By Seller (provided it is not in default hereunder), if the conditions set forth in **Section 9.2** have not been satisfied by a date that is six (6) months from the date of the FCC Consent, provided that Seller’s right to terminate this Agreement under this **Section 13.1(g)** shall not apply if Buyer’s inability to fulfill all of the conditions set forth in **Section 9.2** are due to the action or inaction of Seller.

**13.2 Effect of Termination.** Upon termination of this Agreement, neither Buyer nor Seller shall have any liability to the other party, and this Agreement in its entirety shall be deemed null, void, and of no further force and effect, except as provided in **Section 12.1** and this **Section 13.2**. In the event of termination of this Agreement, each party shall bear its own expenses. Upon a termination of this Agreement by Seller pursuant to **Section 13.1(e)**, then the provisions of **Section 3.2(c)** shall apply. Seller and Buyer each acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyer’s breach of any of its material obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty. Upon a termination of this Agreement for any reason other than by Seller pursuant to **Section 13.1(e)**, then the provisions of **Section 3.2(c)** shall apply.

**13.3 Specific Performance as Remedy for Seller’s Breach.** Seller acknowledges and agrees that the Assets are unique assets not readily available on the open market, and in the event Seller shall fail to perform its obligations to consummate the transactions contemplated hereby, Seller acknowledges that money damages alone cannot adequately compensate Buyer for its injury and therefore Buyer shall be entitled to the remedy of specific performance, in addition to any other remedies it may seek at law or at equity, and Seller shall waive any and all defenses that Buyer has an adequate remedy at law. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and the prevailing party in litigation shall be entitled to receive from the non-prevailing party all court costs, attorneys’ fees and other out-of-pocket expenses incurred by the prevailing party in enforcing or defending its rights under this provision.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

**14.1 Risk of Loss.** The risk of loss to any of the Assets on or prior to the Closing Date shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Assets. In the event that any Asset suffers damage prior to the Closing Date and such Asset is not repaired or replaced by Seller prior to the Closing Date, Buyer shall have the option (i) to consummate this transaction on the Closing Date and Seller shall assign to Buyer all proceeds of insurance it receives covering the damaged Asset(s) (less all reasonable costs and expenses, including without limitation attorneys' fees, incurred by Seller to collect such amounts) not previously expended by Seller to repair or replace the damaged Asset(s), and Buyer shall accept the damaged Asset(s) in their damaged condition, or (ii) if such damage or destruction materially disrupts the operations of any Station, then Buyer may postpone Closing until the date five (5) business days after operations are restored in all material respects, subject to **Section 13.1**.

**14.2 Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer and Seller and their respective proper successors and assigns. This Agreement (and any rights, obligations or liabilities hereunder) may not be assigned or delegated in whole or in part by any party without the prior written consent of the other party; provided, however, that Buyer may assign its rights under this Agreement to an entity under common control with Buyer.

**14.3 Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

**14.4 Governing Law; Jurisdiction; Venue.** This Agreement and the rights of the parties hereto shall be governed, construed and interpreted in accordance with the internal laws of the State of Ohio, without giving effect to the choice of law principles thereof. Jurisdiction and venue for any action arising from or in relation to this Agreement or any provision hereof shall be exclusively in a federal or local court located in Lucas County, Ohio, and each party hereby submits to the jurisdiction of and venue in any such court as the agreed exclusive jurisdiction and venue for any such action.

**14.5 Amendment.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

**14.6 Severability.** In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

**14.7 Neutral Construction.** The language used in this Agreement will be deemed to be language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.



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

Mark Denbo  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW, Suite 301  
Washington, DC 20016  
Email: [mdenbo@fccworld.com](mailto:mdenbo@fccworld.com)

Any party hereto may change its or his address for the purpose of receiving notices, demands and other communications as herein provided, by a written notice given in the aforesaid manner to the other parties hereto. If any notification, communication or action is required or permitted to be given or taken within a certain period of time and the last date for doing so falls on a Saturday, Sunday, a federal legal holiday or legal holiday by law in the State of Ohio, the last day for such notification, communication or action shall be extended to the first date thereafter which is not a Saturday, Sunday or such legal holiday.

**14.10 Entire Agreement.** This Agreement, the Schedules attached hereto, and the ancillary documents provided for herein, constitute the entire agreement and understanding of the parties hereto relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to the matters provided for herein. All Schedules attached hereto or to be delivered in connection herewith are incorporated herein by this reference.

**14.11 Waivers.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**14.12 No Third Party Beneficiaries.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

**14.13 Counterparts.** This Agreement and any ancillary document hereto may be executed in counterpart signature pages, and each such counterpart signature page shall constitute one and the same original signature page.

**14.14 Explication.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term “including” is not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, schedule and schedule references are to this Agreement, unless otherwise specified. Any reference in or to this Agreement or any of the ancillary agreements includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

**14.15 Unwind.** The parties herein agree to close the transaction following the initial grant of the FCC's consent without allowing such consent to become a Final Order. If following Closing, the FCC Consent is reversed on reconsideration, review or appeal or otherwise overturned on its own motion and such reversal becomes a Final Order, the parties agree to cooperate and to take all necessary and advisable actions to unwind the transaction and to return the parties to the *status quo ante* within ninety (90) days thereof.

**14.16 Attorneys' Fees.** If any action at law or equity is brought, whether in a judicial proceeding or arbitration, to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses from the other party, which fees and expenses shall be in addition to any other relief, which may be awarded.

**[Signature Pages Follow]**

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**SELLER**

FUSION RADIO, LLC

By:   
Name: Robert Jamrog  
Title: Member

**BUYER**

RELEVANT RADIO, INC.

By:   
Name: Fr. Francis Hoffman  
Title: Executive Director

**Schedule 1.1(a)**  
**FCC Authorizations**

<b>Type of Authorization</b>	<b>FCC File Number</b>	<b>Grant Date</b>	<b>Current Expiration Date</b>
WPAY Broadcast Station License	BML-20090217AGE	06/02/2009	10/01/2028
WPAY License Renewal	0000113128	09/15/2020	10/01/2028
W231EF Station License	0000193183	10/13/2022	10/01/2028
W231EF License Renewal	0000113129	09/15/2020	10/01/2028

<b>Antenna Structure Registration (ASR) Number</b>	<b>Registered Tower Owner</b>
WPAY 1217966	Fusion Radio LLC
W231EF 1054371	American Tower

**Schedule 1.1(b)**  
**Tangible Personal Property**

See attached list.

SCHEDULE 1(b)(i)(A)

## EMF Equipment

## WPAY-AM

Type	Make	Model	Serial	Notes
Transmitter	Nautel	NAR124A	B394	
Impedance Bridge	Delta Electronics	CPB-1	1076	
Antenna Monitor	Potomac Instruments	1901	598	
Phasor Control System	Warmus & Associates Inc.			
Dummy Load	Kintronics Laboratories	DL-1	020904-007	On West wall
Tower Light Controller	Slatercom-WCD	A1-1-1		For Tower #1
Tower Light Controller	Slatercom-WCD	A1-1-1		For Tower #3
Tower Light Controller	Slatercom-WCD	A1-1-1		For Tower #5
Phasor Cabinets	Kintronics Laboratories			
Temp Probe	PJRC	TPIv1		
EAS Encoder	SAGE	3644	B202708	
Mod Monitor	Inovonics	525N	522	Remote monitoring
Mod Monitor	TFT	923	1180658	Local monitor - feeds speakers/amp
Audio Patch Panel	ADC			
Remote control	Burk/Gentner	GSC3000		comes with voice interface, 2-command relay panels, 1 status panel, and 1 metering panel
EAS Off-Air Monitor	TFT	EAS930A	10104758	
Audio Switch/Monitor	Broadcast Tools	SS2.1 Term III	90352	

Audio Amp	Crown	D45	A565814	
Speakers	Alesis	MK2	A40406046300548	
Audio Processor	Orban	Optimod - AM 9200	102209-007C	
1.8M Satellite Dish	Channel Master			
Non-Pen Dish Mount				

SCHEDULE 1(b)(i)(A)

## EMF Equipment

## W221BG

Type	Make	Model	Serial	Notes
Transmitter	GatesAir	FAX Flexiva500		Came from Fusion
FM Tuner	Rolls	HRS84		
FM antenna	Mag Mount			
Receive Antenna	Belar	AM Loop		Amplified megaloop.

## **SCHEDULE 1(b)(i)(A)**

### **WPAY-AM**

5 guyed towers—300 ft in height

Main transmitter building- photo attached



(2) HVAC units- by MarvAir

Generac generator and 1000 gallon outdoor propane tank

All 5 ATU buildings located at the base of each tower, including all equipment located therein



**Schedule 1.1(c)**  
**Station Contracts**

None, except for the W231EF Lease, which shall be delivered at the Closing in form and substance acceptable to Buyer in its sole discretion

**Schedule 1.1(d)**  
**Intellectual Property**

Other than the call signs associated with the Stations, there is no intellectual property to be assigned.

**Schedule 1.1(e)**  
**Real Property**

Attachments

Limited Warranty Deed with Legal Description of Real Property

JAMES P MATUSZAK  
Wood County Recorder  
08/16/2021 09:47:18 202114307  
DOCUMENT TOTAL 50.00  
Volume: 3912 Page: 1047-1050 OR

TRANSFERRED \$0.50  
THIS CONVEYANCE HAS BEEN EXAMINED  
AND THE GRANTOR HAS COMPLIED WITH  
SECTION 319.202 OF THE REVISED CODE.  
DATE: 08-16-2021  
FEE: \$480.00 EXEMPT:  
MATTHEW OESTREICH  
WOOD COUNTY AUDITOR

**LIMITED WARRANTY DEED**  
(Statutory Form Pursuant to Ohio Revised Code Section 5302.07)

EDUCATIONAL MEDIA FOUNDATION, a California non-profit religious corporation, for valuable consideration paid, grants, with limited warranty covenants, to FUSION RADIO LLC, an Illinois limited liability company, whose tax mailing address is 3535 North Harlem Avenue, #301, Chicago, IL 60634, the real property located in Wood County, State of Ohio, as legally described on Exhibit A attached hereto and made a part hereof (the "Property"), subject to the matters disclosed on Exhibit A attached hereto and made a part hereof.

Prior Instrument Reference: Vol. 2900, Page 870, Wood County Recorder's Office.  
Instrument No: 20096742  
Transaction Date: 05/08/2009

USR 04 23 W1/2 SE SE

Location: Perrysburg TWP  
Property: QTR SE  
Section/Town/Range: 23 4 USR  
Description: W 1/2 SE  
Acres: 20.81  
Parcel ID No.: P57-400-230000020000

This document prepared by Educational Media Foundation located at 5700 West Oaks Boulevard, Rocklin, CA 95765. After recording, please return to: **Midland 2135042DT**

*[Signature Page to Follow]*

**LIMITED WARRANTY DEED**

(Statutory Form Pursuant to Ohio Revised Code Section 5302.07)

EDUCATIONAL MEDIA FOUNDATION, a California non-profit religious corporation, for valuable consideration paid, grants, with limited warranty covenants, to FUSION RADIO LLC, an Illinois limited liability company, whose tax mailing address is 3535 North Harlem Avenue, #301, Chicago, IL 60634, the real property located in Wood County, State of Ohio, as legally described on Exhibit A attached hereto and made a part hereof (the "Property"), subject to the matters disclosed on Exhibit A attached hereto and made a part hereof.

Prior Instrument Reference: Vol. 2900, Page 870, Wood County Recorder's Office.  
Instrument No: 20096742  
Transaction Date: 05/08/2009

Location: Perrysburg TWP

Property: QTR SE

Section/Town/Range: 23 4 USR

Description: W 1/2 SE

Acres: 20.81

Parcel ID No.: P57-400-230000020000

This document prepared by Educational Media Foundation located at 5700 West Oaks Boulevard, Rocklin, CA 95765. After recording, please return to:

*[Signature Page to Follow]*

Witness the execution hereof this 14 day of July, 2021.

**EDUCATIONAL MEDIA FOUNDATION**, a California non-profit religious corporation

By: David Atkinson  
Name: DAVID ATKINSON  
Title: CFO/COO/TREASURER

STATE OF CALIFORNIA

) SS:

COUNTY OF PLACER )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of July, 2021, by \_\_\_\_\_, in his/her capacity as the \_\_\_\_\_ of EDUCATIONAL MEDIA FOUNDATION, a California non-profit religious corporation.

*See attached acknowledgment*

\_\_\_\_\_  
NOTARY PUBLIC

**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Placer

On 7/14/21

Date

before me, Stephanie Taylor, Notary Public

Here Insert Name and Title of the Officer

personally appeared David Atkinson

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal and/or Stamp Above

Signature Stephanie Taylor

Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document . . .**

Title or Type of Document: Limited Warranty Deed

Document Date: 7/14/21

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: David Atkinson

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): CEO/COO, Pres.

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Partner –  Limited  General

Individual  Attorney in Fact

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Other: \_\_\_\_\_

Signer is Representing: EMF

Signer is Representing: \_\_\_\_\_

COMMERCIAL OWNER 'S AFFIDAVIT

State of California

County of Placer)<sup>SS</sup>

The undersigned, David Atkinson, CFO/COO, Tres. of Educational Media Foundation, a California nonprofit corporation hereinafter designated Affiant, being first duly cautioned and sworn according to law, does hereby swear and affirm that the above named company/individual(s)/are the fee title owner of real property described in Exhibit A attached hereto and made a part hereof.

Affiant further states that to the best of his/her/their knowledge and belief, no contracts for the furnishing of any labor or materials to the above described real property or the improvements thereon, and no security agreements or leases in respect to any goods or chattels that have or are to become attached to the real property or any improvements thereon, as fixtures, have been given or are outstanding, that have not been fully performed or satisfied; that no person or persons, corporations, partnership or other entity or entities have claims for work performed or for labor, materials, machinery or fuel furnished in connection with the making of any improvements thereon; that there are no unrecorded contracts for purchase of the real property; and that there are no unrecorded leases to which the real property is subject and there are no outstanding rights or claims of any parties in possession.

Affiant further states that to the best of his/her/their knowledge and belief there are no other encumbrances or liens on the real property described in Exhibit A, except those that appear in the commitment for title insurance issued by First American Title Insurance Company/Midland Title and Escrow, Ltd., Commitment No. 2135042.

Further Affiant states that to the best of his/her/their knowledge there are no special assessments and/or special taxes not yet certified to the tax duplicate, but of which he/she/they are aware, and that all current taxes are paid.

Affiant further expresses the following understanding and acknowledges that this affidavit is given by him/her/them to induce First American Title Insurance Company/Midland Title and Escrow, Ltd., in reliance thereon to remove the standard exceptions in Schedule B from it's loan policy. Upon execution of said Affidavit, First American Title Insurance Company/Midland Title and Escrow, Ltd., will remove said standard exceptions.

Further Affiant sayeth not.

Educational Media Foundation, a California nonprofit corporation

David Atkinson  
By: DAVID ATKINSON  
Its: CFO/COO/TREASURER

Sworn before me and subscribed in my presence this 9th day of September, 2008.

\_\_\_\_\_  
Notary Public

*See Attached  
acknowledgement*

**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Placer

On 7/14/21

Date

before me, Stephanie Taylor, Notary Public

Here Insert Name and Title of the Officer

personally appeared David Atkinson

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal and/or Stamp Above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Commercial Owners' Affidavit

Document Date: 7/14/21

Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: David Atkinson

- Corporate Officer – Title(s): CFO/COO
- Partner –  Limited  General Trcs.
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer – Title(s): \_\_\_\_\_
- Partner –  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

EXHIBIT "A"

The West 1/2 of the Southeast 1/4 of the Southeast 1/4 of Section 23, Town 4, United States Reserve, Perrysburg Township, Wood County, Ohio, containing 20.810 acres of land, more or less. Subject to all legal highways.

Tax Parcel Number: P57-400-230000020000