

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** is made and entered into effective as of the 17<sup>th</sup> day of November, 2022, by and between the **FRC OF ALABAMA, L.L.C.**, a limited liability company organized under the laws of the State of Alabama (“Seller”) and **SOUTHERN BROADCASTING LLC**, a limited liability company organized under the laws of the State of Alabama (“Buyer”).

### **Recitals**

**WHEREAS**, Seller is the licensee of radio station WTKI(AM), Huntsville, Alabama (Facility ID No. 30965); FM Translator Station W287DH, Huntsville, Alabama (Facility ID No. 200684); and FM Translator Station W243EP, Madison, Alabama) (Facility ID No. 72701) (hereinafter referred to as “W243EP” and collectively with WTKI and W287DH as the “Stations”), which are authorized to operate pursuant to authorizations (the “Stations’ Licenses”) issued by the Federal Communications Commission (“FCC”); and

**WHEREAS**, Seller holds an FCC construction permit to modify the facilities of WTKI(AM), which was granted on November 24, 2020 (File No. BP-20200811AAA) (the “Permit”); and

**WHEREAS**, Seller and Radio 256, LLC entered into that certain Local Marketing Agreement dated December 17, 2020, effective as of January 1, 2021 (the “LMA”), whereby Seller agreed to sell airtime on the Stations to Radio 256, LLC; and

**WHEREAS**, Seller granted Radio 256, LLC an Option in the LMA to purchase certain assets used in the operation of the Stations and to secure an assignment of the Stations’ Licenses (the “Option”); and

**WHEREAS**, pursuant to that certain Option Assignment Agreement of even date herewith, Radio 256, LLC has, with Seller’s consent, assigned to Buyer its rights under the Option; and

**WHEREAS**, Buyer wishes to purchase, and Seller wish to sell and assign, all assets and licenses relating to the Stations as set forth below, subject to the prior approval of the FCC and the other terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits and covenants set forth below, the parties hereby agree as follows:

### **Section 1** **Purchase of Assets**

1.1 **Assets to be Assigned to Buyer.** On the Closing Date (as defined in Section 2 below), Seller shall sell and assign to Buyer, and Buyer shall purchase and assume from Seller, all

of the following assets and licenses used or held for use in the operations of the Stations (the “Stations’ Assets”):

- (a) All of Seller’s rights and interests in and to the Stations’ Licenses, including those listed on Schedule 1.1(a);
- (b) The land lease for the operation of Station WTKI(AM) (the “Real Property Lease”);
- (c) The tower lease used in conjunction with the operation of Station W287DH and, subject to the limitation set forth in Schedule 1.1(c), the tower lease used in conjunction with the operation of Station W243EP (collectively, the “FM Translator Tower Leases”);
- (d) All tangible personal property (the “Tangible Personal Property”) used or held for use in the operations of the Stations and listed on Schedule 1.1(d), which assets shall include the existing AM tower and transmitters and antennas used in conjunction with the operation of the Stations;
- (e) All of Seller’s right, title, and interest in and to intangible personal property (the “Intangible Personal Property”), including all copyrights, licenses (in addition to the Stations’ licenses), patents, trademarks, service marks, logos, trade names, copyrights, intellectual property, computer programs, data and data processing systems, websites and website content and accounts, domain names, twitter names, and accounts, and the Stations’ call signs, used in connection with the operations of the Stations and all goodwill associated therewith, including all registrations and applications for registration of any of the foregoing, and all other similar intangible rights and interests, including all set forth in Schedule 1.1(e); and
- (f) Copies of all filings with the FCC and authorizations issued by the FCC relating to the Stations, and all books, files (including, without limitation, public files), records, and logs required by the FCC to be maintained in connection with the operations of the Stations.

1.2 **Excluded Assets.** The Stations’ Assets shall not include the following:

- (a) Seller’s cash, cash equivalents, and accounts receivable;
- (b) any claims that Seller may have under any insurance policies or contracts and any other claims that Seller may have against third parties;
- (c) Seller’s internal books and records which do not relate to the ownership or operations of the Stations;
- (d) Seller’s interest, assets, property, and equipment related to podcasting and program distribution; and
- (e) Those assets listed on Schedule 1.2.

1.3 **Liabilities.** Except for obligations arising subsequent to the Effective Time (as defined in Section 1.6 below) under Contracts and Leases to be assumed (the “Assumed Liabilities”), Buyer expressly does not, and shall not, assume or be deemed to have assumed, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations, or commitments of Seller of any nature whatsoever.

1.4 **Purchase Price.** The total consideration for the Stations’ Assets shall be the sum of Four Hundred Thousand Dollars (\$400,000.00) (the “Purchase Price”) less the sum of (a) Ten Thousand Dollars (\$10,000.00), which was the Initial Deposit described in Schedule A of the LMA; and (b) One Hundred Eight Thousand Eight Hundred Nineteen Dollars and Sixty-one Cents (\$108,891.61), which is the aggregate of that portion of the Basic Monthly Fees paid or to be through November 30 2022, to be credited against the Purchase Price pursuant to Schedule A of the LMA.

1.5 **Escrow Deposit and Closing Payment.**

a. At Closing, Buyer will deposit in escrow with The Law Office of Dan J. Alpert (“Escrow Agent”) the sum of Seventy-Five Thousand Dollars (\$75,000.00) (the “Escrow Deposit”), to be held and distributed pursuant to an Escrow Agreement of even date herewith between Seller, Buyer, and Escrow Agent. At Closing, the balance of the Purchase Price shall be paid by wire transfer of funds by Buyer to such accounts as Seller shall designate in writing prior to Closing.

b. Following consummation of this Agreement, Seller shall remain responsible for implementing, at its own cost, the construction of the facilities specified in the Permit (the Permit Facilities”). Seller shall use its commercially reasonable best efforts to complete construction of the Permit Facilities no later than June 30, 2023. Following completion of construction of the Permit Facilities, at Seller’s cost, (i) Buyer’s engineer shall be responsible for tuning the modified facilities (Tuning Costs”); and (ii) Buyer shall be responsible for filing an application for license to cover the Permit (the License Application”).

c. The Escrow Deposit shall be held in escrow until construction of the Permit Facilities has been completed and the License Application has been filed by Buyer, at which time Seller and Buyer shall instruct the Escrow Agent to pay the Escrow Deposit to Seller, less the Tuning Costs and Buyer’s costs for filing the License Application.

d. Notwithstanding the other provisions of this Section 1.5, in the event construction of the Permit Facilities is not completed by June 30, 2023. Buyer shall assume the task of construction of the Permit Facilities, and Buyer shall be paid from the Escrow Deposit all costs Buyer reasonably incurred in completing the construction of the Permit Facilities, as well as the Tuning Costs and Buyer’s cost for filing the License Application (collectively “Reimbursable Expenses”). Following completion of the construction, and upon filing of the License Application and grant of the License Application, Seller and Buyer shall jointly instruct Escrow Agent to pay to Seller the balance of the Escrow Deposit remaining after payment to Buyer of the Reimbursements Expenses. Seller shall not be responsible for payment of any Reimbursable

Expenses in excess of the Escrow Deposit. In the event that Seller asserts that any of the Reimbursable Expenses submitted for payment was not reasonably incurred or not reasonable in amount, the parties, acting in good faith, shall refer the matter to a mutually selected broadcast engineer who is a member of the Association of Federal Communications Consulting Engineers and who within the last five (5) years has not provided services to either Seller, Buyer or any entity of which an owner of Seller or Buyer was an owner ("Independent Engineer"), who will determine the expenses in question were reasonably incurred and, if so, reasonable in amount. The decision of the Independent Engineer shall be final and binding on Seller and Buyer. Seller and Buyer shall share equally the fees of the Independent Engineer.

1.6 **Adjustments.** Except as specified in the LMA, the operation of the Stations and the income and normal operating expenses attributable thereto through 12:01 a.m. (Central Time) at the beginning of the Closing Date (the "Effective Time") shall be for the account of Seller and thereafter for the account of Buyer and, if any income or expense is properly allocable or credited, then it shall be allocated, charged or prorated accordingly. Expenses for goods or services received both before and after the Effective Time, power and utilities charges, frequency discounts, insurance premiums for any insurance policies being assigned to Buyer, annual regulatory fees, prepaid cash, time sales agreements, commissions, wages, vacation or sick days pursuant to Section 14.2 of this Agreement, payroll taxes, rents, and similar prepaid and deferred items (including, without limitation, accruals and deferrals under Contracts and Leases) shall be prorated between Seller and Buyer as of the Effective Time. At Closing, the parties shall make all known prorations and estimate any remaining prorations. All special assessments and similar charges or liens imposed against any of the Assets in respect of any period of time through the Effective Time, whether payable in installments or otherwise, shall be the responsibility of Seller and amounts payable with respect to such special assessments, charges or liens in respect of any period of time after the Effective Time shall be the responsibility of Buyer and such charges shall be adjusted as required hereunder.

1.7 **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Stations' Assets in accordance with Schedule 1.6, which shall be prepared prior to Closing. Seller and Buyer shall use such allocation for tax, accounting, and all other purposes including the filing of their respective tax returns reflecting the allocation in accordance with requirements of Section 1060 of the Internal Revenue Code of 1986, as amended.

## **Section 2**

### **Date, Time, and Place of Closing**

The date of the Closing (the "Closing Date") shall be five (5) business days after the FCC's grant of the Assignment Application (defined in Section 6 of this Agreement) becomes a Final Order (defined hereinafter), *provided, however*, that Buyer in its sole discretion may waive the requirement of a Final Order, and set the Closing Date for an earlier date following grant of the Assignment Application. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an application that is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing, or

appeal is pending, and as to which the time for filing any such request, petition, or appeal or reconsideration by the FCC on its own motion has expired.

### **Section 3** **Seller's Representations and Warranties**

Seller hereby represents and warrant to Buyer as follows:

3.1 **Organization, Authorization, and Binding Obligation.** Seller is a limited liability company organized under the laws of the State of Alabama. Seller has full power and authority to own and operate the Stations and to carry on the business of the Stations as now being conducted, and as proposed to be conducted by it between the date hereof and the Closing Date. Seller has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Seller have been duly and validly authorized by all necessary action on the part of Seller. This Agreement constitutes Seller's valid, legal, and binding obligation, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.2 **Absence of Conflicting Agreements or Required Consents.** Seller's execution, delivery, and performance of this Agreement (a) does not require the consent of any third party, except for the FCC Consent; (b) will not violate any provision of Seller's governing documents; (c) to the best of Seller's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, or ruling of any governmental authority; (d) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument, or permit to which Seller is subject and that is individually or in the aggregate material to the transactions contemplated hereby; (e) will not result in the creation of any lien, charge, or encumbrance on any of the Stations' Assets; and (f) will not in any way affect or violate the terms or conditions of, or result in the cancellation, modification, revocation, or suspension of, any of the Stations' Licenses.

3.3 **Litigation.** There is no litigation or proceeding (or, to Seller's knowledge, investigation) pending or, to the best of their knowledge, threatened, against either Seller in any federal, state, or local court, or before any administrative agency (including, without limitation, any proceeding which seeks the revocation or forfeiture of or opposes or challenges the renewal of any of the Stations' Licenses), which might have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

3.4 **Liabilities.** Except as indicated on Schedule 3.4, there are no liens or encumbrances against the Stations' Assets. Neither Seller has any knowledge of any circumstances, conditions,

events, or arrangements relating specifically to either Seller and not to the radio industry as a whole which may hereafter give rise to any liabilities on the part of any successor to the business either Seller in connection with the Stations.

3.5 **Stations' Licenses.** The Stations' Licenses are all of the authorizations required for the lawful conduct of the business and operation of the Station. Seller is the authorized legal holder of all of the Stations' Licenses. None of the Stations' Licenses are subject to any restriction or condition which could limit the operation of the Station with the facilities set forth in the Stations' Licenses except for restrictions and conditions applicable to the industry as a whole. Except as set forth on Schedule 1.1(a) hereto, and the Stations' Licenses are in good standing and are in full force and effect. Except as set forth on Schedule 1.1(a), no proceedings are now pending before any governmental authority with respect to the Station. Seller does not know of any facts relating to the Stations that could cause the FCC to deny its consent to the assignment of the Stations' Licenses to Buyer hereunder. Subject to the Communications Act of 1934 (the "Communications Act"), and the rules and regulations promulgated thereunder (the "FCC Rules and Regulations"), the Stations' Licenses are assignable from Seller to Buyer. Schedule 1.1(a) lists all FCC broadcast station licenses, outstanding construction permits, special temporary authorizations, auxiliary authorizations, and antenna structure registrations ("ASRs") associated with the Stations.

3.6 **Stations' Assets.** Seller has good, valid, and marketable title to or the unrestricted right to use all of the Stations' Assets owned, leased or licensed by it, in each case, free and clear of all security interests of every kind or character (other than Permitted Encumbrances). Seller is the owner, lessee, or licensee of all of the Tangible Personal Property listed on the Schedules to this Agreement. The Tangible Personal Property shall be sold WHERE IS, AS IS, without warranty of any kind except as to title.

3.7 **AM Real Property Lease.** Attached to Schedule 1.1(b) is a true and complete copy of the Real Property Lease, including all amendments and modifications thereto. Except as listed on Schedule 1.1(c), the Real Property Lease and all of the fixtures, towers and improvements thereon owned by Seller (collectively, the "Owned Improvements") are in good operating condition and repair, reasonable wear and tear excepted, and have been maintained in accordance with industry standards. Seller has not received any notice alleging that the Real Property Lease or the Owned Improvements fail to comply with applicable zoning laws or the building, health, fire and environmental protection codes of applicable government jurisdictions. The WTKI tower and ground system is located entirely within the confines of the property specified in the Real Property Lease. With respect to the Real Property Lease, Seller has good title to its leasehold interest in such real property and the improvements thereon, in each case, free and clear of all liens, claims and encumbrances, except for the liens, claims and encumbrances identified in such leases or as specifically stated on Schedule 1.1(b). The Real Property Lease is in full force and effect, all accrued and currently payable rents and other payments required by such leases to be paid by Seller have been paid. Seller has not given nor received any notice of default or termination, and no condition exists and no event has occurred that, with the giving of notice, the lapse of time or the happening of any further event would become a default or permit early termination under any such lease. Except as set forth on Schedule 1.1(b), no third-party consent or approval is required

for the assignment of the Real Property Leases to Buyer or for the consummation of the transactions contemplated herein.

3.8 **FM Translator Tower Leases.** Attached as Schedule 1.1(c) are true and correct copies of the Tower Leases being used in conjunction with the operation of the two FM translator station being assigned as a part of this transaction. The Tower Leases are in full force and effect, all accrued and currently payable rents and other payments required by such leases to be paid by Seller have been paid. Seller has not given nor received any notice of default or termination, and no condition exists and no event has occurred that, with the giving of notice, the lapse of time or the happening of any further event would become a default or permit early termination under any such lease. Except as set forth on Schedule 1.1(c), no third-party consent or approval is required for the assignment of the Tower Leases to Buyer or for the consummation of the transactions contemplated herein.

3.9 **Compliance With Laws.** Seller has not received any notice asserting any non-compliance in any material respect by it with any applicable statute, rule, or regulation, federal, state, or local, or any agency thereof, having jurisdiction over it, Seller is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority, and to the best of Seller's knowledge, As of Closing, the Stations will be operating in all material respects with all laws, regulations, and governmental orders applicable to the conduct of the business and operations of the Stations, and its use of the Stations' Assets does not violate in any material respect any of such laws, regulations, or orders or the terms and conditions of the Stations' Licenses. One or more of the Stations, however, may be operating pursuant to Special Temporary Authority as of Closing.

3.10 **Intangible Property.** Seller has all right, title, and interest in and to all Intangible Property necessary or desirable in the conduct of the Stations as presently operated and as presently proposed to be operated. Seller has not received notice of any claim against it involving any conflict or claim of conflict of any of the items listed on Schedule 1.1(e), and there is no basis for any such claim of conflict. Each item of Intangible Property owned or used by Seller immediately before the Closing will be owned or available for use by Buyer on identical terms and conditions immediately after the Closing. Seller has taken all necessary and desirable action to maintain and protect each item of Intangible Property that it owns or uses. No service provided by Seller or any programming or other material used, broadcast or disseminated by Seller or the Stations, infringes on any copyright, patent, or trademark of any other party. Seller has not received any notice of any claim of infringement of any third-party's copyright, patent, trademark, service mark, logotype, license, or other proprietary right, including the use of any call sign, slogan or logo by a broadcast station or cable systems in the marketing area of the Stations which may become confusing similar to the call sign, slogans and logos currently used by the Stations. Seller owns or possesses adequate licenses or other rights to use all copyrights, patents, trademarks, service marks, trade names, logotypes, and other intangible rights used to operate the Stations.

3.11 **Bulk Sales.** Neither the sale and transfer of the Assets pursuant to this Agreement, nor Buyer's possession and use thereof from and after the Closing because of such sale and transfer, will be subject to any law pertaining to bulk sales or transfers or to the effectiveness of bulk sales

or transfers as against creditors of Seller, or the imposition of any liability on Buyer for appraisal rights or other liability owing to Seller.

3.12 **Tax Matters.** Except as indicated on Schedule 3.12, there are no deficiencies or notices of claims or assessments of federal, state, county or local income, excise, import or export taxes, interest or penalties by any federal, state, county, local, or other taxing authority against Seller and Seller is not a party to any action for the collection of taxes. Except as indicated on Schedule 3.12, no threatened or contemplated action for the collection of taxes from Seller which might impede the parties' ability to consummate the transactions contemplated in this Agreement.

3.13 **Brokers.** Other than Richard C. Parrish & Associates LLC, whose fee is to be paid by Seller, there is no broker or finder or other person 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.

#### **Section 4** **Buyer's Representations and Warranties**

Buyer represents and warrants to Seller as follows:

4.1 **Organization, Authorization, and Binding Obligation.** Buyer is a limited liability company organized under the laws of the State of Alabama. Buyer has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action on its part. This Agreement constitutes Buyer's valid, legal, and binding obligation, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.2 **Absence of Conflicting Agreements or Required Consents.** Buyer's execution, delivery, and performance of this Agreement (a) do not require the consent of any third party, except for the FCC Consent; (b) will not violate any provision of Buyer's governing documents; (c) to the best of Buyer's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, or ruling of any governmental authority; and (d) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument or permit to which Buyer is subject and that is individually or in the aggregate material to the transactions contemplated hereby.

4.3 **Litigation.** There is no litigation, proceeding, or investigation pending or, to the best of its knowledge, threatened against Buyer in any federal, state, or local court, or before any administrative agency, which might have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin



or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

4.4 **FCC Qualifications.** Buyer has no knowledge of any facts which would, under present law (including the Communications Act of 1934, as amended) and present rules, regulations, and practices of the FCC, disqualify Buyer as an assignee of the Stations' Licenses or as an owner and/or operator of the Stations' Assets or which might delay the grant of the Assignment Application, and Buyer will not take, or unreasonably fail to take, any action which Buyer knows or has reason to know would cause such disqualification.

4.5 **Brokers.** Other than Richard C. Parrish & Associates LLC, whose fee is to be paid by Seller, there is no broker or finder or other person who would have any valid claim through Buyer 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, Buyer.

## **Section 5** **Pre-Closing Covenants**

5.1 **Pre-Closing Covenants of Seller.** Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer:

(a) **Affirmative Covenants.** Seller shall, except as provided in the LMA:

(i) Maintain and preserve the Stations' Licenses without material change:

(ii) Continue the Stations' broadcasts and conduct the business and operations of the Stations in the ordinary course and in accordance in all material respects with the Communications Act, the FCC Rules and Regulations, and any other applicable federal, state, or local rules and regulations. Upon receipt of notice of violation of any such laws, rules, and regulations, promptly notify Buyer of such notice and use its commercially reasonable best efforts to contest in good faith or to cure such violation prior to the Closing Date;

(iii) Preserve intact the Assets and maintain in effect the casualty and liability insurance on the Assets heretofore in force;

(iv) Notify Buyer of any litigation or administrative proceeding pending or, to its knowledge, threatened which is likely to delay or otherwise interfere with Closing or otherwise adversely affect any of the Stations' Licenses; any material damage or destruction of any of the Stations' Assets; and any adverse change in the condition of the Stations which is likely to delay or otherwise interfere with Closing, or otherwise adversely affect any of the Stations' Licenses;

(v) Promptly give or cause to be given to the employees and representatives of Buyer, at the request of Buyer, full access to the Stations' studio and technical

facilities, insurance policies, agreements, contracts, commitments which are to be assumed by Buyer or may impose any obligation on Buyer after the Closing, and such other information concerning Seller, the Stations and the Assets as Buyer may reasonably request;

(vi) Fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement and use its best efforts to cause the transactions contemplated by this Agreement to be fully carried out; and

(vii) Obtain any necessary consents for the leases to be assigned from Seller to Buyer pursuant to this Agreement, with the understanding that nothing contained in this Agreement shall be construed as an assignment or an attempted assignment of any lease that is non-assignable without the consent of the other party or parties thereto, unless such consent shall be given and if such consent is not obtained, Seller shall cooperate with Buyer in any arrangements necessary or desirable, on commercially reasonable terms, to provide for Buyer to have the benefits and to have Buyer assume the burdens arising after the Closing Date thereunder including, without limitation, enforcement for the benefit of Buyer, and assumption by Buyer of the costs of enforcing, any and all rights of Seller thereunder against the other party thereto arising out of the cancellation thereof by such other party or otherwise.

(b) Negative Covenants. Seller shall not:

(i) Create, assume, or permit to exist any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the Stations' Assets, other than Permitted Liens;

(ii) Sell, assign, lease, or otherwise transfer or dispose of any of the Stations' Assets outside the ordinary course of business;

(iii) Make any change in the Stations' buildings, leasehold improvements, or fixtures;

(v) Enter into, extend, or renew any trade or barter contracts;

(iv) Waive any material right relating to the Stations or the Stations' Assets;

(v) Agree to or participate in any minor modification or other filing with the FCC with respect to the Stations;

(vi) Except with the written consent of Buyer, enter into, extend or renew, any contracts or leases that extend beyond, or cannot be cancelled effective as of the Closing Date;

(vii) Either itself or through any of its officers, directors, shareholders, employees, agents, or any other person or entity acting on Seller's behalf, directly or indirectly, solicit or initiate any offer from, or conduct any negotiations with, any person or entity other than Buyer or its assignee(s) concerning the direct or indirect acquisition of the Stations or the sale of

all or a substantial portion of its air-time pursuant to a time brokerage agreement, or enter into any such transaction;

(viii) Cause or permit, by any act or failure to act, any of the Stations' Licenses to expire or be surrendered or adversely modified, or take any action which could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation, or adverse modification of any of the Stations' Licenses; or

(ix) Take any other action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement.

## **Section 6** **FCC Consent**

The assignment of the Stations' Licenses from Seller to Buyer as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent") pursuant to an application by Seller and Buyer (the "Assignment Application"). The Assignment Application shall be filed by Seller and Buyer within five (5) business days of the date of this Agreement and thereafter Buyer and Seller shall each fully prosecute the Assignment Application with all diligence and shall otherwise use their best efforts to obtain the grant of such application as expeditiously as practicable. The FCC filing fee for the Assignment Application shall be paid initially by Buyer and at Closing and Seller shall reimburse Buyer one-half of the FCC filing fee.

## **Section 7** **Conditions Precedent to Buyer's Obligations**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which (except for the requirement that the FCC Consent to the Assignment Application has been granted) Buyer may waive in writing:

7.1 **Representations, Warranties, and Covenants.** All representations and warranties of Seller made in this Agreement, or in any exhibit, schedule, certificate, or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse (as determined by Buyer in its sole discretion) which arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants, and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

7.2 **FCC Consent.** The FCC Consent shall have been granted and the FCC Consent shall have become a Final Order.

7.3 **Governmental Authorizations.** Seller shall be the holder of the Stations' Licenses, and there shall not have been any modification of any of the Stations' Licenses which could have a material adverse effect on the Stations. No proceeding shall be pending, the effect of which could be to revoke, cancel, fail to renew, suspend, or modify materially and adversely any of the Stations' Licenses or the transfer thereof to Buyer. Additionally, all statutory and other requirements for the valid consummation by Buyer of the transactions contemplated by this Agreement shall have been fulfilled, and all authorizations, consents, and approvals of all federal, state, local, and foreign governmental agencies and authorities required to be obtained in order to permit the consummation by Buyer of the transactions contemplated by this Agreement shall have been obtained.

7.4 **Seller Certificate.** Seller shall have furnished Buyer with a certificate, dated the Closing Date and duly executed by an officer or manager, as applicable, of Seller, to the effect that the conditions set forth in Section 7.1 have been satisfied;

7.5 **Adverse Proceedings.** No suit, action, or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effectuate the transactions contemplated by this Agreement in accordance with its terms.

7.6 **Instruments of Conveyance and Transfer.** Seller shall have delivered to Buyer instruments in form and substance reasonably satisfactory to counsel to Buyer effecting the sale, transfer, assignment, and conveyance of Seller's right, title, and interest in and to the Stations' Assets to Buyer pursuant to the terms of this Agreement including, without limitation, the following:

(a) An assignment of all right, title, and interest in and to the Stations' Licenses to be assigned pursuant to Section 1.1(a) of this Agreement;

(b) An assignment of all right, title, and interest in and to the FM Translator Tower Leases pursuant to Section 1.1(c) of this Agreement;

(c) An assignment of the Real Property Lease for the WTKI(AM) tower and transmitter facilities pursuant to Section 1.1(b) of this Agreement;

(d) A Bill of Sale for all of the Stations' Assets, including the Tangible Personal Property, to be conveyed pursuant hereto, pursuant to Section 1.1(d) of this Agreement;

(e) An assignment of all right, title, and interest in and to the Intangible Personal Property, including necessary registrations and applications for registration, pursuant to Section 1.1(e) of this Agreement;

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

7.7 **FCC FRN Association.** At Closing, Seller shall notify the FCC of the closing of the transaction as to the Stations, and inform the FCC that the FCC FRN to be associated with the Stations' Licenses shall be that as specified by Buyer.

7.8 **Discharge of Liens.** At Closing, Seller shall deliver to Buyer duly-executed termination statements and releases as are appropriate to convey the Stations' Assets by Seller to Buyer free and clear of all liens, security interests, litigation, and other encumbrances, except as specifically permitted by this Agreement or otherwise consented to by Buyer in writing.

## **Section 8**

### **Conditions Precedent to Seller's Obligations**

The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which (except for the requirement that the FCC Consent to the Assignment Application has been granted) Seller may waive in writing:

8.1 **Representations, Warranties, and Covenants.** All representations and warranties of Buyer made in this Agreement, or in any exhibit, schedule, certificate, or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse (as determined by Seller in its sole discretion) which arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants, and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

8.2 **FCC Consent.** The FCC Consent shall have been granted.

8.3 **Payment of Purchase Price.** On the Closing Date, Buyer shall pay the remainder of the Purchase Price in accordance with Section 1.4 of this Agreement.

8.4 **Buyer Certificate.** Buyer shall have furnished Seller with a certificate, dated the Closing Date and duly executed by an officer of Seller, to the effect that the conditions set forth in Section 8.1 have been satisfied.

8.5 **Instruments of Assumption.** Buyer shall have delivered to Seller instruments in form and substance reasonably satisfactory to counsel to Seller effecting the assumption of Buyer's obligations arising subsequent to the Closing Date in and to the Stations' Assets pursuant to the terms of this Agreement.

8.6 **Adverse Proceedings.** No suit, action, or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**Section 9**  
**Transfer Taxes, Fees and Expenses**

9.1 **Transfer Taxes.** Buyer shall pay any sales, use, or transfer tax due as a result of this transaction.

9.2 **Parties' Expenses.** Buyer and Seller shall each pay their own attorneys' fees, incurred in conjunction with the preparation and filing of this Agreement and the filing with the FCC.

**Section 10**  
**Risk of Loss**

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

**Section 11**  
**Termination Rights**

Without limiting the right of either party to terminate this Agreement as otherwise provided herein, this Agreement may be terminated, upon written notice, upon the occurrence of any of the following:

(a) By either Buyer or Seller for a material default in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty, or covenant hereunder, by Buyer on the one hand or Seller on the other hand, which is not cured by the earlier of the Closing Date or within twenty (20) business days after written notice of the breach, provided that the terminating party is not then in material default or material breach.

(b) By either Buyer or Seller if the FCC denies the FCC Consent (and such denial is not the fault, directly or indirectly, of the terminating party) and such order becomes a Final Order.

(c) By Buyer if Closing has not occurred within one year of execution of this Agreement, provided that Buyer is not then in material default or material breach.

## **Section 12**

### **Pre-Closing Remedies**

12.1 **Seller's Breach.** In the event of a material breach by Seller of any of its representations and obligations hereunder, which is not cured by the earlier of the Closing Date or within twenty (20) calendar days after written notice from Buyer, Buyer may bring an action to enforce the terms of this Agreement by decree of specific performance, it being agreed that the Stations' Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Seller agrees to waive the defense in any such action for decree of specific performance that Buyer has an adequate remedy at law, to cooperate fully in the filing of FCC applications and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. In the event of breach by Seller which is not timely cured, and the FCC does not grant consent to the Assignment Application, Buyer may seek damages from Seller for breach of contract.

12.2 **Buyer's Breach.** In the event of a material breach or default by Buyer of any of its warranties, representations or covenants hereunder, which breach or default is not cured by the earlier of the Closing Date or within twenty (20) business days after written notice from Seller, Seller may seek damages from Buyer for breach of contract and, in addition, may terminate this Agreement.

## **Section 13**

### **Post-Closing Remedies**

13.1 **Seller's Indemnities.** For a period of one year after the Closing Date, Seller shall indemnify, defend, and hold Buyer harmless from and against any and all losses, costs, liabilities, claims, actions, damages, and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature, or description, arising out of or in connection with (a) the breach of any representation, warranty, covenant, or agreement of Seller set forth in this Agreement (including the schedules hereto) or in any other document delivered to Buyer pursuant hereto; (b) any liability of Seller not assumed by Buyer herein; (c) a claim relating to the conduct of the business and operations of the Stations and the Stations' Assets prior to the Closing Date including, without limitation, any taxes, assessments, or similar charges relating to the operation of the Stations accrued or attributable to periods prior to the Closing Date; or (d) any claims by any of Seller's employees arising out of their employment with Seller.

13.2 **Buyer's Indemnities.** For a period of one year after the Closing Date, Buyer shall indemnify, defend, and hold Seller harmless from and against any and all losses, costs, liabilities, claims, actions, damages, and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature, or description arising out of, or in connection with (a) the breach of any representation, warranty, covenant or agreement of Buyer set forth in this Agreement or in any other document delivered to Seller pursuant hereto; (b) any Assumed Liability; or (c) a claim relating to the conduct of the business and the operation of the Stations by Buyer on or after the Closing Date including, without limitation, any taxes, assessments or similar charges relating to the operation of the Stations accrued or attributable to periods on or after the Closing Date.

13.3 **Notice of Claim.** If any action, suit, or proceeding shall be commenced by a third party against Buyer or Seller, as the case may be, in respect of which Buyer or Seller proposes to seek indemnification from the other under this Section 13 (a “Third-Party Claim”), then such party shall promptly notify the party from whom indemnification is sought (hereinafter the “Indemnifying Party”) to that effect. The Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such Third-Party Claim, and the other party shall cooperate with all reasonable requests of the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of a Third-Party Claim, then the other party shall have the right to participate in the defense of such claim at its own expense. If a Third-Party Claim requires immediate action, then the parties will make every effort to reach a decision with respect thereto as expeditiously as possible. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third-Party Claim, then it shall be bound by the results obtained by the other party with respect to such Third-Party Claim, but no settlement of a Third-Party Claim may be made by the Indemnifying Party without the written consent of the party being indemnified.

## **Section 14** **Miscellaneous**

14.1 **Survival of Representations and Warranties.** Other than as specifically provided in this Agreement, the representations and warranties in this Agreement shall survive Closing for a period of one (1) year from the Closing Date.

14.2 **Employees.** Seller shall terminate all of Seller’s employees effective as of the date of Closing, and pay all termination and severance costs in connection with such termination.

14.3 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party hereto, provided that Buyer may assign its right to acquire the Stations to an affiliate of Buyer if such assignment does not delay the FCC Consent or otherwise delay Closing, the representations made by Buyer under this agreement are true with respect to the assignee, and Buyer gives Seller prior written notice thereof. No such assignment shall relieve Buyer of any obligation or liability under this Agreement. The rights and obligations of the parties hereunder shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and permitted assigns.

14.4 **Waiver of Jury Trial; Attorneys’ Fees.** If, notwithstanding the provisions of Section 14, any law suit is filed to resolve an issue as to the interpretation or enforcement of this agreement and is not dismissed on the basis of Section 14, each party irrevocably waives trial by jury and the right thereto in any and all litigation in any court with respect to, in connection with, or arising out of this Agreement.

14.5 **Construction and Venue for Legal Actions.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama without regard to choice of laws principles. Each party submits to the jurisdiction of any court sitting in



Madison County in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party waives any defense of inconvenient forum or lack of personal jurisdiction to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the other party with respect thereto.

14.6 **Attorneys' Fees and Costs.** Should any party default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit or any action, the prevailing party in such lawsuit shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

14.7 **Notices.** All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be sent by for next business day delivery by Federal Express or a similar nationally-recognized overnight courier service, with all charges prepaid, and shall be deemed to have been duly delivered and received on the next business day. All such notices, demands, and requests shall be addressed as follows:

If to Seller:

Mr. Fred Holland  
FRC of Alabama, L.L.C.  
1108 Woodmont Ave. SE  
Huntsville, AL 35801

Copy to:

Matthew H. McCormick  
Fletcher, Heald & Hildreth, PLC  
1300 N. 17th Street, Suite 1100  
Arlington, VA 22209

If to Buyer:

Mr. Michael Brandt  
Southern Broadcasting LLC  
414 W. Wilson Dam Rd.  
Muscle Shores, AL 35630

Copy to:

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

or at such other address as either party shall specify by notice to the other.

14.8 **Multiple Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. All of such counterpart signature pages shall be read as though all of the signers had signed a single signature page. This Agreement may be signed and exchanged by facsimile transmission or by a scanned PDF sent by email, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

14.9 **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all other and prior memoranda and agreements between the parties with respect to such subject matter and may not be modified or amended except by a written instrument signed by all of the parties hereto.

14.10 **Investigations.** No inspection or investigation made by or on behalf of Buyer, or Buyer's failure to make any inspection or investigation, shall affect Seller's representations, warranties, and covenants set forth in this Agreement, or be deemed to constitute a waiver of any of those representations, warranties, and covenants.

14.11 **Captions.** The section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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

14.13 **Further Assurances.** From time to time at another party's request and without further consideration, a party shall execute and deliver such further instruments of conveyance, assignment, and transfer, and take such other actions as the requesting party may reasonably request, in order to more effectively convey and transfer any of the Stations' Assets.

14.14 **Counsel.** Each party has had the right to obtain independent review of the documents and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

[Signature Page Follows.]

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

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


**SELLER:**

**FRC OF ALABAMA, L.L.C.**

By:   
Fred Holland  
Managing Member

**BUYER:**

**SOUTHERN BROADCASTING LLC**

By:   
Michael Brandt  
Managing Member

**SCHEDULE 1.1(a)**  
**Station Licenses**

WTKI (AM), Huntsville, Alabama, Facility No. 30965  
BL-19881020AB  
Renewal of License 0000105258

W287DH, Facility No. 200684, Huntsville, Alabama  
BLFT-20191222AAI  
Renewal of License 0000105258

W243AD, Facility No. 72701, Madison, Alabama  
File No. 0000112114  
CP File No. 0000118080  
Renewal of License 0000105258

**SCHEDULE 1.1(b)**  
**Land Lease**

“Ground Lease” dated March 28, 2019 by and between The City of Huntsville and FRC of Alabama, LLC d/b/a Focus Radio Communications.

**SCHEDULE 1.1(c)**  
**FM Translator Tower Leases**

W287DH Tower Space Lease: “Communications Tower Lease Agreement” dated July 24, 2018 by and between James Ernest Blair, d/b/a Monte Sano Communications and FRC Radio Communications.

W243EP Tower Space Lease: “License Agreement” dated May 13, 2020 by and between City of Madison, Alabama and FRC of Alabama, LLC d/b/a Focus Radio Communications. (On its face, this License Agreement is not transferable and Buyer will need to enter into a new agreement with the City of Madison.)

**SCHEDULE 1.1(d)**  
**Tangible Personal Property**

Nautel J1000 AM Transmitter (SN B385)	WTKI
Armstrong X1000B AM Transmitter (SN 5972)	WTKI
Middle Atlantic MRK-4426 Equipment Racks (SN 285602)	WTKI
Middle Atlantic MRK-4426 Equipment Racks (SN 285566)	WTKI
Kintronic Labs RFC40-20-2 AM RF Switch	WTKI
Wheatstone Vorsis RP3 AM Audio Processor	WTKI
150 foot Pi-Rod Self-Supporting AM Broadcast Tower	WTKI
AM Antenna Tuning Unit	WTKI
Sage ENDEC EAS Unit Model 3644 (SN B409344)	WTKI
Sage ENDEC EAS receiver (No SN-attached to above)	WTKI
Gentner GSC3000 site remote control system (SN P061106)	WTKI
Gentner VRC 1000 Relay Interface Unit (SN 073000402)	WTKI
Crown FM 600 E Transmitter	W287DH (105.3)
Wheatstone VP8 FM Audio Processor	W287DH
Telecom TFC2K-D FM Broadcast Antenna	W287DH
Circuitwerkes SiteSentry 4 remote control	W287DH
DEVA DB91TX & DEVA DB91RX IP Audio Codec	W287DH
Continental 802B 50 Watt FM Exciter (SN 000375)	W243EP (96.5)
SVP 700 Watt FM Broadcast Amplifier	W243EP
Bogan FM Broadcast Receiver	W243EP
Audemat-Aztec Digiplexer 2/4 FM Processor	W243EP
BK-77 FM Broadcast Antenna	W243EP

**SCHEDULE 1.1(e)**  
**Intangible Personal Property**

Call Letters WTKI



**SCHEDULE 1.2**  
**Excluded Assets**

None

**SCHEDULE 1.6**  
**Allocation**

[to be prepared prior to Closing]

Equipment:

Towers:

License and Good Will:

## **SCHEDULE 3.4**

### **Liens**

Seller has an outstanding loan with the Small Business Administration (“SBA”), which debt is believed to be secured by a lien on certain of the Stations’ Assets. The remaining balance on the loan is approximately \$51,000. The loan is to be paid in full at Closing. Prior to Closing, Seller will obtain a payoff letter from SBA and at Closing Buyer will wire to the SBA the amount specified in the SBA payoff letter, which payment is to be credited against the Purchase Price.

**SCHEDULE 3.12**  
**Tax Matters**

Seller has an outstanding tax obligation with the Internal Revenue Service in the approximate amount of \$30,000. The obligation will be paid in full prior to Closing and Seller will provide to payment confirmation of payment in full of the subject tax obligation.