

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made as of June 20<sup>th</sup>, 2023, by and between **HIGH PLAINS RADIO NETWORK, L.L.C.**, a Texas limited liability company ("Seller") and **Broadcast Industry Group, LLC**, an Arizona limited liability company ("Buyer").

### WITNESSETH:

WHEREAS, Seller is the FCC-approved licensee or permittee of certain licenses and authorizations (the "Licenses") issued by the Federal Communications Commission (the "FCC") for Stations KZYP(AM), Malvern, Arkansas (FCC FIN: 39750), K281CK, Sheridan, Arkansas (FCC FIN: 151073), KVRG(AM), Arkadelphia, Arkansas (FIN: 24734), KDEL-FM, Arkadelphia, Arkansas (FIN: 24733), and KYXK(FM), Gurdon, Arkansas (FIN: 52416) KAFN(AM), Benton, Arkansas (FCC FIN: 4839), K229CX, Benton, Arkansas (FCC FIN: 150843), KWPS-FM, Caddo Valley, Arkansas (FIN: 183370) KCMC-FM, Viola, Arkansas (FCC FIN: 166081), KRZP-FM, Gassville, Arkansas (FCC FIN: 189491), KJMT-FM, Calico Rock, Arkansas (FCC FIN: 16520), WDMS-FM, Greenville, Mississippi (FCC FIN: 41846) and WGVM-AM, Greenville, Mississippi (FCC FIN: 41838), W247BA, Indianola, Mississippi (FCC FIN: 152957), (collectively, the "Stations");

WHEREAS, Seller agrees to sell, transfer and assign, and Buyer agrees to purchase, acquire and assume, the Licenses and the other Stations Assets (as defined below), and the Assumed Liabilities (as defined below) pursuant to the terms of this Agreement and applicable FCC requirements.

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

### ARTICLE I. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

1.1 **Purchase and Sale of Assets.** Subject to the terms and conditions set forth below, Seller agrees to assign, sell and transfer to Buyer, and Buyer agrees to purchase, acquire and assume from Seller, the following assets, properties and businesses of Seller (except for the Excluded Assets (as defined below)), whether real, personal, tangible or intangible, to the extent exclusively used or otherwise relating exclusively to the Stations (collectively the "Stations Assets");

(a) the Licenses and any and all other FCC authorizations pertaining to the Stations that are set forth and more fully described on Schedule 1.1(a) hereto;

(b) Seller's right, title and interest to any and all pending applications before the FCC which relate to the Stations that are set forth and more fully described on Schedule 1.1(b) hereto, to the extent assignable;



(c) Seller owns and/or leases real property constituting the real property used and useful in the operation of the Stations' studio and transmitting facilities that are set forth and more fully described on Schedule 1.1(c) hereto (the "Real Property" or "Leased Property");

(d) Seller's right, title and interests under those existing agreements, contracts, commitments and leases/licenses relating to the operation of the Stations, other than contracts for the broadcast on the Stations of programming in any form or manner whatsoever, that are set forth and more fully described on Schedule 1.1(d) hereto (the "Assumed Contracts");

(e) Seller's equipment and other personal property at the Stations' studio and transmitter sites, as set forth and more fully described on Schedule 1.1(e) hereto (the "Personal Property"); and

(f) Seller's operating and maintenance logs maintained in connection with the Stations, engineering or consultant reports relating to the Stations' studios and transmitting facilities, copies of all documents in the Stations' public inspection file and applicable codes for accessing said online file (the "Documents").

**1.2 Excluded Assets.** Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Buyer, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean all assets, properties, interests, and rights of Seller other than the Stations Assets (including, but not limited to, such other radio stations owned by Seller), and shall include, without limitation, each of the following assets:

(a) all cash, cash equivalents and cash items of any kind whatsoever, certificates of deposit, money market instruments, bank balances and rights in and to bank accounts, Treasury bills and marketable securities and other securities existing as of the Closing Date;

(b) all of Seller's deposits or prepaid charges and expenses paid in connection with or relating to any assets of Seller;

(c) all claims, rights or interests of Seller in or to any refund, rebate, abatement or other recovery for taxes, together with any interest due thereon or penalty rebate arising therefrom, for any tax period (or portion thereof) ending on or before the Closing;

(d) all rights, claims or causes of action of Seller against third parties relating to the Stations Assets or any assets, properties, business or operations of Seller arising out of events occurring on or prior to the Closing;

(e) all insurance policies, contracts or plans, promissory notes, amounts due from employees, bonds, letters of credit or other similar items relating to the Stations Assets or the assets, properties, business or operations of Seller, and the assets thereof (including any cash surrender value) or any right to proceeds thereunder;

(f) all corporate and other books and records that pertain to internal corporate matters of Seller; and

(g) all rights of Seller (if any) as of the Closing Date to payment for the sale of advertising time and other goods and services by the Stations prior to the Closing Date.

**1.3 Assumption of Liabilities.** On the terms and subject to the conditions set forth in this Agreement, at the Closing Buyer shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, all liabilities and obligations (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated) and including all costs and expenses relating thereto (the "Liabilities") of Seller arising out of, relating to or otherwise in respect of the Stations Assets on or after the Closing Date, other than the Excluded Liabilities (collectively, the "Assumed Liabilities"), including, without limitation, the following:

- (a) all Liabilities under the Licenses;
- (b) all Liabilities under the Real Property;
- (c) all Liabilities under the Assumed Contracts;
- (d) all other Liabilities with respect to the Stations and the Stations Assets arising on or after the Closing Date;
- (e) all transfer taxes (if any) and;
- (f) all taxes related to the Stations Assets that are required to be paid for the period commencing on or after the Closing Date.

To the best of Seller's Knowledge, the Assumed Liabilities are those that are set forth and more fully described on Schedule 1.3 hereto.

**1.4 Excluded Liabilities.** Buyer will not assume or be liable for any Excluded Liabilities. "Excluded Liabilities" shall mean all Liabilities of Seller arising out of, relating to or otherwise in respect of the Stations Assets (including, but not limited to, any contracts between Seller and third parties not being assumed by Buyer) before the Closing Date (provided, that Excluded Liabilities shall not include any taxes that are included among the Assumed Liabilities) and the following Liabilities:

- (a) all Liabilities arising out of Excluded Assets;
- (b) all Liabilities for taxes of Seller relating to the Stations Assets (other than transfer taxes) for any tax period (or portion thereof) beginning on or before the Closing; and
- (c) all Liabilities that are not Assumed Liabilities.

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## ARTICLE II. CONSIDERATION

2.1 **Purchase Price and Payment.** (a) Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, on the Closing Date, Buyer shall pay to Seller the aggregate sum of Three Million (\$3,000,000.00) (the "Purchase Price"), which shall be paid by Buyer by wire transfer of same day federal funds to an account designated by Seller at least two (2) business days before the Closing Date.

(b) **Allocation of Revenues and Expenses.** All revenues and all expenses arising from the Stations Assets shall be allocated between Buyer and Seller in accordance with GAAP, consistently applied, and to effect the principle that Seller shall receive all revenues and shall be responsible for all expenses, costs and liabilities related to the period prior to the Closing Date and Buyer shall receive all revenue and shall be responsible for all expenses, costs and liabilities related to the period on and subsequent to the Closing Date.

(c) **Allocation of Purchase Price.** Buyer shall prepare an allocation of the Purchase Price (and all other capitalized costs) among the Stations Assets in accordance with Internal Revenue Code section 1060 and Treasury regulations thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate). Buyer shall deliver such allocation to Seller in writing within thirty (30) days after the Closing, for Seller's review and comment. The parties shall use commercially reasonable efforts to resolve any issues raised by Seller's comments (if any), and if Buyer and Seller are unable to reach agreement on an allocation within ninety (90) days after the Closing, Seller and Buyer shall each be free to allocate the Purchase Price (and all other capitalized costs) in their own discretion; provided, that if Seller does not provide comments to Buyer, in writing, within thirty (30) days after Buyer's delivery of its allocation hereunder, then such allocation shall be deemed final.

## ARTICLE III. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller (and if necessary, trustees of any members) and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligations of Seller, enforceable in accordance with its respective terms.

(b) The execution, delivery, and performance of this Agreement by Seller will not (i) constitute a violation of or conflict with Seller's organizational documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or



other instrument or obligation relating to the business of the Station and to which Seller or any of the Assets may be subject, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Buyer, (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller or any of the Assets, (iv) result in the creation or imposition of any Lien of any nature whatsoever on any of the Assets, or (v) require the consent or approval of any governmental authority or other third party, other than the FCC Consent and any applicable lessor consents for the Real Property Lease.

(c) Schedule 1.1(e) hereto contains a complete and accurate list of the Tangible Personal Property that is necessary to conduct the operation of the Stations in the manner in which it is currently operated (other than those assets which are Excluded Assets) and will be acquired by Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property. Each item of Tangible Personal Property (i) is in good operating condition (reasonable wear and tear excepted) and is not in need of any material repair, (ii) has been maintained in a manner consistent with generally accepted standards of good engineering practice, and (iii) is operating in substantial compliance with all Licenses, including, but not limited to, the FCC Authorizations and rules and regulations of all relevant federal, state and local governments, agencies, or departments, including, but not limited to, the FCC.

(d) To the best of Seller's knowledge, no item of Tangible Personal Property contains any Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any applicable regulations of any federal, state, or local department of natural resources or federal, state, or local environmental protection agency now or at any time hereafter in effect ("Environmental Laws"). Without limiting the generality of the foregoing, Hazardous Materials includes, but is not limited to, polychlorinated biphenyls (PCBs), asbestos, lead-based paints, infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including crude oil or any fraction thereof).

(e) There are no underground storage tanks located at the Leased Property and there are not now, nor has there been, any Hazardous Materials stored by Seller upon the Leased Property that, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any Environmental Laws.

(f) Schedule 1.1(a) contains a true and complete list of the FCC Authorizations and all other Licenses that are required for the lawful conduct of the business and operations of the Stations in the manner and to the full extent it is presently operated. Seller lawfully holds the FCC Authorizations and Licenses listed on Schedule 1.1(a). Except as set forth in Schedule 1.1(a), Seller is operating the Stations in all material respects in accordance with the FCC Authorizations, and all applicable rules, regulations and policies of the FCC (collectively, the "Communications Laws. There is not now pending or, to Seller's knowledge, threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such



FCC Authorizations or Licenses, and Seller has not received any notice of and has no knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Stations or Seller. All material reports and filings required to be filed with the FCC by Seller with respect to the operation of the Stations have been timely filed, and all such reports and filings are accurate and currently are in material compliance.

(g) Schedule 1.1(c), contains a description of the Real Property Leases. Seller has provided Buyer with a complete and correct copies of the Real Property Leases together with all amendments and assignments related thereto. The Real Property Leases are in effect and binding upon Seller and, to Seller's knowledge, the other party thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has, and will convey to Buyer at the Closing, a valid leasehold interest in the Real Property Leases. Seller is not (and to Seller's knowledge, the lessor (including any ground lessor) is not) in material breach or default under the Real Property Leases or related ground lease (if any) and no events or circumstances have occurred which, with or without notice or lapse of time or both, would constitute defaults under the Real Property Leases. There is full legal and practical access to the Leased Property (including vehicular access to a public roadway) and all utilities necessary for Buyer's use of the Leased Property as a radio transmission facility are installed and are in working order, and are subject to valid easements, where necessary. Seller will provide Buyer with access to a true, complete and correct copy of all title reports, surveys, reports, structural analysis or other records that are in Seller's possession or control relating to the Leased Property, the tower located on the Leased Property or other Assets. The Leased Property is not subject to any zoning, restrictive covenant or other agreement or order that either (i) prohibits use of the Leased Property as a broadcast transmitter site or (ii) requires the lessee of the Real Property Lease to provide programming on the Station or to otherwise provide any consideration to any third party other than the lessor.

(h) To the best of Seller's knowledge, the buildings, towers, guy wires and other fixtures situated on the Leased Property are free of material structural defects that would render them unsuitable for their intended uses. Seller has no knowledge that they have not been properly maintained and repaired or that they do not comply in all material respects with applicable zoning, health and safety laws and codes. The operation of the Stations do not exceed permissible levels of exposure to RF radiation specified in either the Communications Laws or any other applicable Environmental Laws.

(i) The towers used in the operation of the Stations at the Leased Property is obstruction-marked, monitored and lighted, to the extent required by, and in accordance with, the rules and regulations of the Federal Aviation Administration (the "FAA"), the FCC or any other governmental authority. To the best of Seller's knowledge, all improvements of Seller or the tower lessor located on the Leased Property are in compliance with applicable zoning, FCC, FAA, and any related or similar state or local laws, land use laws and applicable title covenants, conditions, restrictions and reservations in all respects, now and at the time of development of the Leased Property as a broadcast transmission facility.

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(j) The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Assets to Buyer, will transfer good and marketable title to the Assets free and clear of all Liens (other than Permitted Liens) and Buyer will assume the Assumed Liabilities.

(k) Buyer shall have no obligation to offer employment to any employee of Seller or the Stations and shall have no liability with respect to any such employee or for benefits of any kind or nature.

(l) There is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller. In the event any broker claims to be owed a commission with respect to this transaction on account of the actions of Seller, Seller shall be solely responsible for any amounts which may ultimately be owed to such broker.

(m) Seller is not subject to any order, writ, injunction, judgment, arbitration decision or decree having binding effect and affecting the business of the Stations or the Stations Assets or which restrains or enjoins the transactions contemplated hereby, and no such proceeding is pending. Seller has complied in all material respects with all applicable laws, regulations, orders or decrees applicable to the Station. The present uses by Seller of the Stations Assets do not violate any such laws, regulations, orders or decrees in any material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing.

(n) With respect to the Leased Property, Seller has complied and currently is in material compliance with all applicable laws, statutes, rules, regulations, codes and ordinances of all Environmental Laws relating to the discharge of air pollutants, water pollutants or processed waste water, Hazardous Materials, or toxic substances, or otherwise relating to the environment, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Commission, and Environmental Laws with respect to the Leased Property and the Station.

(o) There is now, and through the Closing there shall be, in full force and effect with reputable insurance companies, fire and property insurance with respect to all Tangible Personal Property in commercially reasonable amounts sufficient to repair or replace the applicable Assets.

(p) Seller has duly, timely, and in the required manner filed all federal, state, and local, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid prior to the Closing Date which, if not filed or paid as the case might be, would interfere with Buyer's full use and enjoyment of the Assets after the Closing Date. No event has occurred which would impose on Buyer any liability for any taxes, penalties or interest due or to become due from Seller from any taxing authority.

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(q) Except for administrative rulemaking or other proceedings of general applicability to the radio broadcast industry: (i) there is no proceeding or investigation of any nature pending or, to Seller's knowledge, threatened against Seller (in relation to the Stations), any of the Stations or the FCC Authorizations or affecting the same; and (ii) no writ, decree, or similar instrument has been rendered or is pending against Seller which would materially and adversely affect the Assets or Seller's ability to perform under this Agreement.

(r) On or before the Closing Date, Seller shall furnish to Buyer revised schedules to this Agreement as may be necessary to render such Schedules accurate and complete as of the Closing Date. Seller shall give detailed written notice to Buyer promptly upon the occurrence of or becoming aware of the impending or threatened occurrence of, any event which would cause or constitute a breach or would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of Seller's representations or warranties contained in this Agreement or in any Schedule. Seller shall promptly disclose to Buyer any significant problems or developments with respect to the Assets.

**3.2 Absence of Litigation.** Except as otherwise set forth on Schedule 3.2, there is no suit, action, proceeding or investigation now pending or, to the knowledge of Seller, threatened, before any federal, state or local court, grand jury, administrative or regulatory body, arbitration or mediation panel or similar body, against Seller or in any way involving or relating to the Stations Assets, which could reasonably be expected to result in any judgment, order, decree, liability, award or other determination which, in each case, will have or could reasonably be expected to have, a Material Adverse Effect. There is no Order enjoining Seller from selling and transferring the Licenses or any of the Stations Assets to Buyer pursuant to this Agreement. As used herein, the term "Material Adverse Effect" means any event or change that (A) has a material adverse effect on the Stations Assets, taken as a whole or (B) prevents Seller from performing its obligations under this Agreement or the consummation of the transactions contemplated hereby; provided, however, that a Material Adverse Effect shall not include (i) any event, change, circumstance, occurrence, effect or state of facts generally affecting the radio broadcasting industry, (ii) any event, change or condition generally affecting the economy or the financial or securities markets, or political or regulatory conditions, in the United States and the local political jurisdictions in which the Stations and their facilities are located, (iii) any failure by Seller to meet internal projections, forecasts or revenue or earnings predictions, in and of itself, or (iv) any matter of which Buyer is aware on the date hereof.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

**4.1 Organization and Standing.** Buyer is a limited liability company organized under the laws of the State of Arizona, and has all requisite power and authority to enter into this Agreement and the other documents and instruments to be executed and delivered by Buyer and to carry out the transactions contemplated hereby and thereby.

**4.2 Authorization and Binding Obligation.** The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary



actions on the part of Buyer. This Agreement has been duly signed and delivered by Buyer and constitutes the legal, valid and binding obligations of Buyer, enforceable against it in accordance with its terms, except as the enforceability may be affected by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

4.3 **Brokers and Financial Advisors.** Except as set forth on Schedule 4.3, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement.

4.4 **FCC Matters.** Buyer is legally, financially and otherwise qualified to assume and hold the Licenses and to acquire, own, and operate the Stations under the Communications Act of 1934, as amended, and published FCC rules, regulations, and policies (collectively, the "Communications Laws"), including all such provisions relating to media ownership and attribution, foreign ownership and control, and character qualifications. Buyer knows of no fact that would, under the Communications Laws, (a) disqualify Buyer as an assignee of the Licenses or as the owner and operator of the Stations or (b) cause the FCC to fail to grant the FCC Application in a timely manner. With respect to Buyer, no waiver of any FCC rule or policy is necessary to be obtained for the grant of the FCC Application, nor will processing pursuant to any exception to any FCC rule or policy of general applicability be requested or required in connection with Buyer's consummation of the transactions contemplated by this Agreement.

## ARTICLE V. COVENANTS

5.1 **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, Seller hereby covenants and agrees:

- (a) not to sell, transfer or further encumber any of the Stations Assets;
- (b) to notify Buyer in writing of the commencement of any material claim, suit, action, arbitration, legal, administrative or other proceeding, governmental investigation or tax audit against Seller that relates to the Stations;
- (c) upon Buyer's request and at Buyer's expense, to file within a commercially reasonable time after its receipt of such request, an application or applications or, at Seller's election, to give written consent to Buyer filing an application or applications with the FCC for modification of the transmitting facilities of one or more of the Stations (it being understood that favorable action upon any such application or applications shall not be a condition to Buyer's performance of its obligations under this Agreement). Seller shall not be required to construct any facilities approved in any such modification application or to cause or to permit one or more of the Stations to operate using any modified facilities which Buyer may choose to construct at Buyer's cost and expense; and

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(d) to give Buyer and its employees and other authorized representatives, during normal business hours and with reasonable written prior notice, reasonable access to the Stations Assets and to all other books, records and documents of Seller relating solely to the Stations for the purpose of audit and inspection, and to furnish or cause to be furnished to Buyer or its authorized representatives, upon reasonable notice, all information with respect to the Stations' business that Buyer may reasonably request; provided, however, that no such investigation or examination shall be permitted to the extent that it would require Seller or any of its Subsidiaries to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which Seller is bound.

**5.2. Joint Covenants. (a) FCC Application.** Buyer and Seller shall cooperate fully with each other and their respective counsel in connection with any actions required to be taken in connection with obtaining the FCC Consent, including: (i) the filing of an application on FCC Form 314 (or such successor form thereto) (the "FCC Application") with the FCC for all necessary consent of the FCC to the assignment of the Licenses for the Stations to Buyer or to Buyer's designee, and (ii) the defense against any petition to deny or informal objection filed against the FCC Application, provided, however, that neither party shall be required to participate in a trial-type hearing or judicial appeal in pursuit of a grant of the FCC Application. Each party shall prepare its portion of the FCC Application, which shall be filed with the FCC within five (5) Business Days after the execution of this Agreement. Buyer and Seller shall share equally all FCC filing fees associated with the FCC Application. Each party shall pay its own attorneys' fees incurred in filing and prosecuting the FCC Application. The parties hereto acknowledge that the purchase and sale of the Stations Assets as contemplated by this Agreement is subject to the receipt of the FCC Consent. Each party will promptly provide to the other party a copy of any pleading, order or other document served on or delivered to it relating to the FCC Application. Buyer and Seller shall take or cause to be taken all commercially reasonable actions necessary or appropriate to permit the FCC to grant the FCC Consent at the earliest practicable date and agree to comply with all conditions imposed on it (or its affiliates) by the FCC Consent that are applicable to broadcast radio stations generally, that are customarily imposed on similarly situated broadcast radio stations or that arise out of such party's breach of this Agreement. Each of Buyer and Seller shall use its commercially reasonable efforts to oppose any petitions to deny or other objections filed with respect to the FCC Application and any requests for reconsideration or review of the FCC Consent. Neither Seller, on the one hand, nor Buyer, on the other hand, shall agree to participate in any meeting with the FCC in respect of any filing, consent, approval, investigation or other inquiry relating to this Agreement or the transactions contemplated hereby unless it consults with the other party in advance and, to the extent permitted by the FCC, gives the other party the opportunity to attend and participate in such meeting.

(b) **Other Consents.** Seller shall use its commercially reasonable efforts, and Buyer shall cooperate with Seller, to obtain at the earliest practicable date all consents and approvals required to consummate the transactions contemplated by this Agreement; provided, however, that Seller shall not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval.



(c) **Further Assurances.** Each of Seller and Buyer shall use its commercially reasonable efforts to: (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement. At and after the Closing, Buyer and Seller will, without further consideration, execute and deliver such further instruments and documents and do such other acts and things that the other party may reasonably request in order to effect or confirm the transactions contemplated by this Agreement.

## **ARTICLE VI. CLOSING**

6.1 **Time and Procedure.** Subject to the satisfaction of the conditions set forth in Article VIII hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Stations Assets and the assumption of the Assumed Liabilities provided for in Article I hereof (the "Closing") shall be by exchange of documents and funds on a date, set by Seller, that is no later than five (5) Business Days following the satisfaction or waiver of the conditions set forth in Article VIII (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date."

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

(a) A Bill of Sale, and other such documents or instruments as Buyer may reasonably request to carry out the transaction contemplated by this Agreement. For purposes of this Agreement, all such documents are defined as the "Transaction Documents";

(b) An assignment and assumption agreement, duly executed by Seller, and, if necessary, general assignments of all intellectual property rights (if any) included among the Stations Assets.

(c) Copies of the Licenses and all other files, records and correspondence pertaining to the Licenses or the Stations in Seller's possession that are not Excluded Assets;

(d) An assignment of each lease of Real Property and a deed, or other appropriate instrument of transfer, for each parcel of owned Real Property, prepared and recorded on the local real property land records in accordance with local customs and procedures;

(e) A certificate, dated as of the Closing Date, executed by Seller, certifying that all representations and warranties of Seller contained in this Agreement shall be true and accurate in all respects and Seller has performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date; and



(f) Such other documents, instruments and certificates as Buyer may reasonably request.

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

(a) The Purchase Price as provided in Article II hereof by wire transfer or immediately available funds;

(b) An assignment and assumption agreement, duly executed by Buyer;

(c) A certificate, dated as of the Closing Date, executed by Buyer, certifying that all representations and warranties of Buyer contained in this Agreement shall be true and accurate in all respects and Buyer has performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date; and

(d) Such other documents, instruments and certificates as Seller may reasonably request.

## **ARTICLE VII. TERMINATION**

**7.1 Termination by Buyer.** Buyer may terminate this Agreement, if not then in material default, upon written notice to Seller upon the occurrence of any of the following:

(a) If FCC approval is denied or approval, with no condition materially adverse to Buyer, has not been received within the one (1) year period following the date the FCC Application is filed; or

(b) If Seller defaults in any material respect in the observance or in the due and timely performance of any of its material covenants or agreements contained herein and such default has not been cured within thirty (30) days after written notice by Buyer; provided, however, that in the event of a default that cannot be reasonably cured within thirty (30) days, and the Seller is engaged in good faith efforts to cure, a reasonable additional amount of time will be allowed for completion of the cure.

**7.2 Termination by Seller.** Seller may terminate this Agreement, if not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(a) If FCC approval is denied or approval has not been received within the six (6) month period following the date the FCC Application is filed; or

(b) If Buyer defaults in the observance or in the due and timely performance of any of its material covenants or agreements contained herein, and such default has not been cured within thirty (30) days after written notice by Seller; provided, however, that in the event of a default that cannot be reasonably cured within thirty (30) days, and the Buyer is engaged in good



faith efforts to cure, a reasonable additional amount of time will be allowed for completion of the cure.

**7.3 Termination by Either Party.** This Agreement may be terminated at any time prior to the Closing by mutual written consent of Seller and Buyer.

**7.4 Effect of Termination.** In the event that this Agreement is validly terminated as provided herein, then each of the parties shall be relieved of its duties and obligations arising under this Agreement after the date of such termination and, except as otherwise provided in this Section 7.4, such termination shall be without liability to Buyer or Seller, as the case may be; provided, however, except in the event of a default by Seller, Buyer shall be entitled to monetary damages or equitable relief, but not both. For clarity, nothing in this Section 7.4 is intended to limit the parties' obligations under Section 9.4. The obligations of the parties set forth in Article IX (including the limitations in Section 9.1) hereof shall survive any such termination and shall be enforceable hereunder. Nothing in this Article VII shall relieve Buyer or Seller of any liability for a breach of this Agreement prior to the date of termination.

## **ARTICLE VIII. CONDITIONS TO CLOSING**

### **8.1 Conditions to Obligations of Buyer.**

(a) The obligations of Buyer to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or waiver by Buyer), at or prior to the Closing, of Seller's obligation to deliver, or cause to be delivered, to Buyer, each of the items set forth in Section 6.2; and

(b) All representations and warranties of Seller contained in this Agreement shall be true and accurate in all respects and Seller shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

**8.2 Conditions to Obligations of Seller.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the fulfillment (or waiver by Seller), at or prior to the Closing, of Buyer's obligation to deliver, or cause to be delivered, to Seller, each of the items set forth in Section 6.3.

**8.3 Conditions to Obligations of Buyer and Seller.** The respective obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable Law):

(a) The FCC Consent shall have been granted by Final Order (which Buyer may waive, for Buyer and Seller, at its sole discretion), and such consent shall include no condition materially adverse to a party declining to close. For purposes of this Agreement: (i) the term "FCC Consent" means action by the FCC granting its consent to the application filed with the FCC in order to obtain the consent of the FCC to the assignment of the Licenses from Seller to Buyer and the consummation of the transactions contemplated thereby; and (ii) the term "Final



Order" means an action by the FCC or other regulatory authority having jurisdiction (A) with respect to which action no timely request for stay, motion or petition for reconsideration or rehearing, application or request for review or notice of appeal or other judicial petition for review is pending and (B) as to which the time for filing any such request, motion, petition, application, appeal or notice and for the entry of orders staying, reconsidering or reviewing on the FCC's or such other regulatory authority's own motion has expired.

(b) The FCC has consented to the applications for assignment of licenses, filed simultaneously with the FCC Application, from Seller to Broadcast Industry Group, LLC.

(c) There shall not be in effect any Order by a Governmental Entity of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby, and no proceeding shall be pending seeking such an Order.

**8.4 Frustration of Closing Conditions.** Neither Seller nor Buyer may rely on the failure of any condition set forth in this Article VIII. if such failure was caused by such party's failure to comply with any provision of this Agreement.

## **ARTICLE IX. MISCELLANEOUS**

**9.1 Survival.** The representations, warranties and covenants of Seller contained in this Agreement shall survive the Closing for one (1) month after the Closing, and Seller shall not have any liability to Buyer after that one-month period for any breach thereof. The representations, warranties and covenants of Buyer contained in this Agreement, shall survive the Closing for six (6) months after the Closing, and Buyer shall not have any liability to Seller after that six-month period for any breach thereof.

**9.2 Specific Performance.** The parties recognize and agree that the Stations Assets are unique and that if Seller breaches any of the covenants, promises and agreements contained in this Agreement, Buyer would be damaged irreparably and the award of monetary damages alone would not be adequate to compensate Buyer for its injury. Accordingly, Buyer shall be entitled to injunctive relief with respect to any such breach, including, specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. For the avoidance of doubt, Buyer may obtain monetary damages or secure specific performance, but not receive the benefit of both monetary damages and specific performance.

**9.3 Binding Effect; Assignment; No Third Party Beneficiaries.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and permitted assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Seller or Buyer (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void; provided, however, that Buyer may without Seller's consent assign this Agreement to any third party. No assignment of any obligations hereunder shall relieve the parties hereto of any such obligations. Nothing in this Agreement shall create or be



deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below.

9.4 **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. Buyer may, at its option, either (a) postpone Closing for a period of up to sixty (60) days while Seller repairs or replaces such Assets, or (b) elect to close with the Assets in their current condition, in which case Seller shall assign all proceeds from insurance on such lost or damaged Assets to Buyer, and Buyer shall have the responsibility to repair or replace the Assets.

9.5 **Attorneys' Fees.** 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 for damages, specific performance, or other permitted remedy, or if there is litigation to interpret this Agreement, the prevailing party in such lawsuit shall be entitled to seek an award of reasonable legal attorneys' fees and expenses, including such fees and expenses at the appellate level.

9.6 **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the of State of Arkansas, without regard to the choice of law provisions thereof.

9.7 **Construction.** The parties acknowledge and agree that this Agreement has been fully negotiated between them and shall not be interpreted or construed against the drafting party.

9.8 **Notices.** All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by certified mail, return receipt requested, postage prepaid, overnight delivery service, or personal delivery, to the address specified below (or to such other address which a party shall specify to the other party in accordance herewith):

If to Buyer:	Broadcast Industry Group, LLC 8402 East Jenan Drive Scottsdale, Arizona 85260 Attn: Charles Jayson Brentlinger, Manager 920 Edison Avenue Benton, Arkansas 72015
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With a copy (which shall not constitute notice) to:	Thompson Hine LLP 1919 M Street, N.W., Suite 700 Washington, DC 20036 Attn: Barry A. Friedman, Esq.
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If to Seller:	High Plains Radio Network, LLC 800 West Palestine Ave. Palestine, Texas 75801 Attn: Monte L. Spearman
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With a copy (which  
shall not constitute  
notice) to:

Hanszen Laporte, LLP  
14201 Memorial Drive  
Houston, Texas 77079  
Attn: Kent Hanszen

Notice shall be deemed to have been given on the date of personal delivery, the date set forth in the records of the delivery service, or on the return receipt.

**9.9 Indemnification.**

(a) **Indemnification by Seller.** After the Closing, but subject to the limitations in Section 9.1, Seller agrees to indemnify, defend and hold Buyer harmless against and with respect to, and shall reimburse Buyer for, any and all Losses which Buyer may suffer or incur as a result of or in connection with: (i) any breach or inaccuracy of any representation or warranty of Seller made in this Agreement or any certificate, document or instrument prepared by Seller and delivered to Buyer pursuant to the terms and subject to the conditions hereof; (ii) any failure by Seller to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking or obligation of Seller under this Agreement; (iii) the Excluded Liabilities; and (iv) any suit, action or other proceeding brought by any Governmental Authority or any other Person arising out of, or related to, any of the matters referred to in the foregoing clauses.

(b) **Indemnification by Buyer.** After the Closing, but subject to the limitations in Section 9.1, Buyer agrees to indemnify, defend and hold Seller harmless against and with respect to, and shall reimburse Seller for, any and all Losses which Seller may suffer or incur as a result of or in connection with: (i) any breach or inaccuracy of any representation or warranty of Buyer made in this Agreement or any certificate, document or instrument prepared by Buyer and delivered to Seller pursuant to the terms and subject to the conditions hereof; (ii) any failure by Buyer to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking or obligation of Buyer under this Agreement; (iii) the Assumed Liabilities; and (iv) any suit, action or other proceeding brought by any Governmental Authority or any other Person arising out of, or related to, any of the matters referred to in the foregoing clauses.

(c) **Definitions.** Under this Agreement: (i) the term "Governmental Authority" means any government, any governmental entity, department, commission, board, agency or instrumentality and any court, tribunal or judicial or arbitral body; (ii) "Losses" means any claims, demands, actions, causes of action, assessments, losses, investigations, proceedings, damages, penalties, fines, costs, payments, expenses and judgments, including, without limitation, interest and penalties and reasonable attorneys' fees, disbursements and expenses whether federal, state or local; and (iii) the term "Person" means an individual, corporation, association, partnership, joint venture, trust, estate, limited liability company, limited liability partnership or other entity or organization.

(d) Except with respect to obligations to indemnify for third-party, no claim for damages under this Agreement shall exceed actual losses or include any element of consequential or punitive damages or lost future profits or opportunities.



9.10 **Counterparts and Facsimile Signatures.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Counterpart signatures to the Agreement delivered and received by facsimile or by e-mail in portable document format (PDF) shall be acceptable and binding to both parties.

9.11 **Entire Agreement.** This Agreement, the Schedules and Exhibits hereto, and all documents to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. This Agreement supersedes all prior memoranda, discussions and agreements between the parties hereto, and may not be modified, supplemented or amended, except by a written instrument signed by each of the parties hereto designating specifically the terms and provisions so modified, supplemented or amended.

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

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

9.14 **Expenses.** Except as otherwise provided in this Agreement, each of Seller and Buyer shall bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

9.15 **Severability.** If any one or more of the provisions contained in this Agreement should be found invalid, illegal or unenforceable in any respect, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of a court, the unenforceable, invalid or illegal provision shall be deemed deleted, and the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

*[signatures on following page]*

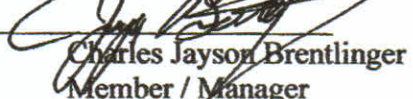
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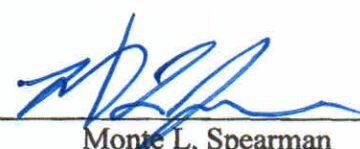


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and first year above written.

**Broadcast Industry Group, LLC**

By:   
Name: Charles Jayson Brentlinger  
Title: Member / Manager

**HIGH PLAINS RADIO NETWORK, L.L.C.**

By:   
Name: Monte L. Spearman  
Title: President

***[Signature Page to Asset Purchase Agreement]***