

## **NONCOMPETE AGREEMENT**

This Noncompete Agreement (this “Agreement”) dated as of \_\_\_\_\_, 2023, by and between Multicultural Radio Broadcasting Licensee, LLC, a Delaware limited liability company (“Seller”) and Smiley Radio Properties, Inc., a California corporation, (“Buyer”) (Individually, Seller and Buyer are a “Party” and collectively, the “Parties”). All capitalized terms used herein and not defined shall have the meanings given to them in the Purchase Agreement (as defined below).

### **WITNESSETH:**

WHEREAS, Seller is the licensee of AM Radio Broadcast Station KBLA, Facility Id. No. 34385, licensed to Santa Monica, California (the “Station”), pursuant to authorizations issued by the Federal Communications Commission (the “FCC”);

WHEREAS, Seller and Buyer have entered into an Asset Purchase Agreement dated as of April 14, 2023 (the “Purchase Agreement”) pursuant to which Seller is purchasing the Assets owned or held by Seller and used or useful in the operation of the Station; and

WHEREAS, to induce Buyer to enter into the Purchase Agreement, and as a condition to Buyer’s obligation to purchase the Assets and pay the purchase price under the Purchase Agreement, Seller has agreed to certain restrictions as specified herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, including the obligations under the Purchase Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

### **1. Non-Competition; Non-Solicitation.**

1.1 Seller acknowledges and agrees this Agreement and the provisions hereof are a material inducement to Buyer entering into the Purchase Agreement to which this Agreement is attached, without which Buyer would not have entered into the Purchase Agreement or consummated the transactions contemplated thereby, and that Buyer would incur a significant loss of the goodwill being acquired as part of the transactions under the Purchase Agreement if Seller were to breach any of the provisions of this Agreement applicable to Seller. Seller acknowledges and agrees that (i) the restrictions set out in this Agreement are necessary and reasonable in all respects to protect the legitimate business interests of Buyer and to prevent unfair advantage being conferred on the Seller, and (ii) Buyer would be irreparably damaged if Seller was to breach the covenants set forth in this Agreement.

1.2 Therefore, in order to facilitate the consummation of the transactions contemplated by the Purchase Agreement, it is agreed that for a period of eight (8) years from and after the Closing Date (the “Restricted Period”), Seller shall not, directly or indirectly, or for any other person, and shall cause their respective subsidiaries not to, participate in any business or enterprise (including,

without limitation, any division, group or franchise of a larger organization) that engages or proposes to engage in acquiring, selling, managing or operating any Competing Business. For purposes of this Agreement, “Competing Business” means a broadcast radio station with an Urban programming format and with a broadcast antenna located within, or that originates broadcast programming from any location within, or that has the capability to broadcast radio signals into any part of, the Restricted Market. The term “Restricted Market” means any area within the greater of the 2.0 mV/m contour for the Station or the Radio Market for Los Angeles, California as determined by the Nielsen Company (the “Los Angeles Radio Market”). For purposes of this Agreement, the term “participate in” shall include, without limitation, having any direct or indirect interest in any person, whether as a sole proprietor, owner, stockholder, partner, manager, member, joint ventures, creditor or otherwise, or rendering any direct or indirect service or assistance to any person (whether as a director, officer, supervisor, employee, agent, consultant, independent contractor, advisor or otherwise) that is a Competing Business or who proposes becoming a Competing Business. Nothing herein will prohibit the Seller from mere passive ownership of not more than one percent (1%) of the outstanding stock of any class of a publicly-held corporation whose stock is traded on a national securities exchange or in the over-the-counter market. The Buyer acknowledges and agrees that Seller (directly or through subsidiaries) currently operates one or more broadcast radio stations in the Radio Market, and in connection therewith operates or owns, or may operate or own, one or more broadcast antennae located within, or that originates broadcast programming within, or that has the capability to broadcast radio signals into the Restricted Market (“Permitted Broadcasting”). Notwithstanding the provisions of this section to the contrary, Seller shall not be in violation of this section and the Permitted Broadcasting shall not be deemed to be a Competitive Business hereunder, unless Seller changes or modifies any of its Permitted Broadcasting in such a manner as to be similar to the Urban format programming broadcast on the Station at the time of such change or modification.

1.3 During the Restricted Period, Seller shall not, directly, or indirectly through another person, and shall cause their respective subsidiaries not to, (i) solicit, induce or attempt to solicit or induce any customer, supplier, vendor, licensee, advertiser, or other business relation of Buyer to cease doing business with Buyer in the Restricted Market, (ii) solicit, induce or attempt to solicit or induce any officer, general manager, other employee or consultant of Buyer and its affiliates to terminate such person’s employment or engagement with Buyer or their affiliates, or hire any such person, or (iii) in any way interfere with the relationship between any such customer, supplier, vendor, licensee, advertiser, employee or business relation and Buyer in the Restricted Market, including, without limitation, knowingly making any negative statements or communications concerning, or disparaging, Buyer and/or their operations in the Restricted Market or otherwise; provided, however, that the foregoing clauses (i) and (iii) shall not apply to Seller to the extent related to such Seller’s operations (or those of its subsidiaries) in the ordinary course of business in connection with the Permitted Broadcasting; and provided, further, that clause (ii) shall not apply to general solicitations for employment made by or on behalf of Seller and not directed at employees or consultants of Buyer and its affiliates. The parties acknowledge and agree that Seller and their affiliates operate broadcast radio stations and other media interests outside of the Restricted Market (the “Other Markets”), and in connection therewith Seller and/or affiliates engage (and may in the future engage) in business relationships in Other Markets with one or more of the same customers, suppliers, vendors, licensees, advertisers, employees and business relations (and their respective affiliates) as Buyer does within the Restricted Market (including after giving

effect to the Closing), that clauses (i) and (iii) are intended to apply to business and operations in the Restricted Market only, and that such activity by Sellers and their affiliates in Other Markets shall not be prohibited by this section.

1.4 If, at the time of enforcement of this Agreement, a court holds that the restrictions stated herein are unreasonable under circumstances then existing, the parties agree that, to the extent permitted by applicable law, the maximum period, scope or geographical area reasonable under such circumstances will be substituted for the Restricted Period, scope or area. Because Seller has had access to confidential information and other intellectual property with respect to the Assets, the parties agree that money damages would be an inadequate remedy for any breach of this Agreement. Therefore, in the event of a breach or threatened breach of this Agreement, Buyer or any of its respective affiliates, and their successors or assigns may, in addition to other rights and remedies existing in their favor, apply to any court of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security).

**2. Reasonableness of Restrictions.** Seller acknowledges and agrees that (i) the restrictions set out in this Agreement are necessary and reasonable in all respects to protect the legitimate business interests of Buyer and to prevent unfair advantage being conferred on Seller, and (ii) Buyer would be irreparably damaged if Seller were to breach the covenants set forth in Section 1. Seller further agrees that the covenants and provisions of this Agreement shall be construed as separate agreements independent of any other provision of this Agreement or any other agreement between Seller and Buyer. Seller agrees that the existence of any claim or cause of action by Seller against Buyer, whether based on this Agreement or otherwise, will not constitute a defense to the enforcement by Buyer of the covenants and provisions of this Agreement.

**3. Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither Buyer nor Seller may assign its rights under this Agreement without the prior written consent of the other parties hereto; provided, however, that Buyer may assign its rights hereunder to any direct or indirect parent company or another entity controlled by a direct or indirect parent company, or any acquirer of Buyer's business, whether such acquisition is consummated by merger, asset purchase or otherwise. No Person other than the parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the parties hereto, and the covenants and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto or their respective successors and assigns as permitted hereunder.

**4. Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California, without giving effect to the choice of law principles thereof. Venue shall be in Los Angeles County, California.

**5. Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement will be (a) in writing, (b) delivered to the recipient in person or sent by commercial delivery service or registered or certified mail, postage prepaid and return receipt requested, (a) deemed to have been given on the date received by the recipient (if delivered in

person) on the date set forth in the records of the delivery service (if delivered by commercial delivery service) or on the date of receipt (if delivered by certified mail) and (d) addressed as follows:

If to Seller, to:

Mr. Young C. Kim (Sean)  
Multicultural Radio Broadcasting License, LLC  
40 Exchange Place  
Suite 1010  
New York, New York 10005  
(Tel): 212-431-4300  
(E-mail):

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

Mark N. Lipp, Esq.  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street  
Suite 1100  
Arlington, VA 22209  
(Tel): 703-812-0445  
(E-mail): [lipp@fhhlaw.com](mailto:lipp@fhhlaw.com)

If to Buyer, to:

Mr. Tavis Smiley  
Smile Radio Properties, Inc.  
7610 Beverly Boulevard  
Suite #48154  
Los Angeles, CA 90048  
(Tel): 323-290-4690  
Email: [tsmiley@tavistalks.com](mailto:tsmiley@tavistalks.com)

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

David G. O'Neil, Esq.  
Rini O'Neil, PC  
2101 L Street, NW  
Suite 300  
Washington, DC 20037  
(Tel): 202-955-3931  
(E-mail): [doneil@rinioneil.com](mailto:doneil@rinioneil.com)

**6. Entire Agreement.** This Agreement (and to the extent incorporated herein, the Purchase Agreement) embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought. No failure or delay on the part of party in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

**7. Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by facsimile or other electronic transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

[SIGNATURES BEGIN ON PAGE IMMEDIATELY FOLLOWING]

SIGNATURE PAGE FOR NONCOMPETE AGREEMENT

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

SELLER:

**MULTICULTURAL RADIO BROADCASTING  
LICENSEE, LLC**

By: \_\_\_\_\_  
Young C. Kim (Sean)  
Title:

BUYER:

**SMILEY RADIO PROPERTIES, INC.**

By: \_\_\_\_\_  
Tavis Smiley  
President