

AGREEMENT NOT TO COMPETE

THIS AGREEMENT NOT TO COMPETE (“Agreement”) is made as of October 1, 2020, between **Thomas J. Steel**, a Michigan resident (“Shareholder”) and **Black Diamond Broadcast Group, LLC**, a Michigan limited liability company (“Black Diamond”).

WHEREAS, Steel Broadcasting, Inc., a Michigan corporation (“SBI”) holds the authorizations issued by the Federal Communications Commission (“FCC”) authorizing the operation of AM radio station WMPX, 1490 kHz, Midland, Michigan, FCC Facility ID No. 39673 (the “AM Station”), FM translator station W299CK, Midland, Michigan, FCC Facility ID No. 200080 (the “Translator Station”), and FM radio station WMRX-FM, 97.7 MHz, Beaverton, Michigan (the “FM Station”, and together with the AM Station and the Translator Station, the “Stations” and individually, each is a “Station”);

WHEREAS, SBI conducts a business known as “*Discover Michigan Magazine*,” which is a direct-to-consumer print media distributed throughout the State of Michigan promoting Michigan businesses, including businesses centered around travel, and regional businesses with multiple locations (“Discover Michigan Magazine”);

WHEREAS, SBI and Black Diamond, simultaneously with the execution of this Agreement, have entered into that certain “Option and Asset Purchase Agreement” (the “OAPA”), pursuant to which SBI has agreed to sell to Black Diamond, and Black Diamond has agreed to buy from SBI, the Stations, Discover Michigan Magazine, and associated assets, subject to the exercise of the option stated therein and as described therein under the terms and conditions set forth in the OAPA;

WHEREAS, SBI and Black Diamond, simultaneously with the execution of this Agreement, have entered into that certain Local Programming and Marketing Agreement (“LMA”) pursuant to which SBI has agreed to make available to Black Diamond airtime on the Stations and accept for broadcast the programs of Black Diamond, as well as for Black Diamond

to conduct the business of Discover Michigan Magazine with consultation by SBI, on the terms and conditions set forth in the LMA;

WHEREAS, Shareholder is the sole shareholder of SBI;

WHEREAS, to induce Black Diamond to enter into the LMA and consummate the OAPA, Shareholder is prepared to assure Black Diamond that Shareholder shall not compete with the broadcasting business of the Stations nor the promotion business of Discover Michigan Magazine; and

WHEREAS, all capitalized terms used herein shall have the meanings ascribed to such terms in the LMA unless otherwise defined herein;

NOW, THEREFORE, in consideration of the foregoing, as an inducement to Black Diamond to enter into the LMA and to exercise the option described in the OAPA, in satisfaction of a condition precedent to Black Diamond's willingness to enter into the LMA and to consummate the OAPA, and for other good and valuable consideration, the parties hereto covenant and agree as follows:

1. **Covenants Not to Compete.** During a period of seven (7) years from the Commencement Date as set forth in the LMA (the "Commencement Date"), Shareholder, other than to conduct its oversight of the business of the Stations between the Commencement Date (as set forth in the LMA) and the Closing Date (as set forth in the OAPA), will not at any time compete, directly or indirectly, with Black Diamond in the Geographic Areas as defined below (i) in providing commercial radio broadcasting serving the Saginaw-Bay City-Midland, Michigan Total Survey Area as defined by Nielsen or its successor (the "Radio Geographic Area"), or (ii) in conducting a print media promotional business serving any county within the State of Michigan, excluding Wayne County, Michigan (the "Magazine Geographic Area" and collectively with the Radio Geographic Area, the "Geographic Areas"), in either event, including, without limitation, participating as a director, stockholder, member, or partner of, or having any direct or indirect financial interest (including, without limitation, the interest of a creditor) in, any enterprise which engages in such business or businesses.

2. **Consideration.** In consideration of the covenants not to compete contained herein, Black Diamond promises to pay Shareholder the following (collectively, the “Consideration”): Thirty Thousand Dollars (\$30,000) on or by October 1, 2020; Twenty-Five Thousand Dollars (\$25,000) on or by October 1, 2021; and Twenty-Five Thousand Dollars (\$25,000) on or by October 1, 2023. Such payments shall be made by federal wire transfer of immediately available funds to an account or accounts identified by Shareholder. Provided that Shareholder is substantially in compliance with the covenant not to compete described in Section 1 hereof, all Consideration owing hereunder shall be paid without any setoff or deduction whatsoever and shall be paid without notice or demand.

3. **Default by Black Diamond.** The following shall constitute an event of default by Black Diamond hereunder (“Black Diamond Event of Default”): the failure to pay, when due, any portion of the Consideration or any other sum payable hereunder (whether upon maturity hereof, upon any installment payment date, upon acceleration, or otherwise), and continuance of such failure for ten (10) business days following written notice thereof from Shareholder. Upon the occurrence of such Black Diamond Event of Default hereunder, Shareholder shall have available all rights and remedies available to Shareholder at law or in equity.

4. **Default by Shareholder; Restrictions Reasonable.** The failure of Shareholder in the observance or in the due and timely performance in any material respect of any of its covenants or agreements herein shall constitute an event of default by Shareholder hereunder (“Shareholder Event of Default”). Shareholder acknowledges that the restrictions contained herein are reasonable and necessary to protect the businesses and interests which Black Diamond is conducting pursuant to the LMA and would acquire pursuant to the OAPA, and that any violation of these restrictions will cause substantial irreparable injury to Black Diamond. Shareholder therefore agrees that Black Diamond is entitled, in addition to any other remedies, to preliminary and permanent injunctive relief to prevent a Shareholder Event of

Default or contemplated Shareholder Event of Default, in addition to all available rights and remedies available to Black Diamond at law or in equity.

5. **Waiver.** No delay or failure in exercising any right, power, privilege or remedy under this Agreement or under any other instrument or document given in connection with or pursuant to this Agreement shall impair any such right, power, privilege or remedy or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power, privilege or remedy shall preclude the further exercise of such right, power, privilege or remedy, or the exercise of any other right, power, privilege or remedy.

6. **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 as permitted hereunder. No person or entity 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. Neither this Agreement nor any rights hereunder shall be assignable by either party without the prior written consent of the other party.

7. **Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of Michigan without giving effect to the choice of law provisions thereof. Any action, suit or proceeding brought by any party to this Agreement relating to or arising out of this Agreement or any other agreement, instrument, certificate or other document delivered pursuant hereto (or the enforcement hereof or thereof) must be brought and prosecuted as to all parties in, and each of the parties hereby consents to service of process, personal jurisdiction and venue in, the state and Federal courts of general jurisdiction located in Michigan. The obligations of the parties hereto are subject to all federal, state and local laws and regulations now or hereafter in force and to the Communications Laws and the laws of all other government entities or authorities presently or hereafter to be constituted.

8. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior oral and written agreements, commitments or understandings with respect to the matters provided herein. This Agreement may not be changed orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

9. **Severability.** If any part or any provision of this Agreement shall be invalid or unenforceable under applicable law, said part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this Agreement, which shall be construed as if such invalid parts or provisions had not been inserted.


10. **Headings.** The headings of the paragraphs contained in this Agreement are inserted for convenience only and do not form a part of or affect the meaning, construction or scope thereof.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Delivery of an executed counterpart signature page to this Agreement by facsimile or e-mail shall be deemed sufficient to render this Agreement effective.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement, or has caused this Agreement to be duly executed and delivered in its name on its behalf, all as of the day and year first above written.

SHAREHOLDER

By:  10/1/20
Name: Thomas J. Steel

**BLACK DIAMOND BROADCAST
GROUP, LLC**

By:  10-1-2020
Name: Michael Chires
Title: Co-Managing Member