

**ASSET EXCHANGE AGREEMENT  
BETWEEN  
POSITIVE ALTERNATIVE RADIO, INC.  
AND  
BASE COMMUNICATIONS, INC.**

This Asset Exchange Agreement (hereinafter referred to as the "Agreement") is executed this 21<sup>st</sup> day of April, 2023, by and between Positive Alternative Radio, Inc., a Virginia non-profit corporation ("PAR") and Base Communications, Inc., a Virginia for-profit corporation ("Base").

**RECITALS**

- A. PAR is the licensee of FM Translator Station W246CR (Facility ID 140358) at Christiansburg, Virginia.
- B. Base is the licensee of FM Translator Station W272EA (Facility ID 201380) at Fairlawn, Virginia.
- C. PAR desires to assign to Base its Federal Communications Commission ("FCC") license for translator station W246CR and Base desires to assign to PAR its FCC license for translator station W272EA, including all associated broadcast transmitting equipment and each transmitter site lease agreement.

**AGREEMENT**

**NOW THEREFORE**, for and in consideration of the following mutual covenants and agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PAR and Base hereby mutually covenant and agree as follows:

**ARTICLE I**

**Transfer and Exchange of Assets  
and Delivery of Documents**

Upon the basis of the representations, warranties, covenants and agreements and

on the terms and subject to the conditions set forth in this Agreement, on the Closing Date:

**1.1 PAR Assignment to Base.** PAR shall assign, transfer and convey to Base free and clear of all liens and encumbrances the FCC broadcast station license, associated call sign for W246CR as well as the tangible and intangible assets owned or leased by PAR.

**1.2 Base Assignment to PAR.** Base shall assign, transfer and convey to PAR free and clear of all liens and encumbrances the FCC broadcast station license, associated call sign for W272EA as well as the tangible and intangible assets owned or leased by Base.

**1.3 Assignment and Assumption of Contracts, Operations and Vendor Contracts, Real Property Leases and Tower Leases.** Each agreement that PAR and Base desires to assign to one another to effectuate this asset exchange transaction must be identified prior to the Closing Date.

**1.4 Licenses.** At Closing, PAR shall assign and transfer to Base, and Base shall assign and transfer to PAR, all right, title, interest in, to and under permits, authorizations or licenses issued to each of them by the FCC and any other governmental authority in connection with the operation (or proposed operation) of their respective above-identified stations, together with all FCC logs, reports and records relating thereto, and any renewals or modifications of such items between the date hereof and the Closing Date, and together with any applications filed by the parties and pending on the Closing Date.

**1.5 Condition of permits and licenses & Condition Precedent to Closing.** Each party is assigning the above-referenced FCC licenses and permits to one another "as is" without any representation or warranty as to their suitability, usability or non-interference with other broadcasters, or any other warranty as to the performance or reliability of the same.

**1.6 Transfer of Assets and Delivery of Documents.**

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(1) On the Closing Date, PAR and Base shall deliver to the extent necessary, or cause to be delivered, to the other party the following documentation to transfer all of their right, title and interest in their respective assets to the other party as required herein:

(a) Bills of Sale and Exchange.

(b) Assignment and Assumption Agreements.

(c) Corporate Certification and Resolution. A certification, dated as of the Closing Date, by a corporate officer of PAR certifying the resolutions of the Board of Directors of PAR, identifying the person so authorized to execute and deliver such agreements. A certification of the President of Base certifying the resolutions of the Board of Directors of Base, identifying the person so authorized to execute and deliver such agreements.

(d) Records. To the extent available, originals or copies of all operations, transmissions or maintenance logs and all other records required to be maintained by the FCC with respect to the PAR and Base stations.

(e) Other Documents. Such other documents, instruments and agreements as each party in their buying capacity shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for each respective party.

## **1.8 Closing; FCC Finality.**

Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

(a) Closing Date or Closing means a date to be designated by PAR which shall not be later than the fortieth (40<sup>th</sup>) day after the FCC provides Notice that it has approved and granted the transactions contemplated by this Agreement, provided, however, that,

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in the event of any post-grant protest of the FCC approval, either PAR or Base shall have the option to extend the Closing Date to a date not later than the tenth (10th) business day after the Commission's consent and approval has become a Final Order, as defined below.

(b) Final Order means an Order of the FCC granting its consent and approval to the exchange of licenses and authorizations between PAR and Base, which is no longer subject to rehearing, reconsideration or review by the FCC, or to a request for stay, an appeal or review by any court under the Communications Act of 1934, or the Rules and Regulations of the FCC.

**1.9 Consent of the FCC.** It is specifically understood and agreed that the consummation of this Agreement shall be subject to the prior consent of the FCC without conditions materially adverse to either party. Upon the execution of this Agreement, each party will, at their mutual expense, proceed to expeditiously prepare and file with the FCC the requisite Assignment Applications to secure such consent, together with such other necessary instruments and documents as may be required. The parties further agree to tender the said Applications to the FCC within five (5) business days of the date of execution of this Agreement, and thereafter to prosecute said Applications with diligence, and to cooperate with each other and to use their best efforts to obtain the requisite consent and approval promptly, and to carry out the provisions of this Agreement.

**1.10 Possession and Control of Stations.** Between the date of this Agreement and the Closing Date, neither party shall control the operation of the other party's broadcast station.

**1.11 Section 73.1150 Statement.** Both PAR and Base agree that the other party has retained no rights of reversion of their respective broadcast licenses or permits, no right to the reassignment of their broadcast licenses or permits in the future, and has not reserved the right to use the facilities of their broadcast stations in the future for any reason whatsoever.

**1.12 Compliance With Laws.** Neither party has received any notice asserting

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noncompliance by it in connection with the business or operation of its respective broadcast station with any applicable local, state or federal (including FCC) statute, rule or regulation. Neither party is in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other governmental authority or any other tribunal duly authorized to resolve disputes in any respect material to the transactions contemplated hereby. There are no applications, complaints or proceedings pending or, to the best of either party's knowledge, threatened before the FCC relating to the business and operations of its respective translator station which would have a material adverse effect on the operation of that radio station.

**1.13 Conduct of Business Prior to Closing.** Between the date hereof and the Closing Date, each party will conduct the business of its broadcast station only in the ordinary course, consistent with its past practices, including but not limited to the following:

- (a) the personal property used and useful in the operation of each respective broadcast station will be maintained in normal operating condition and repair;
- (b) no material personal property or real property used and useful in the operation of each respective broadcast station will be sold, transferred or terminated, and no additional material personal property or real property will be acquired, except for acquisitions made in the normal and ordinary course of business;
- (c) no new lien or encumbrance against the assets will be created;
- (d) each party will take all commercially reasonable actions to preserve and maintain the FCC licenses and the intellectual property listed on their respective lists of assets, and will operate their respective broadcast station in compliance with all provisions of the FCC licenses, the Communications Act, and the rules and regulations of the FCC;

**1.14 Indemnification and Release:**

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(a) It is understood and agreed that, unless expressly assumed herein, PAR and Base does not assume and shall not be obligated to pay any liabilities of the other under the terms of this Agreement or otherwise and shall not be obligated to perform any obligations which arise subsequent to the Closing Date or as herein provided. Each party hereunder hereby agrees to indemnify and hold the other, its successors and assigns, harmless from and against the following:

(i) Any and all claims, liabilities and obligations of every kind and description, contingent or otherwise, arising from or related to the operation of their respective broadcast station prior to the close of business on the Closing Date, including, but not limited to, any and all claims, liabilities and obligations arising or required to be performed prior to the close of business on the Closing Date under any contract or instrument assumed by the other hereunder.

(ii) Any and all damages or deficiency resulting from any misrepresentations, breach of warranty or covenant, or nonfulfillment of any agreement or obligation on the part of one party against the other under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished by one party to the other pursuant to this Agreement or in connection with any of the transactions contemplated hereby.

(iii) Any and all actions, suits, proceedings, damages, assessments, judgments, costs and expenses, including reasonable attorneys' fees incident to any of the foregoing provisions.

(b) If any claim or liability shall be asserted against either party hereunder which would give rise to a claim by any one party against the other party for indemnification under the provisions of this Paragraph, the first party shall promptly notify the other party (second party) in writing of the same and the second party shall, at its own expense, defend any such action.

(c) Release. In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, effective upon the Closing Date, each party, on behalf of itself and its officers, directors, shareholders, successors, and assigns (collectively, "Releasers")

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hereby releases, waives, and forever discharges the other party and its respective present and former, direct and indirect, affiliates, employees, officers, directors, members, agents, successors, and assigns (collectively, "Releasees") of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, or equity (collectively, "Claims"), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the Closing Date, except for any surviving obligations under this Agreement. Each Releasor understands that it may later discover Claims or facts that may be different from, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in this Section, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and such Party's decision to enter into it and grant the release contained in this Section. Nevertheless, the Releasors intend to fully, finally, and forever settle and release all Claims that now exist, may exist, or previously existed, as set out in the release contained in this Section, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts.

## **ARTICLE II**

### **Representations, Warranties and Covenants of PAR and Base**

In addition to representations, warranties and covenants made elsewhere in this Agreement, each party represents, warrants and covenants to the other that both as of the date of this Agreement, and as of the Closing Date, each of the following statements are, and shall be, correct and complete with respect to itself. The representations, warranties and covenants of each party shall survive the Closing Date for a period of three (3) years.

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**2.1 Organization and Standing.** Each of PAR and Base is a legal entity organized, existing and in good standing under the laws of the State of their respective jurisdiction, and has all requisite power and authority (corporate and otherwise) to own, lease and operate its properties and assets and to carry on its business as it is currently conducted.

**2.2 Absence of Conflicting Agreements or Required Consents.** The execution, delivery and performance of this Agreement by each party: (1) does not require the consent of any third party; (2) will not violate any provisions of the Company's Articles of Organization (corporate or otherwise) or By-Laws; (3) will not violate any applicable law of any governmental authority to which the Company is a party or by which it or its assets are bound; (4) will not conflict with the terms, conditions or provisions of any agreement to which the Company is now subject; and (5) will not result in the creation of any new encumbrance on any of the Company's assets.

**2.3 Compliance with Permits, Laws, Regulations and Orders.** Each of PAR and Base is in substantial compliance with all material terms of its FCC License or Permit for its respective broadcast station, and, where applicable, has paid all FCC regulatory fees to date with respect to such station to the extent required.

**2.4 Assets.** Each of PAR and Base has, or will have as of the Closing Date, good and marketable title to the assets being transferred under the terms of this Agreement, and such assets shall be free and clear of all liens, pledges, encumbrances, agreements or claims.

**2.5 Adverse Proceedings.** To each of PAR's and Base's knowledge, there are no adverse proceedings (administrative, judicial or otherwise) pending or threatened against them or any of its shareholders, officers, directors or members, especially any that would negatively impact the continued operations of broadcast stations being exchanged hereunder.

**2.6 Authorization and Binding Obligation.** The undersigned officer of each of PAR and Base has the power and authority to enter into and perform, and to bind their respective company to this Agreement and the transactions contemplated hereby, and

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are consistent with all the requisite company actions taken to duly and validly authorize this transaction.

## **2.7 Insurance; Risk of Loss.**

(a) There is presently in full force and effect adequate fire, theft and general casualty insurance in respect to the assets of each of PAR and Base together with general liability insurance covering the business and operation of their respective broadcast stations. Both parties will maintain such insurance in force until the Closing Date, and each party shall disclose proof of said insurance to the other upon request, within a reasonable period of time.

(b) The risk of loss, damage or destruction to any of the property or assets to be transferred to one party from the other hereunder from fire or other casualty or cause shall be borne by holder of that property or assets at all times up to the close of business on the Closing Date. In the event of any such loss, damage or destruction, the proceeds of any claim for any loss, payable under any insurance policy with respect thereto, shall be used to repair, replace, or restore any such property to its former condition. However, in the event that the property is not completely repaired, replaced or restored on or before the Closing Date, the parties may agree to postpone the Closing. If circumstances referenced above require postponement of the Closing for a period of 60 days or more, the parties may agree to rescind this Agreement.

**2.8 Environmental Matters.** To the best knowledge of each of PAR and Base, neither party has knowledge of any hazardous or toxic materials (as hereinafter defined) existing in any structure located on, or exist on or under the surface of, any of the real property or equipment to be conveyed to or leased by either party as a result of the transaction proposed herein. For purposes of this Agreement, "hazardous or toxic material" shall mean waste, substances, materials, smoke, gas, pollutants, contaminants, asbestos or asbestos related products, PCB's, petroleum, crude oil (or any fraction or distillate thereof) or particular matter designated as hazardous, toxic or dangerous, or requiring special handling, treatment or storage whether or not designated hazardous, toxic or dangerous under any environmental laws. For purposes of this Agreement "environmental law" shall be interpreted to mean the Comprehensive

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Environmental Response Compensation and Liability Act, any successor to such law, and/or any other applicable federal, state, or local environmental, health or safety law, rule or regulation concerning the treating, producing, handling, storing, releasing, spilling, leaking, pumping, pouring, emitting, or dumping of any waste, substance, materials, smoke, gas or particulate matter or imposing liability or standards in connection therewith.

**2.9 Compliance with Bulk Sales Laws; Sales Tax.** Each party hereunder will comply with all bulk sales laws to the extent they may be applicable to this transaction. Neither party collects sales taxes.

### **ARTICLE III**

#### **Termination**

**3.1 Grounds for Termination.** This Agreement may be terminated by either PAR or Base, provided that the party seeking to terminate is not in breach of any of its material obligations under this Agreement, upon the occurrence of any of the following:

- (a) If, on or prior to the Closing Date, the other party breaches any of its material obligations, representations and warranties contained herein, and such breach is not cured by the earlier of the Closing Date or twenty (20) business days after receipt of written notice of breach from the non-breaching party; or
- (b) If either of the FCC Assignment Applications is denied Final Order; or
- (c) If there shall be in effect any judgment, or final decree order that would prevent or make unlawful the consummation of this Agreement; or
- (d) If either party shall become insolvent or unable to pay for its debts as they mature, or shall file a voluntary petition in bankruptcy or a voluntary petition seeking reorganization or to effect a plan or other arrangement with creditors, or shall file an Answer admitting to the jurisdiction of any Bankruptcy Court or

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other sovereign, and the material allegations of an involuntary petition, pursuant to any act of Congress relating the bankruptcy or any act purporting to be amendatory thereof, or shall be adjudicated bankrupt, or shall make an assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its assets, or shall apply for or consent to or suffer the appointment of any receiver or trustee for it or a substantial part of its property or assets; or

- (e) If the Closing has not occurred within one hundred eighty (180) days after the FCC assignment applications are tendered for filing.

## **SECTION IV**

### **Miscellaneous**

**4.1 Benefit.** The parties hereto understand and agree that this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

**4.2 Other Documents.** The parties shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement.

**4.3 Attachments.** All Attachments to this Agreement, including the Option Agreement, shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. If any provision in any Attachment conflicts with or is not consistent with the provisions of this Agreement, the terms of this Agreement shall govern.

**4.4 Entire Agreement.** This Agreement is the only Agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. No alteration, modification or change of this Agreement shall be valid unless by like instrument.

**4.5 Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Virginia.

**4.6 Compliance with the Communications Act and FCC Rules.** The parties agree that the provisions of this Agreement are subject to all applicable requirements under the Communications Act of 1934, as amended (the "Communications Act"), and the rules, regulations and policies of the FCC promulgated thereunder ("FCC Rules"). The parties agree that all actions undertaken pursuant to this Agreement or otherwise on behalf of either party, shall be in full compliance with the requirements of the Communications Act and the FCC Rules, and the parties shall take no action which would be in violation thereof, nor, consistent with the above, will any of the parties take any action or fail to take such action, as the case may be, that could jeopardize the FCC authorizations and licenses held by either party.

**4.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.

**4.8 Headings.** The headings of the Paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit or describe the scope of this Agreement nor the intent of any Paragraph hereof.

IN WITNESS HEREOF, the parties hereto have hereunto set their hands and seals on this Asset Exchange Agreement..

**POSITIVE ALTERNATIVE RADIO, INC.**

By:  \_\_\_\_\_

Brian Sanders  
Executive Vice-President

Date: 4/2/23

**BASE COMMUNICATIONS, INC.**

By:  \_\_\_\_\_

Edward A. Baker  
President

Date: 4-21-2023