

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (“Agreement”) is entered into as of July 11, 2023, by and among Hodges Media, LLC, a Tennessee limited liability company (“Seller”), and MH2 Media, LLC, a Tennessee limited liability company (“MH2”, and SM Athletics, Inc., a Tennessee corporation (“SM Athletics”) (and collectively “Buyer”).

**WHEREAS**, Seller is the licensee of full-power AM station WKGN(AM), Knoxville, Tennessee (FCC Facility No. 68146) and FM translator W289CU, Knoxville, Tennessee (FCC Facility ID No. 201183) (collectively “Stations”), pursuant to licenses and authorizations issued by the Federal Communications Commission (“FCC”);

**WHEREAS**, Seller owns the real estate, tower, and transmitter building used in operation of the Station (the “Tower Site Property”);

**WHEREAS**, Seller and MH2 have entered into a Local Marketing Agreement of even date herewith (the “LMA”), under which MH2 shall have use of the Stations’ airtime beginning on the date hereof;

**WHEREAS**, Seller desires to sell to MH2, and MH2 desires to purchase from Seller the Station Assets (defined below), subject to the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder (collectively, “Communications Laws”); and

**WHEREAS**, Seller desires to sell to SM Athletics, and SM Athletics desires to purchase from Seller, the Tower Site Property.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### **ARTICLE 1 – SALE AND PURCHASE OF STATIONS ASSETS**

1.1 Sale of Stations Assets. On the Closing Date (defined below), subject to the conditions contained herein, Seller shall sell, assign, transfer and convey to MH2, and MH2 shall purchase, assume and accept from Seller the following (collectively the “Stations Assets”):

(a) all licenses, permits, pending applications and other authorizations relating to the Stations, including those set forth on Schedule 1.1(a) (“FCC Licenses”);

(b) all of the equipment, furniture, inventory, and office supplies owned by Seller that is used in operation of the Stations and located at the Tower Site Property, including, without limitation, the items described on Schedule 1.1(b) (“Tangible Personal Property”). For the avoidance of doubt, certain construction materials currently stored at the Tower Site Property that are not described in Schedule 1.1(b) are not used in the operation of the Stations and do not constitute Tangible Personal Property subject to this Agreement;

(c) Seller's right, title and interest in and to any and all of the material contracts and agreements associated with the Stations ongoing operations, including but not limited to customer contracts, vendor contracts, advertising contracts, sponsorship agreements, partnership agreements, and maintenance contracts ("Stations Contracts"), as set forth on Schedule 1.1(c);

(d) all intangible assets of Seller used or useful in the operation of the Stations including Seller's right, title and interest in and to the Stations' call signs, slogans, logos, trademarks, tradenames, copyrights, internet domain names, social media accounts, computer software, warranties, trade secrets and sales and operating plans, including, without limitation, the items described on Schedule 1.1(d) (collectively, "Intangible Property"); and

(e) the Stations' public inspection files, filings with the FCC relating to the Stations, and such other technical information, engineering data, books and records that relate to the Stations and the Stations Assets being conveyed hereunder.

1.2 Sale of Tower Site Property. On the Closing Date (defined below), subject to the conditions contained herein, Seller shall sell, assign, transfer, and convey to SM Athletics, and SM Athletics shall purchase, assume, and accept from Seller the Tower Site Property and any interests therein, including, without limitation, land, easements, air rights, rights of way and fee ownership, buildings, towers, guy wires, anchors, structures, fixtures and improvements owned by Seller and used in connection with the operation of the Station, which are listed and described on Schedule 1.2, and any additions, improvements and alterations thereto made between the date of this Agreement and the Closing Date.

1.3 No Liens. The Stations Assets shall be sold free and clear of all liens, encumbrances, debts, security interests, mortgages, trusts, claims, pledges, charges, covenants, conditions, defects in title or restrictions of any kind ("Liens"), except for: (a) taxes not yet due and payable; (b) liens that will be released at or prior to the Closing Date; (c) statutory landlord's liens and liens for current taxes not yet due and payable (or being contested in good faith); (d) zoning laws and ordinances and similar laws; (e) rights reserved to any governmental authority to regulate the affected property; (f) the Assumed Obligations (defined below); (g) the rights of any grantor under any applicable easement, (including any Liens held thereunder); and (h) inchoate materialmen's, mechanics', workmen's, repairmen's or other Liens arising in the ordinary course of business (collectively, "Permitted Liens").

1.4 Liabilities. Except as expressly stated in this Agreement, Buyer shall not assume or be liable for, and does not undertake or attempt to assume or discharge, any obligation of Seller relating to the Stations arising prior to the Closing Date ("Retained Liabilities"). On the Closing Date, Buyer shall enter into any new contracts required by Schedule 1.1(c) or otherwise required by this Agreement and shall assume the obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date under the Stations Contracts and any other liabilities of Seller to the extent Buyer receives a credit therefor under Section 2.2 (collectively, "Assumed Obligations"). Seller shall not assume or be liable for, and does not undertake or attempt to assume or discharge, any obligation of Buyer relating to the Stations arising after the Closing Date ("Assumed Liabilities").

1.5 Excluded Assets. Seller shall not sell, assign, or transfer to Buyer: (i) any assets, of whatever kind or nature, which are held by Seller and used in connection with the operations of any station or stations other than the Stations, or (ii) the following assets relating to the Stations (“Excluded Assets”):

(a) Cash on hand and in bank and investment accounts (or their equivalents) and prepaid expenses;

(b) All rights of Seller under all contracts of insurance and insurance proceeds of settlement and insurance claims made by Seller relating to property or equipment repaired, replaced, restored by Seller prior to the Closing Date;

(c) Any or all pension, profit sharing plans and trusts and the assets thereof and any employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller; and

(d) Those assets identified in Schedule 1.5(d).

1.6 Allocation. On or before the Closing, Seller and Buyer will allocate the Purchase Price (defined below) for tax purposes in accordance with the fair market values of the Stations Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (“Code”).

## ARTICLE 2 – CONSIDERATION

2.1 Consideration. The Station Purchase Price for the sale, assignment, transfer, and conveyance of the Stations Assets shall be Two Hundred Thousand U.S. Dollars (\$200,000.00) (the “Station Purchase Price”), and the Tower Purchase Price for sale, transfer, and conveyance of the Tower Site Property shall be Two Hundred Fifty Thousand U.S. Dollars (\$250,000.00) (the “Tower Purchase Price”), which shall be paid as follows:

(a) Concurrently herewith, SM Athletics shall deposit the amount of Forty-Five Thousand U.S. Dollars (\$45,000.00) (the “Escrow Deposit”) with Fletcher, Heald & Hildreth, PLC (“Escrow Agent”), which will be held in Escrow until the Closing (defined below). The Escrow Deposit shall be disbursed to Seller and credited against the Tower Purchase Price at closing, or otherwise disbursed in accordance with the terms of the Escrow Agreement attached hereto as Exhibit A.

(b) At the Closing, SM Athletics shall pay Seller, by wire transfer of immediately available funds, the sum of Two Hundred and Five Thousand U.S. Dollars (\$205,000.00), subject to adjustment pursuant to Section 2.2 (“Cash Amount”).

(c) At the Closing, MH2 shall pay Seller, by wire transfer of immediately available funds, the sum of Two Hundred Thousand U.S. Dollars (\$200,000.00), subject to adjustment pursuant to Section 2.2 (“Station Cash Amount”).

2.2 Prorations and Adjustments. The parties agree to prorate all items of income and expenses arising out of the operation of the Stations which are incurred, accrued or payable, as of

11:59 p.m. local time of the day preceding the Closing (“Effective Time”). The items to be prorated may include, but are not limited to, accrued but unpaid commissions to employees of Seller hired by Buyer at the Closing, power and utilities charges, security deposits (to the extent any such deposit is assigned to the benefit of the other party hereunder), and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with any final settlement and payment to be made within forty-five (45) days after the Closing Date. It is understood and agreed that all salaries, wages, sales commissions, fringe benefit accruals and termination or severance pay for employees of Seller who are not hired by Buyer shall be the sole responsibility of Seller.

(a) Tower Site Property Adjustments. The Buyer and Seller agree that Two Hundred Fifty Thousand Dollars (\$250,000.00) of the Purchase Price is being allocated by Buyer to purchase the Tower Site Property from Seller (“Tower Site Property Consideration”). Buyer’s financing is contingent upon the Tower Site Property being appraised at a value of Two Hundred Fifty Thousand Dollars (\$250,000.00) (“Target Appraisal Value”). Immediately prior to Closing, Buyer shall have the Tower Site Property appraised by a third party to determine the value of the Tower Site Property (“Actual Appraisal Value”). Should the Actual Appraisal Value be less than the Target Appraisal Value (“Appraisal Shortfall”), then the Tower Site Property Consideration (and, therefore, the overall Purchase Price) shall be automatically reduced by the Appraisal Shortfall up to a maximum amount of Twenty-Five Thousand Dollars (\$25,000.00). Should the Appraisal Shortfall exceed Twenty-Five Thousand Dollars (\$25,000.00), then the Buyer and Seller agree to negotiate a revised Purchase Price in good faith (“Revised Purchase Price”). The Buyer and Seller shall have thirty (30) days to negotiate the Revised Purchase Price. Should the Actual Appraisal Value be more than the Target Appraisal Value (“Appraisal Surplus”), then the Tower Site Property Consideration (and, therefore, the overall Purchase Price) shall automatically increase by the Appraisal Surplus up to a maximum amount of Twenty-Five Thousand Dollars (\$25,000.00). If the Buyer and Seller fail to reach a mutually agreed to Revised Purchase Price within the thirty (30) day period, this Agreement shall automatically be deemed terminated by mutual consent pursuant to Section 10.1(a) of this Agreement, and the Termination Effects outlined in Section 10.2 shall occur.

### **ARTICLE 3– FCC CONSENT**

3.1 FCC Consent. The transactions contemplated hereby are expressly conditioned on, and subject to, the prior consent and approval of the FCC to the assignment of the FCC Licenses from Seller to Buyer (“FCC Consent”).

3.2 FCC Application.

(a) Within ten (10) business days after the date of this Agreement, Seller and Buyer shall prepare, execute and submit its respective portion of the assignment application for the FCC Consent (“FCC Application”). Seller and Buyer further agree to prepare amendments to the FCC Application whenever such amendments are required by the FCC. Seller and Buyer shall prosecute the FCC Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Application as expeditiously as reasonably practicable. In the event any objections or challenges to the FCC Application or any requests for reconsideration or review of the FCC Consent are filed at the FCC, Seller and Buyer shall cooperate with respect to any responses thereto. Except as otherwise provided herein, Seller and Buyer will be solely responsible for the expenses incurred by it in the preparation, filing and

prosecution of its respective portion of the FCC Application; however, the fees to be paid to the FCC in conjunction with the filing of the FCC Application will be shared equally by Seller and Buyer.

(b) Neither Seller nor Buyer shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent. Seller and Buyer shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby.

#### **ARTICLE 4 – CLOSING**

4.1 Closing. The consummation of the transactions contemplated herein (the “Closing”) shall take place on the later of: (a) ten (10) business days after the date that the FCC has issued the FCC Consent; and (b) the date on which each of the other conditions to Closing set forth herein have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time). The date on which the Closing is to occur is referred to herein as the “Closing Date.”

#### **ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents, warrants, and covenant to Buyer as follows:

5.1 Organization and Standing. Seller is duly organized, validly existing and in good standing under the laws of the state of Tennessee.

5.2 Authority.

(a) Seller has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates, and instruments delivered or to be delivered hereunder by Seller (collectively, the “Seller Documents”), to perform each of its obligations thereunder, and to consummate the transactions contemplated thereby. Each of the Seller Documents has been, or at or prior to the Closing will be, as the case may be, duly executed and delivered by Seller, and constitutes, or will constitute at the Closing, a valid and binding obligation of Seller enforceable against Seller in accordance with its respective terms.

(b) The execution and delivery by Seller of the Seller Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of Seller’s organizational documents; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, including the Station Contracts, or any other material agreement, indenture, covenant, instrument, license or permit by which Seller is bound; (iii) create any Lien, except for Permitted Liens; or (iv) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Seller.

5.3 No Defaults. Neither the execution, delivery and performance by Seller of this Agreement nor the consummation by Seller of the transactions contemplated hereby is an event that, of itself or with the giving of notice or the passage of time or both, will: (a) violate any judgment, decree, order, statute, law, rule or regulation of any court, arbitrator or government or regulatory body applicable to Seller, the Stations Assets, or the Stations; or (b) result in the creation or imposition of any Lien, except for Permitted Liens, against the Stations Assets or the Stations.

5.4 Litigation. There is no action, suit, or proceeding pending or, to Seller's knowledge, threatened against Seller, which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Seller to perform its obligations hereunder. Except for any Litigation disclosed in Schedule 5.4, there are no known actions, suits or proceedings pending which could materially adversely affect the Buyer in using the Stations Assets.

5.5 FCC Licenses. Schedule 1.1(a) hereto contains a true and complete list of the FCC Licenses. The FCC Licenses listed are all the licenses, permits, pending applications and other authorizations needed to operate the Stations. Seller is the authorized legal holder of the FCC Licenses. The FCC Licenses are in full force and effect, unimpaired by any act or omission of Seller. No proceedings are pending or to Seller's knowledge, threatened (other than proceedings applicable to the radio industry as a whole) nor, to Seller's knowledge, do any facts exist which may reasonably result in the revocation or materially adverse modification of any of the FCC Licenses

5.6 Tangible Personal Property. Schedule 1.1(b) hereto contains a true and complete list of the Tangible Personal Property being sold to Buyer. Seller: (a) is the owner of all the Tangible Personal Property it purports to own, (b) has a valid leasehold interest in the Tangible Personal Property it purports to lease, and (c) has a valid license right (whether as a licensor or licensee) in the Tangible Personal Property it purports to license, in all cases free and clear of any Liens, except for Permitted Liens. The Tangible Personal Property are in operating condition and capable of being used for their intended purposes, ordinary wear and tear and routine maintenance excepted.

5.7 Stations Contracts. Schedule 1.1(c) contains a list of all contracts, leases and agreements that are used in the operation of the Stations other than agreements for the sale of advertising time entered into in the ordinary course of business. Each of the Stations Contracts is in effect and is binding upon Seller and, to Seller's knowledge, the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally).

5.8 Intangible Property. Schedule 1.1(d) contains a description of the Intangible Property, To Seller's knowledge:

(a) the business of the Stations is not infringing, misappropriating, or otherwise violating any intellectual property owned by any third party; and



(b) there are no actions by or before any court or any governmental authority which are pending or threatened regarding or disputing the ownership, registrability or enforceability, or use by Seller, of any Intangible Property. Seller is not a party to any outstanding order that restricts, in a manner material to the business of the Stations, the use or ownership of any Intangible Property.

(c) (d) the Intangible Property listed in Schedule 1.1(d) includes all software, systems, and information technology equipment used or held for use in connection with the operation of the Stations.

5.9 Tower Site Property. Schedule 1.1(f) includes a description of the real property included in the Tower Site Property owned by Seller and used in connection with operation of the Station (the “Real Property”). Seller has fee simple title to the Real Property free and clear of liens except the security interests as described in Schedule 1.1(f) hereof, if any, which security interests will be released on or before Closing, and except for Permitted Liens (as defined in Section 1.2). The Real Property provides unrestricted access to the Station’s facilities. To Seller’s knowledge, the Real Property is not subject to any suit for condemnation or other taking by any public authority. To Seller’s knowledge, there is no condition on the Real Property which violates any county, state or federal environmental law or regulation. To the Seller’s knowledge, all Real Property located on the Tower Site Property, including without limitation, the buildings, the towers, satellite dish, guy wires, anchors, structures, fixtures and improvements are in operating condition and capable of being used for their intended purposes, ordinary wear and tear excepted. To Seller’s knowledge, there are no underground storage tanks, PCBs or asbestos located on the Real Property or in any equipment or other facilities located on the Real Property.

5.10 Stations Operations. The Tangible Personal Property together with the Tower Site Property and Real Property include all of the assets and properties that are necessary and sufficient for the operation of the Stations as historically conducted, subject to standard maintenance consistent with the historical operation of the Stations and useful life of such assets and properties.

5.11 Insurance. All the material Stations Assets that are insurable are insured against loss, injury, or damage consistent with the insurance policies and limits listed in Schedule 5.11.

5.12 Taxes. Seller has previously delivered to Buyer true and complete copies of its tax returns for fiscal years ended 2018, 2019 2020, 2021, and 2022, included as Schedule 5.12. Seller has filed all federal, state, and local income, franchise, sales, use, property, excise, payroll, and other tax returns and forms required to be filed under applicable law, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid with respect to the Stations that have become due and payable.

5.13 Absence of Insolvency. No insolvency proceedings of any character including bankruptcy, receivership, reorganization, composition or arrangements with creditors, voluntary or involuntary, affecting Seller or any of the Stations Assets, are pending or, to the best knowledge of Seller, threatened, and Seller has not made any assignment for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

5.14 No Broker. There is no broker, finder or other person or entity who would have any valid claim through Seller against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by Seller.

5.15 Financial Statements.

(a) Seller has previously delivered to Buyer true and complete copies of its: (i) balance sheets and statements of income, retained earnings and cash flows as of and for its fiscal years ended 2018, 2019 2020, 2021, and 2022, including all applicable footnotes, included as Schedule 5.15(a); and (ii) interim balance sheets and statements of income, retained earnings and cash flows as of and for the five month period ended May 31, 2023 (the "Current Financial Statements" and, together with the items described in clause (i) above, the "Financial Statements"). The Financial Statements present fairly in all material respects the financial condition of Seller as at the end of the covered periods and the results of its operations and its cash flows for the covered periods.

(b) Except as and to the extent disclosed in the Current Financial Statements or on Schedule 5.15(b), Seller has no Liabilities other than (i) executor obligations under Seller agreements that are not required to be set forth in the Current Financial Statements in accordance with GAAP and (ii) Liabilities incurred in the ordinary course of business since June 1, 2023 (the "Financial Statement Date").

5.16 Absence of Certain Changes. Since June 1, 2023, except as set forth in Schedule 5.16, Seller has operated the Stations only in the ordinary course of business consistent with past practice, except for actions taken in respect of this Agreement.

## **ARTICLE 6– REPRESENTATIONS AND WARRANTIES OF BUYER**

MH2 and SM Athletics hereby jointly represent, warrant, and covenant to Seller as follows:

6.1 Organization and Standing. Each Buyer is duly organized, validly existing and in good standing under the laws of the state of Tennessee.

6.2 Authority.

(a) Each Buyer has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates, and instruments delivered or to be delivered hereunder by Buyer (collectively, the "Buyer Documents"), to perform each of its obligations thereunder, and to consummate the transactions contemplated thereby. Each of the Buyer Documents has been, or at or prior to the Closing will be duly executed and delivered by Buyer and constitutes, or will constitute at the Closing, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms.

(b) The execution and delivery by Buyer of the Buyer Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of Buyer's organizational documents; (ii) constitute or



result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Buyer is bound; (iii) create any Lien, except for Permitted Liens; or (iv) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Buyer.

6.3 No Defaults. Neither the execution, delivery and performance by Buyer of this Agreement, nor the consummation by Buyer of the transactions contemplated hereby is an event that, of itself or with the giving of notice or the passage of time or both, will violate any judgment, decree, order, statute, law, rule or regulation of any court, arbitrator or government or regulatory body applicable to Buyer.

6.4 Litigation. There is no action, suit, or proceeding pending or, to either Buyer's knowledge, threatened against either Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

6.5 Absence of Insolvency. No insolvency proceedings of any character including bankruptcy, receivership, reorganization, composition or arrangements with creditors, voluntary or involuntary, affecting either Buyer are pending or, to the best knowledge of either Buyer, threatened, and neither Buyer has made any assignment for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

6.6 No Broker. There is no broker, finder or other person or entity who would have any valid claim through Buyer against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, Buyer.

6.7 Qualification. To each Buyer's knowledge: (a) each Buyer is legally, financially, and otherwise qualified to be the licensee of the Stations under the Communications Laws; (b) there are no facts that would, under the Communications Laws, disqualify Buyer as the assignee of the FCC Licenses or that that would reasonably be expected to delay the FCC's processing of the FCC Application because of Buyer's qualifications; and (c) no waiver of or exemption from any existing Communication Law on the part of Buyer is necessary for the FCC Consents to be obtained.

6.8 Financing. SM Athletics and MH2 have each secured financing or obtained a commitment for financing from a reputable financial institution in an amount sufficient to cover the Tower Purchase Price and Station Purchase Price, respectively. SM Athletics and MH2 have delivered to Seller documentation evidencing the loans or commitments.

## **ARTICLE 7 – COVENANTS**

7.1 Covenants of Seller Pending Closing. Seller covenants and agrees that, from the date hereof until the completion of the Closing:

(a) Representations and Warranties. Seller shall give detailed written notice to Buyer promptly on learning of the occurrence of any event that would cause or constitute a breach, or that would have caused a breach had such event occurred or been known to Seller on or before the date of this Agreement, of any of Seller's representations or warranties contained in this Agreement or in any Schedule attached hereto. Any such notice to Buyer, similar informal notice by Seller to Buyer, or independent investigation, examination, or other source of information regarding a breach of Seller's representations and warranties shall not in any way diminish or obviate any representations or warranties of Seller made in this Agreement, the Schedules and documents delivered pursuant to this Agreement.

(b) Notice of Proceedings. Seller will promptly notify Buyer in writing on: (a) receiving notice of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement or the transactions contemplated hereunder; or (b) receiving any notice from any governmental department, court, agency or commission of its intention (i) to institute an investigation into, or institute a suit or proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated.

(c) Consummation of Agreement. Subject to the provisions of Section 10.1 of this Agreement, Seller shall use its best efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement and use its best efforts to cause the transactions contemplated by this Agreement to be fully carried out.

(d) Publicity. Seller shall not issue or cause the publication of any press release or any other public statement or any correspondence or other communication with respect to the execution and Closing of this Agreement unless Buyer shall have had the prior opportunity to review and comment thereon and such release or statement has been consented to by Buyer.

7.2 Covenants of Buyer Pending Closing. Buyer covenants and agrees that, from the date hereof until the completion of the Closing:

(a) Representations and Warranties. Buyer shall give detailed written notice to Seller promptly on learning of the occurrence of any event that would cause or constitute a breach, or that would have caused a breach had such event occurred or been known to Buyer on or before the date of this Agreement, of any of Buyer's representations or warranties contained in this Agreement or in any Schedule attached hereto. Any such notice to Seller, similar informal notice by Buyer to Seller, or independent investigation, examination, or other source of knowledge by Seller regarding a breach of Buyer's representations and warranties shall not in any way diminish or obviate any representations or warranties of Buyer made in this Agreement, the Exhibits, Schedules and documents delivered pursuant to this Agreement.

(b) Notice of Proceedings. Buyer will promptly notify Seller in writing on: (a) becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement or the transactions contemplated hereunder; or (b) receiving any notice from any governmental department, court, agency or commission of its intention (i) to institute an investigation into, or institute a suit or proceeding to restrain or enjoin, the consummation of this Agreement or such transactions, or (ii) to nullify or render ineffective this Agreement or such transactions if consummated.

(c) Consummation of Agreement. Subject to the provisions of Section 10.1 of this Agreement, Buyer shall fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement and to cause the transactions contemplated by this Agreement to be fully carried out.

(d) Publicity. Buyer shall not issue or cause the publication of any press release or any other public statement or any correspondence or other communication with respect to the execution and Closing of this Agreement unless Seller shall have had the prior opportunity to review and comment thereon and such release or statement has been consented to by Seller.

(e) Confidentiality Any and all information, disclosures, knowledge or facts regarding Seller and the Assets received by Buyer (including, without limitation, any of Buyer's Representatives) pursuant to or in connection with this Agreement, shall be confidential and shall not be divulged, disclosed or communicated to any other Person, except as required by law and to Buyer's Representatives and their respective attorneys for the purpose of consummating the transactions contemplated by this Agreement. Buyer shall be responsible for any breach of confidentiality by any such Person. If this Agreement terminates before Closing, Buyer shall return promptly any information obtained regarding Seller or the Assets and Buyer shall instruct its Representatives also to return any such information.

## **ARTICLE 8 – CONDITIONS**

8.1 Conditions Precedent to Seller's Obligations. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Seller shall have waived in writing satisfaction of such condition (other than either FCC Consent, which cannot be waived):

(a) the representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date;

(b) Buyer shall have performed and complied in all material respects with all covenants, agreements and undertakings required by this Agreement to be performed or complied with prior to the Closing;

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer to the effect that the conditions set forth in Sections 8.1(a) and 8.1(b) have been satisfied;

(d) Buyer shall have delivered to Seller customary instruments of conveyance as shall be effective to transfer title of the Stations Assets to Buyer, including but not limited to, assignment and assumption agreements for the FCC Licenses and the Stations Contracts, and certified copies of appropriate resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Buyer of this Agreement, and the consummation of the transaction contemplated hereby;

(e) the FCC Consent shall be effective; and

(f) Buyer shall have delivered the Escrow Deposit, the Station Cash Amount, and the Tower Cash Amount to Seller.

8.2 Conditions Precedent to Buyer's Obligations. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Buyer shall have waived in writing satisfaction of such condition (other than either FCC Consent, which cannot be waived):

(a) the representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date;

(b) Seller shall have performed and complied in all material respects with all covenants, agreements and undertakings required by this Agreement to be performed or complied with prior to the Closing;

(c) Buyer shall have received certificates dated as of the Closing Date from Seller to the effect that the conditions set forth in Sections 8.2(a) and 8.2(b) have been satisfied;

(d) Seller shall have delivered to Buyer customary instruments of conveyance as shall be effective to transfer title of the Tower Site Property and Stations Assets to Buyer, including but not limited to, a Warranty Deed, bill of sale, assignment and assumption agreements for the FCC Licenses and the Stations Contracts, and certified copies of appropriate resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Seller of this Agreement, and the consummation of the transaction contemplated hereby;

(e) the FCC Consent shall be effective; and

(f) The Tower Site Property shall have been appraised at a value of Two Hundred and Fifty Thousand Dollars (\$250,000) or more or adjusted pursuant to Section 2.2(a); and

(g) all non-Permitted Liens on the Stations Assets shall have been released.

## ARTICLE 9 – FEES AND EXPENSES; INDEMNIFICATION

9.1 Expenses. Except as set forth below, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation and preparation of this Agreement, and the transactions contemplated thereby.

### 9.2 Indemnification.

(a) Following the Closing, Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees) (collectively, "Claims") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations or warranties, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement; (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the Stations Assets or Seller's ownership of the Stations prior to the Closing; and (iii) the Retained Liabilities and the Excluded Assets.

(b) Following the Closing, Buyer shall indemnify, defend and hold harmless Seller with respect to any and all Claims asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations or warranties, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in this Agreement; (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the Stations Assets or Buyer's ownership of the Stations after to the Closing; and (iii) the Assumed Liabilities.

(c) The indemnities of Seller and Buyer in (a)(i) and (b)(i), respectively above, shall be limited such that no claim may be made by an indemnified party until the total of Claims shall equal or exceed Five Thousand Dollars (\$5,000), and then a claim may be made for the amount of Claims including the Five Thousand Dollars (\$5,000). Except for claims based on fraud or willful misconduct, in the aggregate, neither Seller nor Buyer shall be liable for Claims in respect of the indemnities in excess of the Purchase Price.

(d) Except for claims based on fraud or willful misconduct, the right to indemnification under this Section 9.2 shall be the exclusive remedy of any party in connection with any breach or default by another party under this Agreement occurring after the Closing Date or with respect to any ancillary document executed and/or delivered in connection with Closing under this Agreement. No party shall have any liability to another party under any circumstances for special, consequential, punitive, or exemplary damages, unless such special, consequential, punitive or exemplary damages are included in any governmental order entered against the indemnified party arising out of a claim by a third party against the indemnified party for which the indemnified party is entitled to seek indemnification pursuant to this Section 9.2.

## ARTICLE 10 – TERMINATION RIGHTS

10.1 Termination. This Agreement may be terminated, by written notice given by either party (provided such party is not in breach of any of its obligations, representations, warranties or duties hereunder) to the other party hereto, at any time prior to the Closing Date as follows:

- (a) by mutual written consent of the parties hereto;
- (b) by either Seller or Buyer if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become a “Final Order”, meaning an action: (x) that has not been vacated, reversed, stayed, enjoined, set aside, annulled or suspended; (y) with respect to which no request for stay, motion or petition for rehearing, reconsideration or review, or application or request for review or notice of appeal or *sua sponte* review is pending; and (z) as to which the statutory or regulatory time for filing any such request, motion, petition, application, appeal or notice, and for any reconsideration, stay or setting aside by the court or agency on its own motion or initiative, has expired.
- (c) by Seller if Buyer fails to perform or breaches any of its obligations, representations, warranties, covenants or duties under this Agreement and Buyer has not cured such failure to perform or breach within ten (10) days after receipt by Buyer of written notice from Seller;
- (d) by Buyer if Seller fails to perform or breaches any of its obligations, representations, warranties, covenants or duties under this Agreement, and Seller has not cured such failure to perform or breach within ten (10) days after receipt by Seller of written notice from Buyer;
- (e) by Seller or Buyer if the FCC by Final Order: (i) dismisses the FCC Application; (ii) denies the FCC Application; or (iii) designates the FCC Application for an evidentiary hearing; provided that the right to terminate this Agreement under this Section 10.1(e) shall not apply to any party whose action or inaction in fulfilling a material obligation under this Agreement shall have been a cause for the failure of the FCC to dismiss, deny or designate for hearing the FCC Application; or
- (f) by Seller or Buyer if the FCC has not granted the FCC Application by the twelve (12) month anniversary of the date hereof, provided that the right to terminate this Agreement under this Section 10.1(f) shall not apply to any party whose action or inaction in fulfilling a material obligation under this Agreement shall have been a cause for the failure of the FCC to grant the FCC Application during such twelve (12) month period.

10.2 Effect of Termination. Upon termination of this Agreement, neither Seller nor Buyer shall have any liability to the other party, and this Agreement in its entirety shall be deemed null, void, and of no further force and effect, except as provided in Section 11.6. In the event of



termination of this Agreement, each party shall bear its own expenses. Upon a termination of this Agreement by Seller pursuant to Section 10.1(c), the sole remedy for a breach by Buyer shall be to retain the Escrow Deposit as liquidated damages. Seller and Buyer each acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyer's breach of any of its material obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty. Upon a termination of this Agreement for any reason, other than by Seller pursuant to Section 10.1(c), the Escrow Deposit shall be returned to Buyer.

## **ARTICLE 11 – MISCELLANEOUS PROVISIONS**

11.1 General. This Agreement and the Schedules attached hereto and the ancillary documents provided for herein, constitute the entire agreement and understanding of the parties hereto relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to the matters provided for herein. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. All notices or other communications required or desired to be given hereunder by any party shall be in writing to the applicable address set forth on the signature page and shall be deemed to have been given if delivered personally (including by a nationally-recognized overnight delivery service), or five (5) business days after being deposited in the U.S. mail if mailed via registered or certified mail, return receipt requested, postage prepaid to the subject party, or via electronic mail, with proof of delivery.

11.2 Construction. The language used in this Agreement will be deemed to be language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

11.3 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement or (b) diminish the benefits or burdens of this Agreement.

11.4 Assignment. This Agreement and the parties' rights or obligations hereunder shall not be assigned without the prior written consent of the non-assigning party, provided, however, that either party may assign its rights hereunder to a party under common control as long as such assignment is not reasonably expected to materially delay the processing by the FCC of the FCC Application. This Agreement shall be binding upon and inure only to the benefit of the parties hereto and their respective successors and assigns.

11.5 Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.6 Survival. The representations and warranties in this Agreement shall survive for a period of twelve (12) months from the Closing Date, whereupon they shall expire and be of no further force or effect, except for those covenants and agreements in this Agreement that are to be performed after the Closing, which shall survive until performed.

11.7 Waivers. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.8 No Third-Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

11.9 Governing Law. The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Tennessee (exclusive of those relating to conflicts of laws). Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated only in the courts of the State of Tennessee. The parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them.

11.10 Notices. Any notice required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be: (a) personally delivered; (b) sent by electronic mail with delivery confirmation; or (c) sent to the parties at their respective addresses by registered or certified U.S. mail, return receipt requested and postage prepaid, as set forth below:

If to Seller:

Hodges Media, LLC  
Attn: Nate Hodges  
729 Hidden Glen Lane  
Knoxville, TN 37922  
Email: natehodges@sportsradioknoxville.com

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

Fletcher, Heald & Hildreth, P.L.C.  
Attn: Seth L. Williams  
1300 17th Street North, Suite 1100  
Arlington, VA 22209

Email: [williams@fhhlaw.copm](mailto:williams@fhhlaw.copm)

If to Buyer:

MH2 Media  
Attn: Ryan Brown  
1125 Ansley Wood Way  
Knoxville, TN 37923

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

Law Office of Brandon Pittard  
Attn: Brandon Pittard  
7705 Saddle Up Drive  
Austin, TX 78724  
[brandon@pittardlawoffice.com](mailto:brandon@pittardlawoffice.com)

[Remainder of page left intentionally blank. Signature page follows.]

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

**SELLER:**

Hodges Media, LLC

By:   
Nate Hodges  
CEO

**BUYER:**

MH Media, LLC

By:   
Nate Hodges  
CEO