

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is made and entered into effective as of the ___ day of September, 2023, by and among **SUDBURY SERVICES, INC.** (“Sudbury”), **PHOENIX BROADCASTING GROUP, INC.** (“Phoenix”), and **NEWPORT BROADCASTING COMPANY** (“Newport”), each an Arkansas corporation (collectively, “Sellers”), and **BOBBY D. CALDWELL REVOCABLE TRUST**, a Trust formed under the laws of the State of Arkansas (“Buyer”). Buyer and Seller are each individually referred to as a “Party” and collectively as the “Parties.”

Recitals

WHEREAS, Sudbury is the licensee of Station KHLS(FM), Facility No. 63607, Blytheville, Arkansas; Phoenix is the licensee of Stations KAMJ(FM), Facility No. 24666, Gosnell, Arkansas and KQXF(FM), Facility No. 52904, Osceola, Arkansas; and Newport is licensee of Stations KNBY(AM), Facility No. 48750, Newport, Arkansas, KOKR(FM), Facility No. 48743, Newport, Arkansas, and KOSE(AM), Facility No. 52901, Wilson, Arkansas (together the “Stations”), which are each authorized to operate pursuant to licenses (the “Stations’ Licenses”) issued by the Federal Communications Commission (“FCC” or “Commission”); and

WHEREAS, Stations KNBY, KOSE, KQXF, and KOKR currently are silent; and

WHEREAS, Buyer wishes to purchase, and Sellers wish to sell and assign, all assets and licenses relating to the Stations as set forth below, subject to the prior approval of the FCC and the other terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and covenants set forth below, the parties hereby agree as follows:

Section 1 Purchase of Assets

1.1 **Assets to be Sold.** On the Closing Date (as defined in Section 2.1 below), Sellers shall sell and assign to Buyer, and Buyer shall purchase and assume from Sellers, all of the assets and licenses used or held for use in the operations of the Stations (the “**Stations’ Assets**”) including, but not limited to, the following:

(a) All of Sellers’ rights and interests in and to the Stations’ Licenses, including those listed on **Schedule 1.1(a)**;

(b) All owned real property used or held for use in the operations of the Stations, and all of the Sellers' appurtenant easements, fixtures, and improvements located thereon, described in **Schedule 1.1(b)** (the "Owned Real Property");

(c) All leased real property used or held for use in the operations of Station KQXF(FM), described in **Schedule 1.1(c)**, and all of the Sellers' appurtenant easements, fixtures and improvements located thereon, (the "Leased Real Property");

(d) All of the Stations' transmission and studio equipment (including, but not limited to, the equipment listed in **Schedule 1.1(d)** (the "Tangible Personal Property");

(e) All intangible personal property listed on **Schedule 1.1(e)**.

(f) Excluded from the Assets to be sold to Buyer and from the definition of Assets as used herein shall include (i) any assets of Sellers that are not used in conjunction with the operation of the Stations listed on **Schedule 1.1(f)**; (ii) any employment contracts or obligations regarding any personnel working at or for the Stations prior to the Closing Date; (iii) any and all contracts of insurance or insurance proceeds and insurance claims made by Sellers relating to property or equipment repaired, replaced, or restored by Sellers prior to the Closing Date; (iv) the studio buildings using in conjunction with the operation of the Stations; and (v) Sellers' accounts receivable.

1.2 **Liabilities.** Except for obligations arising subsequent to the Adjustment Time (as defined in Section 1.5 below) under Contracts and Leases to be assumed (the "Assumed Liabilities"), Buyer expressly does not, and shall not, assume or be deemed to have assumed, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations or commitments of Sellers of any nature whatsoever.

1.3 **Escrow Deposit.** On the date of this Agreement, Buyer shall deliver to Dan J. Alpert as escrow agent (the "Escrow Agent") the sum of **FIFTY-FIVE THOUSAND DOLLARS** (\$55,000.00) in readily available funds to be held by Escrow Agent (the "Escrow Deposit") pending the Closing of the transaction pursuant to the Escrow Agreement, copy of which is attached as Exhibit A. At Closing, the Escrow Deposit shall be applied to the Purchase Price.

1.4 **Purchase Price.** The price to be paid by Buyer for the Stations' Assets shall be **ONE MILLION ONE HUNDRED THOUSAND DOLLARS** (\$1,100,000.00) (the "Purchase Price"), which shall be paid by Buyer at the Closing, by applying the Escrow Deposit to the Purchase Price and remitting the remainder by wire transfer in immediately available funds.

1.5 **Adjustments.** Except as otherwise provided herein, all income and expenses arising from Sellers' ownership of the Stations' Assets to be conveyed hereunder shall be prorated between Buyer and Sellers in accordance with U.S. generally accepted accounting principles as of 12:01 a.m., Central Time, on the Closing Date ("Adjustment Time"), on the basis that all income and expenses which accrue prior to the Adjustment Time are for the account of Sellers, and all

income and expenses which accrue after the Adjustment Time are for the account of Buyer. Such prorations shall include, without limitation, all rent, utility charges, business and license fees, music and other license fees currently paid by Sellers, FCC regulatory fees, accrued but unpaid commissions and similar prepaid and deferred items attributable to the ownership of the Stations or the Stations' Assets. It is understood and agreed that all salaries, wages, sales commissions, fringe benefit accruals and termination or severance pay for employees of Sellers who are not hired by Buyer shall be the sole responsibility of Sellers.

1.6 **Allocation.** The Purchase Price shall be allocated to the Stations' Assets in accordance with **Schedule 1.6**. Sellers and Buyer shall use such allocation for tax, accounting, and all other purposes including the filing of their respective tax returns reflecting the allocation in accordance with requirements of Section 1060 of the Internal Revenue Code of 1986, as amended.

Section 2

Date, Time, and Place of Closing

2.1 **Assignment Applications.** The assignment of the Stations' Licenses from Sellers to Buyer as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent") pursuant to three contingent applications by Sellers and Buyer (the "Assignment Applications"). The Assignment Applications shall be filed by Sellers and Buyer within ten (10) calendar days following the date of this Agreement (unless the terminal day falls on a holiday, in which case, the Assignment Applications must be filed by the first business day following the holiday) and thereafter Buyer and Sellers shall each fully prosecute the Assignment Applications with all diligence and shall otherwise use their best efforts to obtain the grant of such applications as expeditiously as practicable. Neither Buyer nor Sellers 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 (defined below). No Party shall be required hereunder to comply with any FCC condition that would have a material adverse effect on such Party or any affiliated entity. The FCC filing fees for the Assignment Applications shall be initially be paid by Buyer, provided that one-half of the FCC filing fees shall be credited to Buyer at Closing. FCC FY 2023 regulatory fees for the Stations, and, in addition, for Stations KHPA, Facility ID No. 48740, Hope, Arkansas; and KXAR, Facility ID No. 33763, Hope, Arkansas (which are not a part of this transaction), have been advanced to Sellers so that the fees may be paid by the deadline of September 20, 2023. Sellers have used those funds to pay the regulatory fees. Buyer shall receive credit at Closing for the advance of the regulatory fees.

2.2 **Closing Date.** The closing of the transactions contemplated in this Agreement (the "Closing") shall take place subsequent to the date that is ten (10) business days after receipt of the initial consent from the FCC, pursuant to the provisions of Section 12.3 hereof, unless there is an adverse petition filed against the Assignment Applications; in which case, the Closing shall take place within ten (10) business days after the FCC's grant becomes a Final Order. As used in this Agreement, the term "Final Order" means a written action or order issued by the FCC granting the

FCC Consent and (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which (i) no requests have been filed for administrative or judicial review, reconsideration or appeal and the periods provided by statute or FCC regulations for filing any such requests and for the FCC to set aside the action on its own motion have expired, or (ii) in the event of review, reconsideration or appeal, the FCC upholds the action and the period provided by statute or FCC regulations for further review, reconsideration or appeal has expired.

2.3 **Operations Prior to Closing.** Between the date of this Agreement and the Closing Date, Sellers shall have complete control and supervision of and ultimate responsibility for the Stations and their operations, and during such period:

2.3.1 Sellers shall maintain or cause to be maintained the Tangible Personal Property in its present condition in all material respects (reasonable wear and tear in normal use excepted).

2.3.2 Sellers shall maintain the Stations' books and records in the usual and ordinary manner, on a basis consistent with prior periods in all material respects.

2.3.3 Sellers shall comply in all material respects with all laws, rules, ordinances, and regulations applicable to it with respect to the Stations' Assets and to the business and operation of the Stations.

2.3.4 Sellers shall, in all material respects: (i) perform all Assigned Contracts; and (ii) cure all defaults under any Assigned Contracts.

2.3.5 Sellers shall not, without the express written consent of Buyer (i) sell or agree to sell or otherwise transfer, assign, or dispose of any of the Stations' Assets, except that Sellers may dispose of Stations' Assets which are (A) expended in the ordinary course of business and consistent with Sellers' past practice, and (B) are replaced prior to Closing by assets of equal or greater worth, quality, and utility; (ii) change the Stations' call signs; or (iii) enter into any other contract, lease, or agreement that will be binding on Buyer after Closing.

2.3.6 Except for the Stations that are silent, Sellers shall carry on the business and activities of the Stations in the usual and ordinary course of business consistent with Sellers' past business practices.

2.3.7 Subject to the exceptions in **Schedule 2.3.7**, Sellers shall maintain the validity of the Station Licenses and comply in all material respects with the Communications Laws.

2.3.8 Subject to the exceptions in **Schedule 2.3.7**, Sellers shall not permit the Station Licenses listed on **Schedule 1.1(a)** to lapse or to be modified in any material adverse respect.

2.3.9 Buyer shall notify Sellers promptly of any event, circumstance, or occurrence which will be reasonably likely to interfere with the prompt consummation of this transaction at Closing.

2.3.10 Sellers shall promptly notify Buyer of any developments that occur prior to Closing that have or will be reasonably likely to have a material adverse consequence on the Stations' Assets or the operation or condition of the Stations; *provided, however*, that Sellers' compliance with the disclosure requirements of this Section 2.3.10 shall not relieve Sellers of any obligation with respect to any representation, warranty, or covenant of Sellers in this Agreement or waive any condition to Buyer's obligations under this Agreement.

2.4 **Confidentiality**. Each Party shall hold, and shall exercise its commercially reasonable efforts to cause its officers, employees, agents, and representatives, including, without limitation, attorneys, accountants, consultants, and financial advisors who obtain such information to hold, in confidence, and not use for any purpose other than evaluation and consummation of the transactions contemplated by this Agreement, any confidential or proprietary information of the other Party or its affiliates that is disclosed in connection with the negotiation, preparation or performance of this Agreement, which for the purposes hereof shall not include any information which (i) is or becomes generally available to the public other than as a result of disclosure by the Party which alleges the information is confidential or its affiliates, (ii) becomes available to a Party on a non-confidential basis from a source, other than the Party which alleges the information is confidential or its affiliates, which has represented that such source is entitled to disclose it, or (iii) was known to a Party on a non-confidential basis prior to its disclosure to such Party hereunder, as evidenced by written records. If this Agreement is terminated, each Party shall deliver, and cause its officers, employees, agents, and representatives including, without limitation, attorneys, accountants, consultants and financial advisors who obtain confidential information of the other Party to deliver to such other Party all such confidential information that is written (including copies or extracts thereof), whether such confidential information was obtained before or after the execution hereof and shall continue to preserve, and shall use its commercially reasonable efforts to cause its officers, employees, agents, and representatives to continue to preserve, the confidentiality of all such information. All information concerning the Stations' Assets or operations of the Stations obtained by Buyer or its affiliates pursuant to or in connection with negotiation of this Agreement will be used by Buyer and its affiliates solely for purposes related to this Agreement and, in the case of nonpublic information, will be kept in strict confidence by Buyer and its affiliates and will not be disclosed except as provided for above.

2.5 **Closing Time and Location**. The Closing shall take place commencing at 10:00 a.m. local time at the business offices of Sellers, or at such other time, location and/or manner (including exchange of closing documents by facsimile or electronic transmission) agreeable to the parties.

Section 3
Sellers' Representations and Warranties

Sellers hereby represents and warrant to Buyer as follows:

3.1 **Organization, Authorization and Binding Obligation.** Each of Sellers is a corporation duly organized, validly existing, and in good standing under the laws of the State of Arkansas and is duly qualified to transact business in Arkansas. Sellers have full power and authority to own and operate the Stations and to carry on the business of the Stations as now being conducted, and as proposed to be conducted by it between the date hereof and the Closing Date. Sellers have full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Seller have been duly and validly authorized by all necessary entity action on its part.

3.2 **Absence of Conflicting Agreements or Required Consents.** Each Sellers' execution, delivery, and performance of this Agreement (a) does not require the consent of any third party, except for the FCC Consent; (b) will not violate any provision of Sellers' governing documents; (c) to the best of Sellers' knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, or ruling of any governmental authority; (d) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument or permit to which any of Sellers is subject and that is individually or in the aggregate material to the transactions contemplated hereby; (e) will not result in the creation of any lien, charge or encumbrance on any of the Stations' Assets; and (f) will not in any way affect or violate the terms or conditions of, or result in the cancellation, modification, revocation or suspension of, any of the Stations' Licenses.

3.3 **Stations' Licenses.** The Stations' Licenses are all of the authorizations required for the lawful conduct of the business and operation of the Stations. One or the other Sellers is the authorized legal holder of all of the Stations' Licenses. None of the Stations' Licenses is subject to any restriction or condition which could limit the operation of the Stations with the facilities set forth in the Stations' Licenses except for restrictions and conditions applicable to the industry as a whole. Without limiting any of the foregoing, the Station has been to date operated in material compliance with the Station Licenses and in material compliance with the Communications Act of 1934, as amended, and the rules, regulations, and policies of the Commission. Except as set forth on **Schedule 1.1(a)** hereto, and the Stations' Licenses are in good standing and are in full force and effect.

3.4 **FCC Compliance.** Except as disclosed in **Schedule 2.3.7**, to the best of Sellers' knowledge, each of the Stations, its respective physical facilities, electrical and mechanical systems, and transmitting and studio equipment are operated in all material respects in accordance with the specifications of the FCC Licenses and the rules and regulations of the FCC.

3.5 **Stations' Assets**. On the Closing Date, Sellers shall have good and marketable title to the Stations' Assets, free and clear of all mortgages, deeds of trust, liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions, and encumbrances, or other defects of title ("Encumbrances") other than Permitted Encumbrances. On the Closing Date, Buyer shall acquire good and marketable title to the Stations' Assets free and clear of any and all Encumbrances other than Permitted Encumbrances. All Tangible Personal Property is being transferred in "as is, where is" condition without any additional warranties of fitness for any purpose other than as to title and ownership.

3.6 **Owned Real Property**. The description of the Real Property attached as **Schedule 1.1(b)** is a complete and accurate description of the subject Real Property, and such Real Property constitutes all of the real property owned or used by Sellers in the operations of the Stations. On the Closing Date, Sellers shall have good and marketable fee simple title to the Real Property described on **Schedule 1.1(b)**, free and clear of Liens other than Permitted Liens. To Sellers' knowledge, the Real Property is not subject to any suit for condemnation or other taking by any public authority. All structures being conveyed are entirely within the boundaries of the Owned Real Property being conveyed by Sellers.

3.7 **Environmental Laws**. To the best knowledge of Sellers, (i) no hazardous or toxic materials exist in any structure located on, or exist on or under the surface of, any of the real property or equipment to be conveyed to Buyer, and (ii) Sellers are not in violation of any environmental law. 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 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.

3.8 **Leased Real Property**. Attached to **Schedule 1.1(c)** is a true and complete copy of the real property lease agreement being assumed by Buyer, including all amendments and modifications thereto (the "Real Property Lease"). The Real Property Lease is in full force and effect. Neither of Sellers, nor any other party to the Real Property Lease are in default of their obligations under any of the Assigned Contracts. Sellers agree to supply Buyer with an estoppel certificate from the landlord of the leased property in form reasonably acceptable to Buyer affirming that status prior to Closing. All amounts due by Sellers under all of the Real Property Lease have been paid or will be paid at Closing.

3.9 **Litigation.** As of the date hereof, to the best knowledge of Sellers, there is no unsatisfied judgment against Sellers or any of the Stations' Assets outstanding; there is no action, suit, arbitration, litigation, proceeding, claim, or investigation of any nature pending against Sellers or the Stations' Assets; and to Sellers' knowledge there is no action, suit, arbitration, litigation, proceeding, claim, or investigation of any nature, threatened, against Sellers or the Stations' Assets. Sellers are not aware of any facts that could reasonably result in any such proceedings.

3.10 **Payment of Taxes.** Sellers have timely filed with all appropriate governmental agencies all federal, state, local, and other tax or information returns and tax reports (including, but not limited to, all income tax, unemployment compensation, Social Security, payroll, sales and use, profit, excise, privilege, occupation, property, ad valorem, franchise, license, school, and any other tax under the laws of the United States or of any state or any municipal entity or of any political subdivision with valid taxing authority) due for all periods ended on or before the date hereof. Sellers have paid in full all federal, state, foreign, local, and other governmental taxes, estimated taxes, interest, penalties, assessments, and deficiencies (collectively, "Taxes") which have become due pursuant to such returns or without returns or pursuant to any assessments received.

3.11 **Brokers.** There is no broker or finder or other person who would have any valid claim through the Sellers 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, the Sellers.

3.12 **Disclosure.** No representation or warranty made by Sellers in this Agreement, and no statement made by or on behalf of Sellers in any certificate, document, exhibit or schedule delivered or to be delivered in connection with the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

Section 4 **Buyer's Representations and Warranties**

Buyer represents and warrants to Sellers as follows:

4.1 **Organization, Authorization, and Binding Obligation.** Buyer is a Trust duly organized, validly existing and in good standing under the laws of the State of Arkansas. Buyer has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action on its part. This Agreement constitutes Buyer's valid, legal, and binding obligation, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar

laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.2 **FCC Qualifications**. There are no facts which would, under present law (including the Communications Act of 1934, as amended) and present rules, regulations, and practices of the FCC, disqualify Buyer as an assignee of the Stations' Licenses or as an owner and/or operator of the Stations' Assets or which might delay the grant of the Assignment Applications, and Buyer will not take, or unreasonably fail to take, any action which Buyer knows or has reason to know would cause such disqualification.

4.3 **Brokers**. There is no broker or finder or other person who would have any valid claim through the 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, the Buyer.

4.4 **Disclosure**. No representation or warranty made by Buyer in this Agreement, and no statement made by or on behalf of Buyer in any certificate, document, exhibit, or schedule delivered or to be delivered in connection with the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

Section 5

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 Closing, of each of the following conditions, any of which (except for the requirement that the FCC Consent to the Assignment Applications has been granted) Buyer may waive in writing:

5.1 **Representations, Warranties, and Covenants**. All representations and warranties of Sellers made in this Agreement, or in any exhibit, schedule, certificate, or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date. All of the terms, covenants, and conditions to be complied with and performed by Sellers on or prior to the Closing Date shall have been complied with or performed in all material respects.

5.2 **FCC Consent**. The FCC Consent shall have been granted.

5.3 **Governmental Authorizations**. Sellers shall be the holder of the Stations' Licenses, and there shall not have been any modification of any of the Stations' Licenses which could have a material adverse effect on the Stations. Except as disclosed in **Schedule 2.3.7**, no proceeding shall be pending, the effect of which could be to revoke, cancel, fail to renew, suspend or modify materially and adversely any of the Stations' Licenses or the transfer thereof to Buyer.

5.4 **Sellers Certificate.** The Sellers shall have furnished the Buyer with a certificate, dated the Closing Date and duly executed by an officer or manager, as applicable, of Sellers, to the effect that the conditions set forth in Section 5.1 have been satisfied;

5.5 **Adverse Proceedings.** No suit, action, or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effectuate the transactions contemplated by this Agreement in accordance with its terms.

5.6 **Resumption.** Buyer shall have taken all reasonable steps, at Buyer's expense to assist Sellers in causing Stations KNBY, KOSE, KQXF and KOKR to have resumed operations, and, as a result of Buyer's assistance, all Stations shall be operating at the time of Closing. Sellers shall have no obligation to furnish any funds to resume operations of Stations KNBY, KOSE, KQXF and KOKR.

5.7 **Instruments of Conveyance and Transfer.** Sellers shall have delivered to Buyer instruments in form and substance reasonably satisfactory to counsel to Buyer effecting the sale, transfer, assignment, and conveyance of Sellers' right, title, and interest in and to the Stations' Assets to Buyer pursuant to the terms of this Agreement including, without limitation, the following:

(a) An assignment of all right, title, and interest in and to the Stations' Licenses to be assigned pursuant to Section 1.1(a) of this Agreement;

(b) Warranty deeds for the Owned Real Property to be assigned pursuant to Section 1.1(b) of this Agreement;

(c) An assignment of all right, title, and interest in and to the Leased Real Property pursuant to Section 1.1(c) of this Agreement;

(d) A bill of sale for all of the Stations' Assets, including the Tangible Personal Property, to be conveyed pursuant hereto, pursuant to Section 1.1(d) of this Agreement;

(e) An assignment of all right, title, and interest in and to the Intangible Personal Property, including necessary registrations and applications for registration, pursuant to Section **Error! Reference source not found.** of this Agreement;

(f) The Title Commitments for the Owned Real Property;

(g) The estoppel certificate required under Section 3.8 of this Agreement; and

(h) Further instruments and documents as Buyer may reasonably request to effect the transactions contemplated under this Agreement.

5.8 **Discharge of Liens.** At Closing, Sellers shall deliver to Buyer duly-executed termination statements and releases as are appropriate to convey the Stations' Assets by Sellers to Buyer free and clear of all liens, security interests, litigation, and other encumbrances, except as specifically permitted by this Agreement or otherwise consented to by Buyer in writing.

Section 6 **Conditions Precedent to Sellers' Obligations**

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at Closing, of each of the following conditions, any of which (except for the requirement that the FCC Consent to the Assignment Applications has been granted) Sellers may waive in writing:

6.1 **Representations, Warranties, and Covenants.** All representations and warranties of Buyer made in this Agreement, or in any exhibit, schedule, certificate, or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse (as determined by Sellers in its sole discretion) which arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants, and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

6.2 **FCC Consent.** The FCC Consent shall have been granted.

6.3 **Payment of Purchase Price.** On the Closing Date, Buyer shall pay the remainder of the Purchase Price in accordance with Section 1.4 of this Agreement.

6.4 **Buyer Certificate.** The Buyer shall have furnished the Sellers with a certificate, dated the Closing Date and duly executed by an officer of Sellers, to the effect that the conditions set forth in Section 6.1 have been satisfied.

6.5 **Instruments of Assumption.** Buyer shall have delivered to Sellers instruments in form and substance reasonably satisfactory to counsel to Sellers effecting the assumption of Buyer's obligations arising subsequent to the Closing Date in and to the Stations' Assets pursuant to the terms of this Agreement including, without limitation, the following:

(a) An assumption of all obligations under the Stations' Licenses to be assigned pursuant to Section 1.1(a) of this Agreement; and

(b) An assumption of all obligations under the Leased Real Property pursuant to Section 1.1(c) of this Agreement.

6.6 **Adverse Proceedings.** No suit, action, or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental

authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

Section 7 **Transfer Taxes, Fees and Expenses**

7.1 **Transfer Taxes.** Except as set forth in Section 7.2 below, Sellers and Buyer shall pay any sales, use or transfer tax due as a result of this transaction.

7.2 **Owned Real Property Closing Costs.** The costs associated with the conveyance of the Owned Real Property shall be allocated and paid as follows:

(a) Buyer and Sellers shall pro-rate each real estate tax levied against the Owned Real Property, as shown on the latest available tax bills, per diem on the day of settlement, calculated upon the assessment year of each such tax, whether calendar or fiscal.

(b) Any bonds or improvement assessments levied prior to Closing which are and which may become a lien on the Real Property shall be paid by Sellers at settlement.

(c) All costs of recordation shall be paid by Buyer.

(d) State and local realty transfer taxes imposed on the conveyance of title to the Owned Real Property shall be paid by Buyer.

7.3 **Parties' Expenses.** Except as provided in Section 2.1 with regard to the FCC filing fee for the Assignment Applications and regulatory fees for FY 2023, each Party shall pay all of its own legal, accounting, and other expenses which it incurs in connection with the transactions contemplated herein.

Section 8 **Risk of Loss**

The risk of loss or damage to the Stations' Assets shall be upon Sellers at all times prior to the Closing. In the event of material loss or material damage to the Tangible Personal Property, Sellers shall use all reasonable efforts to repair, replace, or restore the lost or damaged property to its former condition in all material respects as soon as possible. If such repair, replacement, or restoration has not been completed in all material respects prior to the Closing Date, then the Parties shall proceed to Closing (with Sellers' representations and warranties deemed modified to take into account any such condition) and the Purchase Price shall be reduced by the reasonably estimated remaining costs to complete such repair, replacement, or restoration in all material respects.

Section 9
Termination Rights

9.1 **Termination Rights.** Without limiting the right of either Party to terminate this Agreement as otherwise provided herein, this Agreement may be terminated, upon written notice, upon the occurrence of any of the following:

(a) By either Buyer or Sellers for a material default in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder, by Buyer on the one hand or Sellers on the other hand, which is not cured by the earlier of the Closing Date or within twenty (20) calendar days after written notice of the breach, provided that the terminating Party is not then in material default or material breach.

(b) By either Buyer or Sellers if the FCC denies the Assignment Applications (and such denial is not the fault, directly or indirectly, of the terminating Party) and such order becomes a Final Order.

(c) By Buyer or Sellers if the Closing has not occurred within twelve (12) months of execution of this Agreement, provided such Party is not then in material default or material breach.

In the event that this Agreement is terminated by Sellers due to a material default in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder by Buyer which is not timely cured, and Sellers are not materially in default or breach of this Agreement, the Parties shall direct the Escrow Agent to deliver the Escrow Deposit and any accrued interest thereon to Sellers as their exclusive remedy. In the event that this Agreement is terminated by Buyer due to a material default in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty, or covenant hereunder by Sellers which is not timely cured, and Buyer is not materially in default or breach of this Agreement, the Parties shall direct the Escrow Agent to immediately return the Escrow Deposit and any accrued interest thereon to and the parties shall have no further liability to each other.

Section 10
Pre-Closing Remedies

10.1 **Sellers' Breach.** In the event of a material breach by Sellers of any of their representations and obligations hereunder, which is not cured by the earlier of the Closing Date or within twenty (20) days after written notice from Buyer, Buyer may bring an action to enforce the terms of this Agreement by decree of specific performance as Buyer's exclusive remedy, it being agreed that the Stations' Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically

enforced. Sellers agree to waive the defense in any such action for decree of specific performance that Buyer has an adequate remedy at law, to cooperate fully in the filing of FCC applications and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

10.2 **Buyer's Breach.** In the event of a material breach or default by Buyer of any of its warranties, representations or covenants hereunder, which breach or default is not cured by the earlier of the Closing Date or within twenty (20) calendar days after written notice from Sellers, Sellers shall have the option to terminate this Agreement, and Escrow Agent shall immediately deliver to Sellers the Escrow Deposit as liquidated damages in full and complete compensation for any damages to Sellers as a result of Buyer's breach or default.

Section 11 **Post-Closing Remedies**

11.1 **Sellers' Indemnities.** Subject to the "basket and cap" set forth below in this Section 11, for a period of one year after the Closing Date, Sellers shall indemnify, defend, and hold Buyer harmless from and against any and all losses, costs, liabilities, claims, actions, damages, and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description, arising out of or in connection with (a) the breach of any representation, warranty, covenant, or agreement of Sellers set forth in this Agreement (including the schedules hereto) or in any other document delivered to Buyer pursuant hereto; (b) any liability of Sellers not assumed by Buyer herein; (c) a claim relating to the conduct of the business and operations of the Stations and the Stations' Assets prior to the Closing Date including, without limitation, any taxes, assessments or similar charges relating to the operation of the Stations accrued or attributable to periods prior to the Closing Date; or (d) any claims by any of Sellers' employees arising out of their employment with Sellers.

11.2 **Buyer's Indemnities.** For a period of one year after the Closing Date, Buyer shall indemnify, defend, and hold Sellers harmless from and against any and all losses, costs, liabilities, claims, actions, damages, and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description arising out of, or in connection with (a) the breach of any representation, warranty, covenant, or agreement of Buyer set forth in this Agreement or in any other document delivered to Sellers pursuant hereto; (b) any Assumed Liability; or (c) a claim relating to the conduct of the business and the operation of the Stations by Buyer on or after the Closing Date including, without limitation, any taxes, assessments or similar charges relating to the operation of the Stations accrued or attributable to periods on or after the Closing Date.

11.3 **Notice of Claim.** If any action, suit, or proceeding shall be commenced by a third Party against Buyer or Sellers, as the case may be, in respect of which Buyer or Sellers proposes to seek indemnification from the other under this Section 11 (a "Third-Party Claim"), then such Party shall promptly notify the Party from whom indemnification is sought (hereinafter the

“Indemnifying Party”) to that effect. The Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such Third-Party Claim, and the other Party shall cooperate with all reasonable requests of the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of a Third-Party Claim, then the other Party shall have the right to participate in the defense of such claim at its own expense. If a Third-Party Claim requires immediate action, then the parties will make every effort to reach a decision with respect thereto as expeditiously as possible. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third-Party Claim, then it shall be bound by the results obtained by the other Party with respect to such Third-Party Claim, but no settlement of a Third-Party Claim may be made by the Indemnifying Party without the written consent of the Party being indemnified.

Section 12 **Miscellaneous**

12.1 **Survival of Representations and Warranties.** Other than as specifically provided in this Agreement, the representations and warranties in this Agreement shall survive Closing for a period of one (1) year from the Closing Date.

12.2 **Assignment.** Neither Party may assign this agreement without the prior written consent of the other Party hereto, consent not to be unreasonably withheld. No such assignment shall relieve Buyer of any obligation or liability under this Agreement. The rights and obligations of the parties hereunder shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and permitted assigns.

12.3 **Rescission.** If the Closing occurs prior to the FCC Consent becoming a Final Order, and prior to becoming a Final Order the FCC Consent is reversed or otherwise set aside, and there is a Final Order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the Stations’ Licenses to Sellers, then the purchase and sale of the Stations’ Assets shall be rescinded. In such event, Buyer shall re-convey to Sellers the Stations’ Assets, and Sellers shall repay to Buyer the Purchase Price. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such Final Order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Sellers shall each execute such documents (including execution by Buyer of instruments of conveyance of the Stations’ Assets to Sellers), as are reasonably necessary to effectuate such rescission.

12.4 **Construction and Venue for Legal Actions.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arkansas without regard to choice-of-laws principles. Each Party submits to the jurisdiction of any court sitting in Jonesboro, Arkansas in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party waives any defense of inconvenient forum or lack of personal jurisdiction

to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the other Party with respect thereto.

12.5 **Notices.** All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be sent by for next business day delivery by Federal Express or a similar nationally-recognized overnight courier service, with all charges prepaid, and shall be deemed to have been duly delivered and received on the next business day. All such notices, demands, and requests shall be addressed as follows:

If to Sellers:

Sudbury Services, Inc.
Phoenix Broadcasting Co.
Newport Broadcasting Co.
125 South Second St.
Blytheville, AR 72315

with a copy to:

Todd Williams, Esq.
Snellgrove, Langley, Culpepper, Williams & Mullally
111 East Huntington Ave.
2nd Floor
Jonesboro, Arkansas 72401

and

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Ave., N.W.
Suite 301
Washington, DC 20016

If to Buyer:

Bobby D. Caldwell Revocable Trust
2758 Highway 64
Wynne, AR 72396
Attn: Bobby Caldwell

with a copy to:

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 North 21st Rd.
Arlington, VA 22201

or at such other address as either Party shall specify by notice to the other.

12.6 **Multiple Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. All of such counterpart signature pages shall be read as though all of the signers had signed a single signature page. This Agreement may be signed and exchanged by facsimile transmission or by a scanned PDF sent by email, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

12.7 **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all other and prior memoranda and agreements between the parties with respect to such subject matter and may not be modified or amended except by a written instrument signed by all of the parties hereto.

12.8 **Investigations.** Buyer has had the opportunity to make and inspection of the Stations' Assets and accepts them in "as-is/where-is" condition.

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

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

12.12 **Severability.** If any one or more of the provisions contained in this Agreement should be found invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law.

12.13 **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.

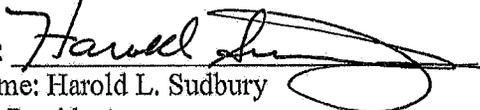
12.14 **Counsel**. Both Parties acknowledge that they have had the right to obtain independent review of the documents and, consequently, each Party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party whose counsel drafted that provision.

12.15 **Schedules**. Disclosure of information included on any Schedule to this Agreement shall be considered disclosed for all other Schedules, and shall so qualify the applicable representations and warranties to which such other Schedules relate, to the extent that it is reasonably apparent from a reading of such disclosure that such disclosure is applicable to such other Schedules. In no event shall the listing of items in the Schedules be deemed or interpreted to broaden or otherwise expand the scope of the representations and warranties or covenants contained in this Agreement. Disclosure of a particular matter on any Schedule shall not be construed to mean that such matter is material.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

SELLERS:

PHOENIX BROADCASTING GROUP, INC.

By: 
Name: Harold L. Sudbury
Its: President

**SUDBURY SERVICES, INC.
NEWPORT BROADCASTING COMPANY**

By: _____
Name: Lydia S. Langston
Their: President

BUYER:

BOBBY D. CALDWELL REVOCABLE TRUST

By: _____
Bobby Caldwell
Trustee

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

SELLERS:

PHOENIX BROADCASTING GROUP, INC.

By: _____
Name: Harold L. Sudbury
Its: President

**SUDBURY SERVICES, INC.
NEWPORT BROADCASTING COMPANY**

By: Lydia S. Langston
Name: Lydia S. Langston
Their: President

BUYER:

BOBBY D. CALDWELL REVOCABLE TRUST

By: Bobby Caldwell
Bobby Caldwell
Trustee