

Settlement Agreement and Release of Claims

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (this "Agreement") is made and binding between and among David J. Miller, Linda R. Miller (collectively "Millers"), Yaquina Bay Communications, Inc., Pacific West Broadcasting, Inc. (collectively including Millers "Borrowers"), and Oregon Coast Bank ("Lender").

This Agreement is effective on execution, see date on signature page.

WHEREAS, Borrower and Lender are parties to that Promissory Note dated December 11, 2009, in the principal sum of \$755,000.00, known as Loan Number 10029941, together with related loan documents and subsequent Change in Terms Agreements and Promissory Note dated December 16, 2016, in the principal sum of \$110,000.00, known as Loan Number 10050400, together with related loan documents and subsequent Change in Terms Agreements (the "Notes").

WHEREAS, an action was filed in the Circuit Court of the State of Oregon, for the County of Lincoln, an action known as Case No. 22CV29375 (the "Action"), in which Lender sought foreclosure of Notes; and

WHEREAS, on July 31, 2023, a general judgment of foreclosure was enrolled and entered against all Defendants including Borrowers,

WHEREAS, on October 5, 2023, a writ of execution of real property was entered in reference to real property described in Deed of Trust recorded in Lincoln County as document 2009-14168, and referenced in the above action, and commonly known as 906 SW Alder St, Newport, 3422 Hwy 20, Toledo, and 3330 NE Devils Lake Rd, Lincoln City ("real property"), and a Sheriff's sale was conducted on December 5, 2023, and Lender was the successful bidder and purchased the real property with a creditor bid; and

WHEREAS, a Certificate of Sale has been issued and Lender has demanded possession of the real property; and

WHEREAS, the outcome of certain issues is uncertain and each party desires to settle all the claims, including all claims asserted in the case or related to the case, fully and finally without further risks, uncertainties, expenses, and inconveniences of litigation;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

SECTION 1. CONSIDERATION

In consideration of the Releases set forth below in section 4 and the other terms set forth in sections 2 and 3, each party is providing consideration and receiving consideration.

As further consideration, each party agrees to execute this Agreement and to release any claims that each may have against the other arising out of the action, as specifically described in section 4.

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SECTION 2. BORROWER OBLIGATIONS

In consideration of the Releases set forth below in section 4 and the other terms set forth in section 3, Borrowers will:

1. Vacate the real property on January 16, 2024;
2. Turn over all keys, access codes and similar, to Lender at 906 SW Alder, Newport, at 1pm on January 17, 2024;
3. Release all redemption rights to the real property and execute a release as to the same;
4. Declare that all personal property previously or presently owned by any Borrower or Defendant and located at, in or on the real property, is considered abandoned by Borrowers and granted to Lender for disposal by Lender in any manner lender chooses and execute a release as to the same.

SECTION 3. LENDER OBLIGATIONS

In consideration of the Releases set forth below in section 4 and the other terms set forth in section 2, Lender will:

1. Allow Borrowers to retain possession of the real property through January 16, 2024;
2. Upon completion of Borrowers obligations, Lender will release all claims and obligations against Millers individually;
3. Upon completion of Borrowers obligations, Lender will release all interest in all personal property not located at, in or on the real property.

SECTION 4. RELEASES

4.1 David J Miller, for himself and his heirs, next of kin, children, assigns, agents, beneficiaries, executors, administrators, and all other affiliated persons, firms, or corporations whomsoever, hereby fully and forever releases and discharges Lender and its successors, predecessors, parents, assigns, agents, employees, officers, directors, insurers, authorized representatives, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, arising out of any fact, event, act, or omission occurring at any time, through and including the date of execution of this Agreement, including fraud in inducing this Agreement, that are directly or indirectly related to the action.

4.2 Linda R Miller, for herself and her heirs, next of kin, children, assigns, agents, beneficiaries, executors, administrators, and all other affiliated persons, firms, or corporations whomsoever, hereby fully and forever releases and discharges Lender and its successors, predecessors, parents, assigns, agents, employees, officers, directors, insurers, authorized representatives, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, arising out of any fact, event, act, or omission occurring at any time, through and including the date of execution of this Agreement, including fraud in inducing this Agreement, that are directly or indirectly related to the action.

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4.3 Yaquina Bay Communications, Inc., for itself and its successors, predecessors, parents, assigns, agents, employees, officers, directors, insurers, authorized representatives, and all other affiliated persons, firms, or corporations whomsoever, hereby fully and forever releases and discharges Lender and its successors, predecessors, parents, assigns, agents, employees, officers, directors, insurers, authorized representatives, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, arising out of any fact, event, act, or omission occurring at any time, through and including the date of execution of this Agreement, including fraud in inducing this Agreement, that are directly or indirectly related to the action

4.4 Pacific West Broadcasting, Inc., for itself and its successors, predecessors, parents, assigns, agents, employees, officers, directors, insurers, authorized representatives, and all other affiliated persons, firms, or corporations whomsoever, hereby fully and forever releases and discharges Lender and its successors, predecessors, parents, assigns, agents, employees, officers, directors, insurers, authorized representatives, and all other affiliated persons, firms, or corporations whomsoever, of and from any and all past, present, and future claims, demands, obligations, causes of action, or damages of any kind, known and unknown, arising out of any fact, event, act, or omission occurring at any time, through and including the date of execution of this Agreement, including fraud in inducing this Agreement, that are directly or indirectly related to the action

SECTION 5. EXPRESS ACKNOWLEDGMENTS, REPRESENTATIONS, AND WARRANTIES

5.1 The parties expressly acknowledge and agree that the Releases set forth in section 2 is are limited release of the matters described above and do not release Yaquina Bay Communications, Inc. or Pacific West Broadcasting, Inc..

5.2 Borrowers further agree to accept consideration as specified herein as a complete compromise of matters involving disputed issues of law and fact. Borrowers assume the risk that the facts or law may be other than as he, she, it believes.

5.3 Each party expressly represents and warrants that it has relied on its own knowledge of the facts and the advice of its own lawyer, or had the opportunity to consult their own lawyer, concerning the consequences of this Agreement; and that the signers of this Agreement are of legal age, legally competent to execute this Agreement, and have full authority to sign this Agreement. The parties further warrant that no promise or inducement has been offered, except as set forth in this Agreement, and that this Agreement is executed without reliance on any statement or representation by any other party concerning the nature and extent of damages or legal liability.

5.4 The parties represent and warrant that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Agreement and that each party has the sole right and exclusive authority to execute this Agreement and to receive the sums specified in it and that no party has sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

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5.5 The Parties agree that the consideration listed herein constitutes Lender's entire obligation under this Agreement and that there is no financial obligation under this Agreement.

5.6 The parties expressly acknowledge and agree that the terms of this Agreement are contractual in nature and not merely a recital.

SECTION 6. NO ADMISSION OF LIABILITY

The parties to this Agreement agree that entering into this Agreement and the consideration rendered is not an admission of liability by any party and that such liability is expressly denied.

SECTION 7. ENFORCEMENT OF AGREEMENT

In the event of a material breach of this Agreement or other dispute regarding the enforcement or interpretation of this Agreement, the losing party will pay attorney fees, costs, and expenses incurred by the prevailing party in enforcing the Agreement.

SECTION 8. NOTICES

Any notice or communication required under this Agreement will be effective when received and will be sufficient if given in writing via email and regular mail, and must be addressed as follows:

Lender:

Melissa Chown, Oregon Coast Bank
PO Box 2280, Newport OR 97365
E-mail: Melissa@oregoncoastbank.com

Borrowers:

David & Linda Miller
1837 N.E. Crestview Pl.
Newport, OR 97365
Emails: dmiller@ybcradio.com & lmillernpt@gmail.com

SECTION 9. GOVERNING LAW

This Agreement will be construed and interpreted in accordance with the laws of the state of Oregon without regard to its principles of conflicts of laws. Because the parties and their respective lawyers have reviewed, revised, and negotiated, or had the opportunity to review, revise, or negotiate, the terms, conditions, and language of this Agreement, the rule of construction that ambiguities are to be resolved against the drafting party does not apply. The parties agree that any action to enforce or interpret this Agreement will be brought in Lincoln County, Oregon.

SECTION 10. INTEGRATION

This Agreement contains the entire agreement between and among the parties regarding the matters set forth herein and is conclusive and binding on and inures to the benefit of the executors, administrators, personal representatives, heirs, next of kin, children, successors, or assigns of each.

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SECTION 11. MODIFICATION

This Agreement may not be amended or modified except in writing signed by all parties.

SECTION 12. SAVING CLAUSE

If any provision of this Agreement, or the application of a provision to any person or circumstance, is held invalid, the remainder of this Agreement, or the application of that provision to other persons or circumstances, will not be affected thereby.

SECTION 13. FURTHER ASSURANCES

The parties agree to execute and deliver any further documents, instruments, and other agreements as are necessary or convenient to carry out the terms and purposes of this Agreement.

SECTION 14. COUNTERPARTS

This Agreement may be executed in any number of counterparts. Telecopied and scanned email signatures will be deemed originals.

The Parties' or their authorized representatives execute this Agreement on the following date set:

December _____, 2023

DocuSigned by:
David Miller
28D27CF7CC5941C

David J Miller, individually

DocuSigned by:
Linda R Miller
88598A8D25AE493

Linda R Miller, individually

DocuSigned by:
David Miller
28D27CF7CC5941C

David J Miller, President/Secretary
Yaquina Bay Communications, Inc.

DocuSigned by:
David Miller
28D27CF7CC5941C

David J Miller, President/Secretary
Pacific West Broadcasting, Inc.

DocuSigned by:
Melissa Chown
63233140077A488...

Melissa Chown, SVP CCO
Oregon Coast Bank