

ASSET DONATION AGREEMENT

This Asset Donation Agreement (the "Agreement") is made as of September 14, 2017, by and between Mariana Broadcasting, Inc., a New Jersey for profit corporation ("Donor"), and The Borough of Pompton Lakes, a municipal corporation of the State of New Jersey ("Donee").

WITNESSETH:

WHEREAS, Donor is the licensee of AM radio broadcast station WGHT, Pompton Lakes, New Jersey, Facility ID Number 40078 (the "Station") pursuant to authorizations issued by the Federal Communications Commission ("FCC"); and

WHEREAS, charitable donations to Donee have been designated by the Internal Revenue Service ("IRS") as tax deductible under Section 170 (c)(1) of the Internal Revenue Code of 1986 (the "Code"); and

WHEREAS, pursuant to the terms and subject to the conditions set forth in this Agreement, Donor desires to donate to Donee and Donee desires to acquire from Donor, the Station and certain tangible and intangible assets and properties, including all real property on which the Station is situate, used in connection with the operation of the Station (collectively, the "Station Assets") with commensurate tax benefits to Donor as a donation pursuant to the Code and the regulations and policies of the IRS promulgated thereunder;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Included Station Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing (as hereafter defined), Donor shall donate, assign, convey, transfer and deliver to Donee as a charitable donation for no consideration, and Donee shall assume from Donor, all right, title and interest of Donor in the Station Assets, free and clear of any and all Liens (as defined below). The Station Assets consist of the following:

(a) the licenses, permits and authorizations issued to Donor by the FCC with respect to the Station that are set forth on **Schedule 1(a)** hereto (the "FCC Licenses");

(b) the equipment owned by Donor and used in connection with the Station that is set forth on **Schedule 1(b)** hereto, including the transmitter used by the Station (the "Equipment");

(c) the real property that is described on **Schedule 1.1(c)** hereto, including the improvements located thereon and subject to the easements thereon or related thereto (the "Real Property");

(d) Seller's rights in and to the Station's call letters and Seller's rights in and to the trademarks, trade names, service marks, copyrights, domain names, computer software,

jingles, slogans, logos, and other intangible property that are used in the operation of the Station and are set forth on **Schedule 1.1(d)** hereto (the "Intangible Property");

(e) Seller's rights in and to all the files, documents, records, and books of account (or copies thereof) relating to the operation of the Station, including the Station's local public files, programming information and studies, blueprints, technical information and engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs, if any; and

(f) All of Donor's goodwill in, and going concern value of, the Station, if any.

2. As Is, Where Is; Exclusions.

(a) The Station Assets shall be conveyed to Donee "as is, where is" and free and clear of all Liens. As used herein, "Liens" means claims, charges, security interests and encumbrances, except encumbrances (including easements) of record and liens for taxes not yet due and payable.

(b) For the avoidance of doubt, the following are not included in the Station Assets being conveyed hereunder: (i) any assets of the Station not set forth on the Schedules hereto, except for those assets included in Sections 1(e) and 1(f), and (ii) any accounts receivable or notes payable to Donor.

3. Closing. The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place on a date (the "Closing Date") as reasonably soon as possible after FCC consent (the "FCC Consent") to the grant of the assignment requested in the Assignment Application (as hereafter defined) is received, whether or not such consent has become a Final Order, subject to the completion of all other contingencies and terms set forth in this Agreement.

4. Additional Agreements.

(a) Control of the Station. Prior to the Closing, Donee shall not, directly or indirectly, control, supervise or direct, or attempt to control, supervise or direct, the operations of the Station. Such operations, including control and supervision of all of the Station's employees and policies, shall be the responsibility of Donor.

(b) Operation of the Business. Between the date of this Agreement until the Closing or the termination of this Agreement pursuant to Section 9 hereof, except as permitted by this Agreement or with the prior written consent of Donee, Donor shall comply in all material respects with FCC rules and regulations and with all other applicable laws, regulations, rules and orders with respect to the Station's operations and equipment.

(c) Assignment Application. Within five (5) business days after the date this Agreement is fully executed by the parties, Donee and Donor shall prepare an application to obtain the consent of the FCC to the assignment of the FCC Licenses to Donee (the "Assignment Application"). Donor and Donee shall file and prosecute the Assignment Application. Each of Donee and Donor shall use commercially reasonable efforts to take or cause to be taken all

actions necessary or appropriate to be taken by such party to permit the FCC to issue the FCC Consent in a timely manner, shall cooperate with each other in the preparation, filing and prosecution of the Assignment Application and agree to furnish all information required by the FCC in connection with the Assignment Application.

(d) Risk of Loss. The risk of loss of any of the Station Assets prior to the Closing shall be upon Donor, and Donee shall bear the risk of loss thereafter.

(e) Subsequent Assignment Condition. The Parties acknowledge and recognize that the proposed transaction will confer certain tax benefits to Donor with the IRS, and, therefore, Donee shall take no action detrimentally affect the standing of this conference. In the event Donee or its successor sells the Station or any of the Station Assets within three (3) years of the Closing Date to an entity that, as a result of the sale, would otherwise cancel or reduce such tax benefits (such as to a commercial entity), Donee, or its successor, shall forward to Donor the sale price from any subsequent sale(s). In addition to and not in limitation of the foregoing, Donee hereby covenants and agrees that it will not, within three (3) years of the Closing, dispose of any of the Station Assets that constitute tangible personal property. All of the covenants and agreements in this Section 4(e) shall survive the Closing.

5. Representations and Warranties of Donor. As of the date hereof and as of the Closing, Donor represents and warrants to Donee as follows:

(a) Organization; Power and Authority. Donor is duly organized, validly existing and in good standing under the laws of the State of New Jersey. Donor has all necessary power and authority to make, execute, deliver and perform this Agreement and the other documents and instruments contemplated hereby.

(b) Execution, Delivery and Validity. The execution, delivery and performance of this Agreement by Donor have been duly authorized by all requisite corporate action. This Agreement and all other agreements contemplated hereby are or, upon the execution and delivery thereof will be, the valid and binding obligations of Donor, enforceable in accordance with their terms.

6. Representations and Warranties of Donee. As of the date hereof and as of the Closing, Donee represents and warrants to Donor as follows:

(a) Organization; Power and Authority. Donee is duly organized, validly existing and in good standing under the laws of the State of New Jersey. Donee has all necessary power and authority to own all of its properties and assets, to conduct its business, and to make, execute, deliver and perform this Agreement and the other documents and instruments contemplated hereby.

(b) Execution, Delivery and Validity. The execution, delivery and performance of this Agreement by Donee have been duly authorized by all requisite action. This Agreement and all other agreements contemplated hereby are or, upon the execution and delivery thereof will be, the valid and binding obligations of Donee, enforceable in accordance with their terms.

(c) Political Subdivision. Donee is a political subdivision of the State of New Jersey to which "charitable donations" may be made under Section 170(c)(1) of the Code.

7. **Conditions to Closing.**

(a) Conditions Precedent to Donee's Obligations. The obligation of Donee to consummate the transaction contemplated hereby is subject to the fulfillment prior to or at the Closing Date of each of the following conditions (unless waived in writing by Donee):

- (i) the FCC Consent shall have been obtained;
- (ii) the representations and warranties of Donor contained in this Agreement shall be true and correct in all material respects as of the Closing Date, except for changes permitted or contemplated by this Agreement;
- (iii) Donor shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and at the Closing Date;
- (iv) the adoption of all municipal ordinances, and receipt of all other governmental approvals, necessary for Donee to consummate the transaction contemplated hereby shall be adopted and received; and
- (v) no proceedings shall be pending or threatened that would be reasonably likely to result in the revocation, cancellation, suspension or modification of any FCC Licenses.
- (vi) Donee shall have conducted any and all due diligence regarding the real property included in the Station Assets determined as necessary or appropriate by Donee, including but not limited to a title search, survey and environmental inspections, and Donee shall have concluded and noticed in writing to Donor that the results of such due diligence are acceptable to the Donee in its sole discretion.

(b) Conditions Precedent to Donor's Obligations. The obligation of Donor to consummate the transactions contemplated hereby is subject to the fulfillment prior to and at the Closing Date of each of the following conditions (unless waived in writing by Donor):

- (i) the FCC Consent to the Assignment Application shall have been obtained;
- (ii) the representations and warranties of Donee contained in this Agreement shall be true and correct in all material respects as of the Closing Date, except for changes permitted or contemplated by this Agreement;
- (iii) Donee shall have performed and complied in all material respects with all covenants, agreements and conditions required by this Agreement to be performed or complied with by it prior to and at the Closing Date; and

(iv) Donee shall deliver a letter acceptable to Donor acknowledging that the donation is a charitable contribution and that Donor has not received any consideration in exchange for its donation.

8. Documents to be Delivered at Closing. At the Closing, the parties shall execute and deliver to each other such documents of conveyance that shall be reasonably necessary or appropriate to convey the Station Assets from Donor to Donee in accordance with this Agreement, including without limitation that following:

(a) a quit claim deed (or a Bargain and Sale Deed with Covenants against Grantors Acts if required by Donee's title company) and such other documents as required by the Donee's title company in order to enable it to insure good and marketable title to the real estate included in the Station Assets;

(b) an Assignment and Assumption of FCC Licenses; and

(c) an assignment of any and all existing warranties or guaranties which Donor may have from third parties relating to the tangible personal property included in the Station Assets.

9. Survival; Termination; Indemnification; Donation.

(a) Survival. Except as set forth in Sections 6(d) and 9(d) hereof, the respective representations and warranties of each of the parties to this Agreement shall expire upon the Closing.

(b) Termination. Either party may terminate this Agreement prior to the Closing, provided that the party seeking termination shall not be in default or breach of any of its material obligations under this Agreement. Unless extended by the mutual written agreement of both parties, this Agreement shall terminate if the Closing has not occurred on or prior to December 15, 2017. Termination of this Agreement shall not relieve any party of any liability it would otherwise have for a breach or default under this Agreement.

(c) Indemnification. Neither party shall be entitled to indemnification pursuant to this Agreement.

(d) Donation. Donor and Donee shall not take any action before or after Closing that would result in elimination in whole or part of the tax benefits to Donor under this Agreement.

10. General Provisions.

(a) Expenses. Except as otherwise specifically provided in this Agreement, each party to this Agreement shall bear its own expenses, including the fees of any attorneys, accountants or others engaged by such party in connection with this Agreement and the transactions contemplated hereby. The filing fee related to the Assignment Application shall be paid equally by Donee and Donor, and Donee shall reimburse counsel for Donor in an amount equal to one-half (1/2) of the fees and costs incurred by FCC counsel to Donor; provided,

however, that Donee shall not be responsible to pay, in the aggregate, more than \$5,000.00 pursuant to this sentence.

(b) Governing Law. Except to the extent preempted by federal law, this Agreement and all documents delivered or to be delivered in accordance with this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey, without regard to principles of conflicts of law.

(c) Assignment; Binding Effect. No party to this Agreement may assign this Agreement or such party's rights, duties and obligations hereunder without the prior written consent of the other parties hereto. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their legal representatives, successors and assigns.

(d) Entire Agreement; Amendment. This Agreement, including the Schedules, sets forth the entire understanding of the parties. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligations, claim or cause of action arising under this Agreement shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is sought to be asserted.

(e) No Waiver. The failure of any party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed as a waiver of such provision or of the right of the party to enforce such provision. The waiver of any default or the failure to exercise any right shall not be deemed a waiver of any subsequent default or waiver of the right to exercise any other right.

(f) Notices. All notices and other communications must be in writing and shall be deemed given if delivered personally or by overnight courier, or mailed by registered or certified mail, postage pre-paid, return receipt requested, to the persons at the addresses set forth below (or such other address for a party as shall be specified by like notice). Notice given personally or by overnight courier service shall be deemed delivered when received by the addressee. Notice given by mail shall be deemed delivered on the third (3rd) business day following the date on which it is so mailed. For purposes of notice, the addresses of the parties shall be:

If to Donor:

Mariana Broadcasting, Inc.
1878 Lincoln Avenue
Pompton Lakes, NJ
Attn: John E. Silliman
(tel): 973-839-1500

With a copy to:

Day Pitney LLP
One Jefferson Road
Parsippany, NJ 07054
Attn: Henry Nelson Massey, Esq.
(tel): 973-966-8105

If to Donee:

Borough of Pompton Lakes
Kevin Boyle, Administrator
25 Lenox Avenue
Pompton Lakes, NJ 07442
(tel): 973-835-0143

With a copy to:

Struble Ragno
Joseph J. Ragno, Jr., Esq.
PO Box 230
Riverdale, NJ 07457-0230
(tel): 973-831-7774

(g) Counterparts; Facsimiles. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. The signature page to this Agreement and all other documents required to be executed at Closing, except those documents required by Donee's title company to be delivered as originals, may be delivered by facsimile or other electronic transmission and the signatures thereon shall be deemed effective upon receipt by the intended receiving party.

(h) Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of legislative or administrative action, such holding or action shall be strictly construed and shall not affect the validity or affect any other provision of this Agreement.

(i) Further Assurances. At any time after the Closing Date, if any further action is necessary, proper or advisable to carry out the purposes of this Agreement, then, as soon as is reasonably practicable, each party to this Agreement shall take, or cause to be taken, such action.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Donation Agreement to be executed by their duly authorized officers, effective as of the day and year first above written.

MARIANA BROADCASTING, INC.

By: 

John E. Siliman
President

THE BOROUGH OF POMPTON LAKES

By: 

Name: Michael Serra

Title: Mayor

Attest:

By: 

Name: Elizabeth Brandsness

Title: Clerk