

## **ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (this "Agreement") is made and entered into as of this 5th day of August, 2009, by and among James S. Bumpous d/b/a Big Bend Broadcasting ("Seller"), Walton Stations – New Mexico, Inc. ("Buyer"), and Shainis & Peltzman, Chartered, a District of Columbia professional corporation, as escrow agent ("Agent").

### **RECITALS**

A. Pursuant to that certain Asset Purchase Agreement, dated August \_\_\_\_\_, 2009 (the "Purchase Agreement"), Buyer has agreed to acquire from Seller, and Seller has agreed to sell to Buyer, the Assets (as such term is defined in the Purchase Agreement) pertaining to Station K234AQ, Ruidoso Downs, New Mexico, Fac. ID 147648 (the "Station").

B. It is a condition to the execution of the Purchase Agreement that Buyer, Seller and Agent execute and deliver this Agreement.

C. Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to them in the Purchase Agreement.

### **AGREEMENTS**

In consideration of the recitals and of the respective agreements and covenants contained herein and in the Purchase Agreement, and intending to be legally bound hereby, the parties agree as follows:

## **ARTICLE I**

### **ESCROW OF FUNDS**

#### **Section 1.1 Escrow Deposit**

(a) Immediately and concurrently with the execution of this Agreement, Buyer shall deliver to Agent, pursuant to the provisions of the Purchase Agreement, the sum of Five Thousand Dollars (\$5,000.00) (the "Escrow Deposit") in the form of immediately available funds.

(b) The Escrow Deposit shall be held by Agent for the benefit of Buyer and Seller as provided in this Agreement.

**Section 1.2 Appointment of and Acceptance of Appointment as Agent.** The parties hereby appoint Agent as escrow agent, and Agent hereby accepts its appointment as

escrow agent with respect to the Escrow Deposit and agrees to hold and deliver the Escrow Deposit in accordance with the terms of this Agreement.

Section 1.3 Disbursement of the Escrow Deposit at Closing. At the time and place of closing under the Purchase Agreement, and simultaneously with the performance by Buyer and Seller of their respective obligations under the Purchase Agreement, Buyer and Seller jointly shall instruct Agent in writing to (i) release the Escrow Deposit to Seller as part of the Purchase Price and (ii) deliver any and all interest accrued on the Escrow Deposit to Buyer.

Section 1.4 Entitlement of Seller to Liquidated Damages. In the event that Seller gives Agent written notice stating that Seller is entitled to the Escrow Deposit as liquidated damages in accordance with the provisions of the Purchase Agreement and that Seller has given notice of such claim to Buyer, then Agent shall promptly give Buyer a copy of such written notice. At any time on or before the seventh (7th) day after the receipt by Buyer of such notice from Agent, Buyer may contest Seller's claim to the Escrow Deposit by written notice delivered to Seller and Agent setting forth the grounds for such dispute. Promptly after the expiration of seven (7) days from the date of Buyer's receipt of such notice from Agent, if the Agent shall not have, during such seven-day period, received from Buyer written notice disputing Seller's claim to the Escrow Deposit, Agent shall deliver the Escrow Deposit to Seller. If Buyer shall give timely written notice to Agent disputing Seller's claim to the Escrow Deposit, Agent shall retain the Escrow Deposit until the dispute is resolved in accordance with Section 2.1 hereof.

Section 1.5 Other Disbursement of the Escrow Deposit Instructions.

(a) In the event Buyer gives Agent written notice stating that Buyer is entitled to the Escrow Deposit in accordance with the provisions of the Purchase Agreement and that Buyer has given notice of such claim to Seller, then Agent shall promptly give Seller a copy of such written notice. At any time on or before the seventh (7<sup>th</sup>) day after the receipt by Seller of such notice from Agent, Seller may contest Buyer's claim to the Escrow Deposit by written notice delivered to Buyer and Agent setting forth the grounds for such dispute. Promptly after the expiration of seven (7) days from the date of Seller's receipt of such notice from Agent, if the Agent shall not have, during such seven-day period, received from Seller written notice disputing Buyer's claim to the Escrow Deposit, Agent shall deliver the Escrow Deposit to Buyer. If Seller shall give timely written notice to Agent disputing Buyer's claim to the Escrow Deposit, Agent shall retain the Escrow Deposit until the dispute is resolved in accordance with Section 2.1 hereof.

(b) Notwithstanding the above provisions, Agent, upon receipt of written instructions signed by both Seller and Buyer, shall disburse the Escrow Deposit in accordance with such instructions

Section 1.6 Investment of the Escrow Deposit.

(a) Agent shall hold the Escrow Deposit in escrow, and shall deposit the funds with a banking institution for investment in Permitted Investments (as hereinafter defined).

Agent shall hold and release the Escrow Deposit in accordance with the terms of this Agreement.

(b) "Permitted Investments" shall mean money market funds, other interest bearing accounts with federally insured banking institutions, or such other investments as may be specified from time to time to Agent by joint written instructions from Buyer and Seller. As and when the Escrow Deposit is to be released under this Agreement, Agent shall cause the Permitted Investments to be converted into cash. Neither Buyer nor Seller nor Agent shall be liable for any loss of principal or income due to the choice of Permitted Investments in which the Escrow Deposit is invested or the choice of Permitted Investments converted into cash pursuant to this paragraph (b).

## ARTICLE II

### AGENT'S DUTIES AND RIGHTS

#### Section 2.1 Rights and Responsibilities of Agent.

(a) The duties and responsibilities of Agent shall be limited to those expressly set forth in this Agreement and Agent shall not be subject to, nor obligated to recognize, any other agreement between, or direction or instruction of, the parties to this Agreement, unless such agreement, direction or instruction is in writing and signed by both Buyer and Seller, and provided to Agent.

(b) If any controversy arises between the parties to this Agreement or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent's discretion, Agent may require. In such event, Agent will not be liable for interest or damages. Furthermore, Agent, in its sole discretion, may file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. Agent is authorized to deposit with the clerk of the court all documents and funds held in escrow. All costs, expenses, charges and reasonable attorney fees incurred by Agent due to the interpleader action shall be paid one-half by Buyer and one-half by Seller, in each case jointly and severally. Upon initiating such action, Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(c) In performing any duties under this Agreement, Agent shall not be liable to any party for damages, losses, or expenses, except as a result of negligence or willful misconduct on the part of Agent. Agent shall not incur any such liability for any action taken or omitted in reliance upon any instrument, including any written statement or affidavit provided for in this Agreement, that Agent shall in good faith believe to be genuine, nor will Agent be liable or responsible for forgeries, fraud, impersonations, or

determining the scope of any representative authority. In addition, Agent may consult with legal counsel in connection with Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by it in good faith in accordance with the advice of counsel. In the absence of knowledge that any action taken or purported to be taken hereunder is wrongful, Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(d) Agent and any successor Agent, may resign at any time as escrow agent hereunder by giving at least 30 days' prior written notice to Seller and Buyer. Upon such resignation, Agent shall be absolved from any and all liability in connection with the exercise of its powers and duties as escrow agent hereunder, except for liability arising in connection with its own negligence or willful misconduct. Upon their receipt of notice of resignation from Agent, Buyer and Seller shall use reasonable efforts jointly to designate a successor Agent. In the event Buyer and Seller do not agree upon a successor escrow agent within 30 days after the receipt of such notice, Agent so resigning may petition any court of competent jurisdiction for the appointment of successor agent or other appropriate relief and any such resulting appointment shall be binding upon all parties hereto. By mutual agreement, Buyer and Seller shall have the right at any time upon not less than 10 days' prior written notice to Agent to terminate the appointment of Agent, or successor Agent, as agent hereunder. Agent or successor Agent shall continue to act as escrow agent until a successor is appointed and qualified to act as Agent.

Section 2.2 Expenses of Agent. Agent shall be entitled to reimbursement for its reasonable expenses (including the reasonable fees and disbursements of its legal counsel) actually incurred by it in connection with its duties under this Agreement (the "Agent Expenses"). Except as otherwise provided herein, all Agent Expenses shall be invoiced periodically by Agent and shall be an equally shared obligation of Buyer and Seller.

Section 2.3 Indemnification of Agent. The parties and their respective successors and assigns agree, jointly and severally, to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, reasonable legal counsel fees and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement, including, but not limited to, any litigation arising from this Agreement or involving its subject matter.

Section 2.4 Legal Representation. Buyer acknowledges that Shainis & Peltzman, Chartered has acted as legal counsel to Seller in connection the Purchase Agreement and the acquisition of Station Assets as provided in that agreement. Buyer and Seller further acknowledge Shainis & Peltzman, Chartered, is providing its services under this Agreement at the request of, and as an accommodation to, the parties. Seller and Buyer agree that the provision of services by Agent under this Agreement does not bar or otherwise limit the ability of Agent to represent Seller in connection with the Purchase Agreement or the transactions contemplated thereby and consummation thereof, or in any litigation or other proceedings that might arise, provided, however, that in the event of such

litigation or proceedings, Agent shall file an action in interpleader in accordance with Section 2.1(b) above.

### **ARTICLE III**

#### **TERMINATION**

This Escrow Agreement shall be terminated (i) upon disbursement of the Escrow Deposit by Agent, (ii) by written mutual consent signed by all parties, or (iii) pursuant to a final order of a court of competent jurisdiction. This Escrow Agreement shall not be otherwise terminated.

### **ARTICLE IV**

#### **MISCELLANEOUS**

Section 4.1 Notices. All notices, requests, consents or other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given or delivered by any party (a) when received by such party if delivered by hand, (b) on the next business day if being sent by recognized overnight delivery service, or (c) on the fifth business day after being mailed by first-class mail, postage prepaid, and in each case addressed as follows:

If to Seller:                James S. Bumpous  
                                      Big Bend Broadcasting  
                                      HC 68 Box 828  
                                      27 McKnight Road  
                                      Mimbres, NM 88049

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

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street  
Suite 240  
Washington, DC 20036

If to Buyer:                John Walton, President  
                                      Walton Stations – New Mexico, Inc.  
                                      PO Box 776  
                                      Kermit, TX 79745

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

Richard J. Hayes, Jr., Esq.

27 Water's Edge Drive  
Lincolnvile, ME 04849

If to Agent: Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, NW, Suite 240  
Washington, DC 20036

Any party by written notice to the other parties pursuant to this Section 4.1 may change the address or the name(s) of person(s) to whom notices or copies thereof shall be directed.

Section 4.2 Assignment. This Agreement and the rights and duties hereunder shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of each of the parties to this Agreement. No rights, obligations or liabilities hereunder shall be assignable by any party without the prior written consent of the other parties; *provided*, that any such assignee duly executes and delivers an agreement to assume such party's obligations under this Agreement.

Section 4.3 Amendment. This Agreement may be amended or modified only by an instrument in writing duly executed by Agent, Buyer and Seller.

Section 4.4 Waivers. Any waiver by any party hereto of any breach of or failure to comply with any provision of this Agreement by any other party hereto shall be in writing and shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

Section 4.5 Construction. This Agreement shall be construed and enforced in accordance with and governed by the laws of the District of Columbia without giving effect to the choice of law provisions thereof. Any proceedings to enforce this Agreement shall be commenced in a court of competent jurisdiction in the District of Columbia. The parties agree not to assert or interpose any defenses, and do hereby waive the same, to the conferral of personal jurisdiction and venue by such court in any suit, action or proceeding. The headings in this Agreement are solely for convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement. Unless otherwise stated, references to Sections and Exhibits are references to Sections and Exhibits of this Agreement.

Section 4.6 Third Parties. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity other than Buyer, Seller and Agent any rights or remedies under, or by reason of, this Agreement.

Section 4.7 Attorneys Fees/Costs of Suit. If either Buyer or Seller institutes a legal action against the other with respect to the Escrow Deposit, the prevailing party shall be entitled to its attorney's fees and costs of suit, including the cost of any appeals.

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Section 4.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed any original and all of which together shall constitute a single instrument.

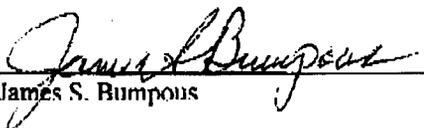
[Signature page follows]

SIGNATURE PAGE TO ESCROW AGREEMENT

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

**SELLER:**

**JAMES S. BUMPOUS D/B/A BIG BEND  
BROADCASTING**

By:   
James S. Bumpous

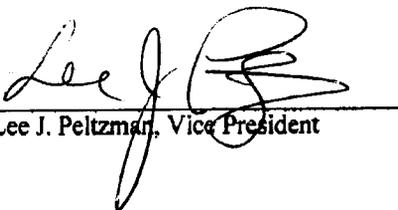
**BUYER:**

**WALTON STATIONS – NEW MEXICO, INC.**

By: \_\_\_\_\_  
John Walton  
Its: President

**AGENT:**

**SHAINIS & PELTZMAN, CHARTERED**

By:   
Lee J. Peltzman, Vice President

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**SELLER:**

**JAMES S. BUMPOUS D/B/A BIG BEND  
BROADCASTING**

By: \_\_\_\_\_  
James S. Bumpous

**BUYER:**

**WALTON STATIONS - NEW MEXICO, INC.**

By:  \_\_\_\_\_  
John Walton  
Its: President

**AGENT:**

**SHAINIS & PELTZMAN, CHARTERED**

By: \_\_\_\_\_  
Lee J. Peltzman, Vice President