

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), entered into as of this 26<sup>th</sup> day of January, 2016, by and between POSITIVE ALTERNATIVE RADIO, INC. ("Seller") and WEST VIRGINIA RADIO CORPORATION ("Buyer");

### **WITNESSETH:**

WHEREAS, Seller is the holder of the Federal Communications Commission ("FCC") Licenses for FM Translator Stations W281AJ at Ripley, West Virginia; W285DZ at Jackson, Ohio; and of Construction Permit BNPFT-20130827ADI for unbuilt FM Translator Station W234CB at Wise, Virginia (collectively, the "Translators"); and,

WHEREAS, Buyer desires to acquire the Translators for purposes of rebroadcasting an eligible station subsequent to the filing and grant of modification applications for W281AJ, W285DZ, and W234CB in either the FCC's First AM Station Modification Window open from January 29, 2016 to July 28, 2016, or the FCC's Second AM Station Modification Window open from July 29, 2016 to October 31, 2016, and Seller desires to sell, assign, transfer and convey the same to Buyer pursuant to the terms and conditions set forth below:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS:** Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

(a) **Closing Date** or **Closing** means a date to be designated by Buyer within ten (10) business days after the FCC provides Notice that it has approved and granted the assignment of the Translators; provided, however, that, in the event any petition to deny or informal objection is filed prior to the grant of the Application, either Seller or Buyer shall have the option to extend the Closing Date to a date not later than the fifth (5th) business day after the Commission's consent and approval has become a Final Order, as defined below.

(b) **Final Order** means an Order of the FCC granting its consent and approval to the assignment of the Translators from Seller to Buyer, which is no longer subject to rehearing, reconsideration or review by the FCC, or to a request for stay, an appeal or review by any court under the Communications Act of 1934, or the Rules and Regulations of the FCC.

2. **SALE AND TRANSFER OF ASSETS:** On the Closing Date, Seller agrees to sell and shall sell, transfer, assign, convey and deliver to the Buyer the Translators.

3. **PURCHASE PRICE:** The total consideration to be paid by Buyer to Seller pursuant to this Agreement is Two Hundred Ten Thousand Dollars (\$210,000.00) ("Purchase Price") to be allocated as Seventy Thousand Dollars (\$70,000.00) for each of the three Translators, which Buyer shall pay as follows:

(a) On the same day as the execution of this Agreement, Buyer shall deposit Forty Two Thousand Dollars (\$42,000.00) (the "Escrow Deposit"), to be allocated as Fourteen Thousand Dollars (\$14,000.00) for each of the three Translators, into an account at EagleBank (Bethesda, Maryland branch) designated by the Tepper Law Firm, LLC (the "Escrow Agent"). Escrow Agent shall disperse the Escrow Deposit in accordance with the Escrow Agreement entered into by Seller, Buyer, and Escrow Agent as of the date of this Agreement.

(b) The remaining balance of the Purchase Price by bank check or wire transfer at Closing.

4. **ASSUMED CONTRACTS AND OBLIGATIONS:** No expense, debt or liability of Seller, of any nature whatsoever, shall be assumed by Buyer unless such assumption is set forth in this Agreement, or in any separate written agreements executed by both Buyer and Seller.

5. **TERMINATION AND REMEDIES:**

(a) This Agreement may be terminated at the option of either party upon written notice to the other party if the Closing has not consummated on or before the first anniversary of the date of this Agreement, provided however, that neither party may terminate this Agreement if that party is in default hereunder, or if a delay in any decision or determination by the FCC respecting either application has been caused or materially contributed to (i) by any failure of the terminating party to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by the terminating party of incorrect, inaccurate, or incomplete information to the FCC; or (iii) by any other action taken by the terminating party for the purpose of delaying the FCC's decision or determination respecting the application.

(b) In the event of termination of this Agreement due to no fault of either party, Buyer shall be entitled to the return of Escrow Deposit. In the event of termination due to a breach by Buyer, Seller shall be entitled to, as its sole remedy, the Escrow Deposit as liquidated damages. In the event of a breach by Seller, Buyer shall be entitled to specific performance of this Agreement, Seller acknowledging that the Translators are unique assets for which monetary compensation is not sufficient.

6. **TRANSFER OF ASSETS:** Seller, on the Closing Date at the Closing Place, will sell, transfer, convey, assign and deliver to Buyer the Translators.

**7. CONSENT OF THE FCC:**

(a) The consummation of this Agreement shall be subject to the prior consent of the FCC without conditions materially adverse to Buyer. Upon the execution of this Agreement, Seller and Buyer will, at their mutual expense, proceed to expeditiously prepare and file with the FCC the requisite Assignment Application to secure such consent, together with such other necessary instruments and documents as may be required. The parties further agree to tender the said Application to the FCC within two (2) business days of the date of execution of this Agreement, and thereafter to prosecute said Application with diligence, and to cooperate with each other and to use their best efforts to obtain the requisite consent and approval promptly, and to carry out the provisions of this Agreement. Buyer and Seller shall be jointly responsible for the payment of any FCC filing fees associated with this transaction.

(b) **Contingent Modification Application:** Seller agrees to cooperate with Buyer in the filing of minor change Contingent Modification Applications for W281AJ, W285DZ, and W234CB in either the January 29, 2016 to July 28, 2016 or the July 29, 2016 to October 31, 2016 filing windows as described above. The parties shall endeavor to take all reasonable actions to allow Buyer to file such modification applications as early as possible in said filing windows. Buyer shall bear the costs and expenses it incurs with regard to the preparation, filing and prosecution of any such application. Seller shall provide the required written consent for the filing of said application in the form supplied herewith as Attachment A, which will be an exhibit to the modification application.

**8. LEGAL NOTICE:** Upon the filing of the assignment application, Seller shall be responsible for, and shall take the necessary steps, to provide such Legal Notice concerning the filing as may be required by the FCC Rules. If requested by Buyer, Seller shall provide Buyer with evidence of Seller's compliance with the Legal Notice requirements.

**9. SECTION 73.1150 STATEMENT:** Both Seller and Buyer agree that Seller has retained no rights of reversion of the Translators, no right to the reassignment of the permits in the future, and has not reserved the right to use the facilities of W281AJ, W285DZ, or W234CB in the future for any reason whatsoever.

**10. COMPLIANCE WITH LAWS:** Seller has not received any notice asserting noncompliance by it in connection with the Translators with respect to any applicable local, state or federal (including FCC) statute, rule or regulation. Seller is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other governmental authority or any other tribunal duly authorized to resolve disputes in any respect material to the transactions contemplated hereby. There are no applications, complaints or proceedings pending or, to the best of Seller's knowledge, threatened before the FCC relating to the Translators which would have a material adverse effect on the future operation of any such permits.

**11. COVENANTS, REPRESENTATIONS, WARRANTIES AND INSURANCE:**

(a) Seller has full power and authority to enter into this Agreement and is the holder of the Translators.

(b) Buyer has full power and authority to enter into this Agreement and has correctly represented its financial standing to consummate this Agreement.

**12. EXPIRATION OF REPRESENTATIONS AND WARRANTIES:** The representations and warranties of Seller and Buyer contained herein shall expire one (1) year after the Closing.

**13. FCC QUALIFICATIONS:**

(a) Seller is qualified under the Communications Act of 1934, as amended, to assign the Translators to Buyer.

(b) Seller does not know of any facts relating to Seller which would cause the FCC to deny its consent to the assignment of the Translators to Buyer, and should any such facts come to Seller's attention, Seller shall promptly notify Buyer thereof and use his reasonable best efforts and take such steps as may be reasonably necessary to remove any such impediment to the Assignment.

**14. SELLER'S PERFORMANCE AT CLOSING:** On the Closing Date at the Closing Place, Seller shall execute and deliver or cause to be delivered to Buyer the following:

(a) An Assignment to Buyer of the Translators, together with any and all other related authorizations.

(b) Such other assignments, bills of sale or other instruments as reasonably may be required to effectuate this Agreement and the assignment of the Translators from Seller to Buyer.

**15. BUYER'S PERFORMANCE AT CLOSING:** On the Closing Date at the Closing Place, Buyer shall (a) instruct Escrow Agent to release the Escrow Deposit to Seller and (b) pay Seller the balance of the Purchase Price (i.e., One Hundred Sixty Eight Thousand Dollars (\$168,000.00)) by wire transfer in accordance with the instructions Seller provides.

**16. BENEFIT:** The parties hereto understand and agree that this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

17. **OTHER DOCUMENTS:** The parties shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Agreement.

18. **BROKER:** Robert H. Branch has served as Seller's broker with respect to this transaction and it will be Seller's responsibility to pay the brokerage fee due Mr. Branch with regard to this transaction.

19. **ATTACHMENTS:** All Attachments to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. If any provision in any Attachment conflicts with or is not consistent with the provisions of this Agreement, the terms of this Agreement shall govern.

20. **NO INCONSISTENT ACTIONS:** Neither Seller nor Buyer shall take any action which is materially inconsistent with its obligations under this Agreement.

21. **ENTIRE AGREEMENT:** This Agreement is the only Agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof. No alteration, modification or change of this Agreement shall be valid unless by like instrument.

22. **NOTICES:** All necessary notices required under this Agreement shall be sent first-class mail, postage pre-paid, to the following:

If to Seller: Edward A. Baker  
Positive Alternative Radio, Inc.  
P.O. Box 889  
Blacksburg, VA 24063

With a copy to: Cary S. Tepper  
Tepper Law Firm, LLC  
4900 Auburn Ave.  
Suite 100  
Bethesda, MD 20814-2632

If to Buyer: Dale B. Miller  
West Virginia Radio Corporation  
1111 Virginia Street, E  
Charleston, WV 25301

With a copy to: Frank R. Jazzo

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

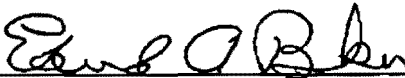
23. **GOVERNING LAW:** This Agreement shall be construed and enforced in accordance with the laws of the State of West Virginia.

24. **COUNTERPARTS:** This Agreement may be executed in counterparts.

25. **HEADINGS:** The headings of the Paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only, and in no way define, limit or describe the scope of this Agreement nor the intent of any Paragraph hereof.

IN WITNESS HEREOF, the parties hereto have hereunto set their hands.

**POSITIVE ALTERNATIVE RADIO, INC.**

By:   
Edward A. Baker  
President

**WEST VIRGINIA RADIO CORPORATION**

By: \_\_\_\_\_  
Dale B. Miller  
President

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street  
11<sup>th</sup> Floor  
Arlington, VA 22209

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IN WITNESS HEREOF, the parties hereto have hereunto set their hands.

**POSITIVE ALTERNATIVE RADIO, INC.**

By: \_\_\_\_\_  
Edward A. Baker  
President

**WEST VIRGINIA RADIO CORPORATION**

By: \_\_\_\_\_  
Dale B. Miller  
President

Attachment A to Asset Purchase Agreement

**Positive Alternative Radio, Inc.  
P.O. Box 889  
Blacksburg, VA 24063**

Dale B. Miller  
West Virginia Radio Corporation  
1111 Virginia Street, E  
Charleston, WV 25301

Dear Dale:

This letter of consent is being provided by Positive Alternative Radio, Inc. to you pursuant to Section 73.3517(a) of the rules of the Federal Communications Commission ("FCC") with regard to the proposed contingent modification applications for FM Translator Stations W281AJ at Ripley, West Virginia; W285DZ at Jackson, Ohio; and W234CB at Wise, Virginia.

Positive Alternative Radio, Inc. proposes to assign the W281AJ, W285DZ, and W234CB Translators to you. As part of the FCC assignment process, you wish to modify the W281AJ, W285DZ, and W234CB Translators in either the first January 29, 2016 to July 28, 2016, or second July 29, 2016 to October 31, 2016 AM Station filing windows for FM translator modifications, and to submit those applications as early as possible in said filing windows. This consent letter is provided by Positive Alternative Radio, Inc. to allow the filing of the W281AJ, W285DZ, and W234CB modification applications by West Virginia Radio Corporation in conjunction with the associated FCC assignment applications.

The foregoing statements are true, and are made under the penalty of perjury.

Sincerely,



Edward A. Baker  
President

Dated: 1-26-2016