

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is made as of this 12th day of August 2020, by and among LeSEA Broadcasting of Hawaii, Inc (“LBHI”) and Family Broadcasting Corporation, both Indiana corporations (collectively “Seller”), and Halepule Television, LLC, a Hawaii limited liability company (“Buyer”).

Recitals

A. LBHI is the Federal Communications Commission (“FCC”) licensee of commercial television station KWHD, Hilo, Hawaii (Fac. Id. 37103) (the “Station”)

B. Seller has agreed to sell the Station to Buyer, and Buyer has agreed to purchase certain assets relating to the Station from Seller, on the terms and conditions set forth herein.

Agreements

In consideration of the foregoing, and the mutual covenants and agreements set forth below, Seller and Buyer hereby agree as follows:

1. **Assignment Application.** The parties shall cooperate in the prompt preparation and filing of an application with the FCC for consent to the assignment of the Station license BLCDT-20060628AAM, and amendments or modifications thereof, for the operation of the Station (the “License”) from Seller to Buyer (the “Assignment Application”). Such application is to be filed no later than two (2) business days after the date hereof. The parties shall cooperate in the diligent submission of any additional information requested or required by the FCC with respect to such application, and shall take all steps reasonably required for the expeditious prosecution of the Assignment Application to a favorable conclusion, and shall diligently oppose any objections to, appeals from or petitions to reconsider such approval of the FCC, to the end that the FCC order granting consent to the assignment of the License may be obtained as soon as practicable, *provided, however*, that in the event the application for assignment of the License has been designated for hearing, then the party which is not the subject of the hearing (or which is not the party whose alleged actions or omissions resulted in the designation for hearing) may elect to terminate this Agreement upon written notice to the other party.

2. **Assets to be Conveyed.** On the Closing Date, as defined in Section 6 hereof, Seller will sell, assign, transfer, convey and deliver to Buyer all of Seller’s rights, title and interest in and to:

- a. the License and associated Station call letters “KWHD”;
- b. the tangible personal property set forth on Exhibit A attached hereto, in “as is, where is” condition (the “Tangible Personal Property”), together with such modifications, replacements, improvements and additional items made or acquired between the date hereof and the Closing Date; and
- c. subject to any required consent of landlord thereunder, the lease agreement for the Station’s tower site dated November 11, 2002 by and between HBC Tower

Company, Inc. as Landlord, and Seller, as Tenant, a copy of which has been provided to Buyer (the "Lease Agreement").

d. any files or records of Seller related to the Station, including the contents of the Station's online public inspection file.

The foregoing assets (the "Purchased Assets") are to be conveyed by Seller to Buyer through an assignment and any other document of transfer (the "Closing Documents") customary for such purpose and satisfactory in form and substance to Buyer, Seller, and their respective counsel. The Purchased Assets are to be conveyed to Buyer free and clear of any liens, security interests or other encumbrances of any nature whatsoever (collectively, "Liens").

The Purchased Assets specifically shall not include: (i) any contractual carriage or distribution rights for the Station or its programming (ii) any other contracts besides the Lease Agreement entered into by Seller relating to the Station; (iii) any cash or cash equivalents; or (iv) any other stations, licenses, assets, equipment or rights of Seller, including without limitation KWHE, Honolulu, Hawaii.

3. **No Liabilities Assumed.** Except for the obligations arising under the Lease Agreement after the Closing Date, Buyer shall not assume or in any manner be liable for any debts, liens, obligations or liabilities of Seller, whether express or implied, known or unknown, contingent or absolute.

4. **Purchase Price.** The Purchase Price ("Purchase Price") to be paid on the Closing Date by Buyer for the Purchased Assets shall be One Hundred Thousand Dollars (\$100,000), to be paid to Seller in the following manner:

a. a deposit in the amount of Fifty Thousand Dollars (\$50,000) (the "Escrow Deposit"), receipt of which is hereby acknowledged by Seller, which Escrow Deposit shall be held by Seller and either (i) retained by Seller at the Closing in partial payment of the Purchase Price, or (ii) otherwise disposed of in accordance with the terms hereof; and

b. the balance of the Purchase Price, to be paid at Closing by wire transfer by Buyer of immediately available funds to Seller.

5. **Prorations.** All operating expenses of the Station shall be prorated between Seller and Buyer as of the Closing Date to the extent known and calculable as of such date. Further prorations, if any, shall be made by Buyer and Seller no later than sixty (60) days following the Closing Date, or such later date as shall be mutually agreed to by Seller and Buyer. Seller shall be entitled to a credit at Closing in the amount of any deposit under the Station Contracts to be assumed by Buyer.

6. **Closing.** The Closing, or the Closing Date, as used throughout this Agreement, shall take place within three (3) business days after the FCC shall have consented to assignment of the License to Buyer, subject to satisfaction of or waiver of the other conditions precedent to Closing.

7. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer that:

a. Seller is, and as of the Closing Date will be, a nonprofit corporation/duly organized, validly existing and in good standing in the State of Indiana. Seller has the requisite power and authority to enter into and fulfill its obligations under this Agreement.

b. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have or will be duly authorized and approved by all necessary action on the part of Seller prior to Closing. No other or further corporate act on the part of Seller is necessary to authorize this Agreement or the consummation of the transaction contemplated hereby. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms.

c. Subject to obtaining the approval of the FCC, the execution, delivery and performance of this Agreement (i) does not require the consent of any third party, and (ii) will not conflict with, result in a breach of, or constitute a default under any agreement or instrument to which Seller is a party or by which Seller is bound, or under any law, judgment, order, decree, rule or regulation of any court or governmental body which is applicable to Seller or the Station.

d. The License is valid and in full force and effect for a term expiring February 1, 2023.

e. Seller has, and on the Closing Date will have, good and marketable title to all the Purchased Assets, free and clear of all claims and Liens.

f. Between now and the date of Closing, Seller shall not, without the consent of Buyer, enter into any leases or contracts pertaining to the Purchased Assets or dispose of or agree to sell any of the Purchased Assets.

g. No agent, broker, investment banker, or other person or firm acting on behalf of or under the authority of Buyer or any affiliate of Buyer is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, from Seller in connection with transactions contemplated by this Agreement.

8. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller that:

a. Buyer is, and as of the Closing Date will be, a limited liability company duly organized, validly existing and in good standing in the State of Hawaii. This Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms.

b. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have or will be duly authorized and approved by all necessary action on the part of Buyer prior to Closing. No other or further corporate act on the part of Buyer is necessary to authorize this Agreement or the consummation of the transaction

contemplated hereby. This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms.

c. Buyer knows of no reason related to its qualifications that would disqualify it from acquiring the Station from Seller.

d. Buyer has the financial resources necessary to consummate the transaction contemplated by this Agreement.

e. No agent, broker, investment banker, or other person or firm acting on behalf of or under the authority of Buyer or any affiliate of Buyer is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, from Seller in connection with transactions contemplated by this Agreement.

9. **Expenses.** Except as are otherwise specified in Section 10 herein, all expenses involved in the preparation and consummation of this Agreement shall be borne by the party incurring such expense, provided, however, that the filing fee for the FCC assignment application shall be paid by Buyer.

10. **Seller's Closing Conditions.** All obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions which, except for the initial consent of the FCC to the assignment, may be waived in whole or in part by Seller:

a. the FCC shall have consented to the assignment of the License to Buyer without any condition materially adverse to Seller.

11. **Buyer's Closing Conditions.** All obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions which, except for the initial consent of the FCC to the assignment, may be waived in whole or in part by Buyer:

a. the FCC shall have consented to the assignment of the License to Buyer without any condition materially adverse to Buyer;

b. Seller shall have executed and delivered to Buyer the Closing Documents and conveyed the Purchased Assets to Buyer in accordance with this Agreement; and

c. all representations and warranties of Seller made herein shall be true and correct in all material respects and Seller shall have complied in all material respects with all covenants and conditions of this Agreement.

12. **Termination.** This Agreement may be terminated by the parties as follows:

a. If either Buyer or Seller shall be in material breach of this Agreement, and such breach is not cured after twenty (20) days' written notice from the other party or, if the breach is not of a type that can be cured within such time period, then after a reasonable time to cure such breach so long as the breaching party has commenced good faith diligent efforts to

cure such breach within said time period and thereafter diligently pursues such cure to completion, then the other party, if not then in material breach itself, may terminate this Agreement. In the event of a material breach of this Agreement by Seller, Buyer shall have the right to seek and obtain specific performance of the terms of this Agreement, it being agreed by Seller that the Purchased Assets are unique assets. If any action is brought by Buyer pursuant to this subsection to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law and Buyer's reasonable costs for seeking such enforcement shall be deducted from the Purchase Price due hereunder on the Closing Date. In the event of termination of this Agreement by Seller as a result of an uncured breach of this Agreement by Buyer, Seller's sole and exclusive remedy shall be retention of the Escrow Deposit as liquidated damages. THE DELIVERY OF THE LIQUIDATED DAMAGES AMOUNT TO SELLER SHALL BE CONSIDERED LIQUIDATED DAMAGES AND NOT A PENALTY, AND SHALL BE THE RECIPIENT'S SOLE REMEDY AT LAW OR IN EQUITY FOR A BREACH HEREUNDER IF CLOSING DOES NOT OCCUR. BUYER AND SELLER EACH ACKNOWLEDGE AND AGREE THAT THIS LIQUIDATED DAMAGE AMOUNT IS REASONABLE IN LIGHT OF THE ANTICIPATED HARM WHICH WILL BE CAUSED BY A BREACH OF THIS AGREEMENT, THE DIFFICULTY OF PROOF OF LOSS, THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY, AND THE VALUE OF THE TRANSACTION TO BE CONSUMMATED HEREUNDER.

b. If the FCC or a court shall have issued an order or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting or making the transaction not feasible, and such order or other action is finally determined, then either party may terminate this Agreement provided, however, that the right to terminate this Agreement under this Section 12(b) shall not be available to a party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in, such order or action. In the event of a termination of this Agreement under this Section 12(b), the Escrow Deposit shall be refunded to Seller.

c. If the Closing has not occurred within twelve (12) months after the date of this Agreement, then either party may terminate this Agreement, provided, however, that the right to terminate this Agreement under this Section 12(c) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in unreasonable delay in the Closing. In the event of a termination of this Agreement under this Section 12(c), the Escrow Deposit shall be refunded to Buyer.

13. **Survival; Indemnification.** The representations and warranties of Buyer and Seller set forth above shall survive the Closing Date for a period of twelve (12) months (the "Survival Period"), except that for any representation or warranty of Buyer or Seller as to such party's qualifications and authority to consummate the transactions contemplated hereby, title of the parties to the Purchased Assets, any tax obligations of Seller, or the Purchased Assets being free and clear of any liens the Survival Period shall be indefinite. Seller indemnifies and holds Buyer harmless from any loss, liability, damage or expense (including legal and other expenses incident thereto) arising from or pertaining to (a) ownership of the Purchased Assets prior to the date of Closing or (b) breach of any covenants, representations or warranties of this Agreement, by Seller. Buyer indemnifies and holds Seller harmless from any loss, liability, damage or

expense (including legal and other expenses incident thereto) arising from or pertaining to (a) ownership or operation of the Purchased Assets subsequent to the date of Closing or (b) breach of any covenants, representations or warranties in this Agreement, by Buyer. No claims may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the Survival Period. In the event such notice is given, the right to indemnification with respect thereto under this provision shall survive the applicable Survival Period until such claim is finally resolved and any obligations with respect thereto are fully satisfied, and the indemnifying party shall be entitled at its own expense to compromise or defend against the claim with counsel reasonably satisfactory to the indemnified party; provided, that once the defense thereof is assumed by the indemnifying party, the indemnifying party shall keep the indemnified party advised of all developments in the defense thereof and any related litigation, and the indemnified party shall be entitled at all times to participate in the defense thereof at its own expense.

14. **Control of Station.** Between the date of this Agreement and the Closing Date, Buyer shall not control the Station, which shall remain the sole responsibility and under the control of Seller, subject to Seller's compliance with this Agreement.

15. **Entire Agreement.** This Agreement, together with all exhibits and schedules hereto, constitute the entire agreement between the parties and supersede any prior negotiations, agreements, understandings or arrangements between the parties with respect to the subject matter hereof.

16. **Amendments and Waivers.** No term or provision of this Agreement may be amended, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom the enforcement of such amendment, waiver, discharge or termination is sought. Any waiver shall be effective only in accordance with its express terms and conditions.

17. **Construction and Enforcement.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Hawaii.

18. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on the permitted successors and assigns of the parties hereto. This Agreement and any rights hereunder shall not be assignable by either party hereto without the prior written consent of the other party.

19. **Cooperation.** Both before and after the Closing, Seller and Buyer shall each cooperate, take such actions and execute and deliver such documents as may be reasonably requested by the other party in order to carry out the provisions of this Agreement.

20. **Notices.** All notices hereunder shall be delivered in writing and shall be deemed to have been duly given if delivered and received by certified or registered mail, return receipt requested, or by expedited courier service, to the following addresses or such other addresses as any party may provide by written notice:

To Seller: LeSEA Broadcasting of Hawaii, Inc.
Family Broadcasting Corporation
61300 Ironwood Road
South Bend, IN 46614
Attn: Andrew Sumrall, President

To Buyer: Halepule Television, LLC
c/o Law Office of Thomas R. Sylvester, LLC
1188 Bishop Street, Suite 2312
Honolulu, HI 96813

21. **Counterparts.** This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument. Executed copies of this Agreement transmitted by facsimile or other electronic means shall be valid and binding.

*[The remainder of this page has been intentionally left blank.
Signatures appear on the next page.]*

[Signature page to Asset Purchase Agreement.]

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

SELLER: LeSEA Broadcasting of Hawaii, Inc.

By: 
Name: Andrew Sumrall
Title: President

Family Broadcasting Corporation

By: 
Name: Andrew Sumrall
Title: President

BUYER: Halepule Television, LLC

By: 
Name: Thomas E. Burke
Title: President

Exhibit A
Tangible Personal Property

2 computers
Associated signal processing gear
Transmitter
Antenna and line
EAS equipment
3.7 meter satellite dish