

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (“APA”) is made and entered into as of this 7th day of July, 2016, by and between **HARNEY COUNTY RADIO, LLC**, a limited liability company organized under the laws of the State of Oregon (“Seller”), and **STARLIGHT BROADCASTING LCC**, a limited liability company organized under the laws of the State of Oregon (“Buyer”) (collectively “Parties”).

### **WITNESSETH:**

**WHEREAS**, Seller and Buyer are parties to that certain Asset Purchase Agreement dated February 24, 2016 (the "Old Agreement");

**WHEREAS, Buyer and Seller wish to entirely replace the Old Agreement with this APA;**

**WHEREAS**, Seller is licensee of Stations KBNH(AM), FCC Facility Identification No. 62265, licensed to Burns, Oregon; and KORC(FM), FCC Facility Identification No. 62264, licensed to Burns, Oregon (collectively the “Stations”); and

**WHEREAS**, Seller owns or leases and desires to sell and/or assign, and Buyer desires to be the assignee of licensed issued by the Federal Communications Commission (“FCC”) Authorizations allowing the Stations to broadcast, together with certain assets, property, and business records used in the operation of the Stations; and

**WHEREAS**, the assignment of the license of the Stations is subject to the prior approval of the FCC.

**NOW, THEREFORE**, the parties, intending to be legally bound, agree as follows:

### **SECTION 1** **ASSETS TO BE SOLD**

1.1 On the Closing Date, Seller shall sell, assign, transfer, convey, set over, and deliver to Buyer, and Buyer shall purchase and/or accept assignment of the following assets (collectively “Assets”), as listed in Attachment A to this APA, as follows:

1.1.1 **Authorizations, Licenses, Permits, Franchises, Etc.**: All licenses, permits, and authorizations issued or granted by the FCC for the operation of the Stations and all assignable applications filed with the FCC for the Stations (“FCC Authorizations”), and all franchises, licenses, permits, and authorizations issued by any administrative body or licensing authority or governmental or regulatory agency, other than FCC Authorizations, which are used exclusively in connection with the operation of the Stations (“Other Authorizations”), if any, and Seller’s rights in the Stations’ call signs.

1.1.2 **Tangible Personal Property**. Seller’s rights in and to all fixed and tangible property used in station operations for which the Seller has unencumbered legal title or license, which are

used to operate the Stations, including, but not limited to phasor and antenna tuning units, whether currently in operation or being held for future use after filing of necessary FCC construction permit applications(s) and FCC approval(s) required before such equipment may be used by the Stations to broadcast.

1.1.3 **Intellectual Property**. Seller's rights in and to all intellectual property used in station operations for which the Seller has unencumbered legal title or license;

1.1.4 **Intangible Property**. Seller's rights in and to all intangible property used in station operations for which the Seller has unencumbered legal title or license including, but not limited to, client lists and related sales records, rights to use the Stations' call signs pursuant to FCC Rules, and goodwill associated with the Stations.

1.2 **Satisfaction of Liens**. Prior to or at Closing, Seller shall cause all liens, mortgages, reversionary interests or other encumbrances on or relating to any of the Assets (collectively "Liens") to be released, extinguished, and discharged in full to fulfill Seller's obligations under this APA, and shall deliver to Buyer instruments releasing, extinguishing, and discharging all such Liens, and all rights and claims of any holder(s) of any of such Liens with respect to any of the Assets (collectively "Lien Release Instruments").

## **SECTION 2** **PURCHASE PRICE**

2.1 **Purchase Price**. In consideration of Seller's performance of this APA, the total purchase price (the "Purchase Price") to be paid by Buyer to Seller at Closing for the Assets shall be **THIRTY THOUSAND DOLLARS** (\$30,000.00), as adjusted pursuant to Section 3 hereof. The Purchase Price shall be paid as follows:

(a) upon the date of execution of this APA, Buyer shall pay Seller a non-refundable cash payment of **FIVE THOUSAND DOLLARS** (\$5,000.00) ("Earnest Money"), which shall be credited to Buyer at Closing;

(b) upon execution of this Agreement, an additional sum of **TEN THOUSAND DOLLARS** (\$10,000.00) (the "Escrow Deposit") shall go into an escrow account of Seller's counsel, Dan J. Alpert, to be disbursed at Closing; and

(c) at Closing, as defined in Section 9.1 of this APA, Buyer shall execute a Promissory Note in the amount of **FIFTEEN THOUSAND DOLLARS** (\$15,000.00) for the remainder of the Purchase Price (the "Note") in the form attached hereto as Attachment A, which shall bear interest at 5% interest with a term of 18 months (17 monthly payments of \$866.71 and a final payment of \$863.11).

2.2 **Allocation of Purchase Price**. Seller and Buyer agree to allocate the Purchase Price among the Assets, which allocation schedule will be determined within sixty (60) days after the Closing (the "Allocation Schedule"). Seller and Buyer will each file an IRS Form 8594 consistent with the Allocation Schedule.

**SECTION 3**  
**ADJUSTMENTS**

3.1 **Adjustment Time.** The parties shall calculate, as of 12:01 A.M. in the Stations' time zone, on the Closing Date ("Adjustment Time") the value of items requiring proration and adjustment to effectuate proper calculation of the Remainder due at Closing ("Adjustment Items").

3.2 **Adjustment Items.**

3.2.1 The following shall constitute the Adjustment Items, which shall be prorated as of the Adjustment Time:

(a) Personal property taxes, assessments (including sewerage assessments and fees), and annual FCC Regulatory Fees levied or assessed against or otherwise paid or payable with respect to any of the Assets.

(b) Transferable license, permit, and registration fees, and like items.

(c) Charges for utilities (including but not limited to electricity, fuel, water, basic monthly telephone charges, long distance telephone calls, and sanitation and garbage disposal) furnished to or in connection with the Stations.

(d) Intellectual property license agreement fees to ASCAP, BMI and SESAC.

(e) Unpaid or prepaid obligations of Seller with respect to any contract or agreement that Buyer assumes (if any).

(f) All other items of revenue or expense relating to the Assets, it being the intention of the parties that all operations and the business of the Stations prior to the Adjustment Time shall be for the account of Seller, and all operations and the business of the Stations after the Adjustment Time shall be for the account of Buyer, all in accordance with generally accepted accounting principles.

(g) FCC Assignment Application fees not otherwise prorated and reimbursed.

3.2.2 If the amount of any property tax, personal property tax, or other regulatory fee to be prorated is not known on the Closing Date, such tax or fee shall be apportioned on the basis of the most recent tax assessment or based on the fees due in the immediately prior year.

3.3 **No Adjustments for Foreclosed Property.** Any Assets in foreclosure that, as a result of such foreclosure, cannot be assigned, transferred or otherwise sold by Seller to Buyer, free and clear, at Closing, are expressly excluded from the Adjustment Items.

**SECTION 4**  
**APPLICATION TO AND CONSENT BY FCC**

4.1 **FCC Consent.** Buyer and Seller acknowledge that consummation of the purchase and sale provided for herein and the performance of the obligations of Seller and Buyer under this APA is subject to the FCC's consent to the assignment of the FCC Authorizations from Seller to Buyer.

4.2 **Application for FCC Consent.**

(a) Seller and Buyer agree to complete, execute, and deliver an assignment application, on FCC Form 314 (the "Assignment Application"), to the FCC, by the fifth business day after execution of the APA, and to proceed with due diligence and in good faith, using commercially reasonable efforts and to cooperate with each other in seeking the FCC's approval of the transactions contemplated hereunder. By the fifth business day after the execution by Buyer and Seller of this APA, each party shall have prepared or caused the preparation of its portion of an application on FCC Form 314 to request FCC consent to assign the FCC Authorizations from Seller to Buyer ("Assignment Application") and shall have filed or caused the filing of such portion of the Assignment Application with the FCC. Each party further agrees to diligently prosecute the Assignment Application and expeditiously prepare Assignment Application amendments, respond to oral or written inquiries, and answer pleadings whenever such actions may be necessary for successful prosecution of the Assignment Application.

(b) Each party shall bear its own expenses incurred for the preparation, filing, and prosecution of the Assignment Application. The parties agree that counsel for Seller shall file the Assignment Application. Should the Seller choose to proceed without assistance of an attorney-at-law, the Parties agree that Buyer's legal counsel ("Buyer's Lawyer") shall prepare and file the Assignment Applications. Should the Buyer's Lawyer prepare and file the Assignment Application, the Seller shall provide file all necessary log-in information to effectuate submission via the FCC's electronic filing systems. All filing fees imposed by the FCC with respect to the Assignment Application shall be paid by Buyer.

(c) Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this APA or the transactions contemplated herein, or any opposition to the Assignment Application or related applications that may be filed by third parties. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation and prosecution of any governmental filing required to complete the assignment of Stations pursuant to this APA.

(d) Each party agrees to comply with any reasonable condition imposed on it by the FCC, except that no party shall be required to comply with a condition that would have a material adverse effect upon it (except for conditions of general applicability to all FCC broadcast applicants or permittees and licensees) unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties, or covenants in this APA. Buyer and Seller shall oppose, at their respective expense, any efforts for reconsideration or judicial review of FCC approval of the Assignment Application (but nothing in this Section will limit any party's right to terminate this APA in accordance with the terms herewith).

**SECTION 5**  
**ASSUMPTIONS**

5.1 **Liabilities.** The Assets shall be sold and conveyed to Buyer free and clear of all Liens of any type or amount created or suffered by Seller prior to the Closing Date, whether existing now or in the future. Buyer shall not assume any obligations of Seller unless such assumption is evinced by a separate writing specifically drafted to create such an assumption.

5.2 **Seller's Liability.** Seller shall remain liable for all obligations except those explicitly transferring to Buyer upon closing and explicitly stated in this APA or in any separate agreement as described in Section 5.1, above.

**SECTION 6**  
**REPRESENTATIONS WARRANTIES AND COVENANTS OF SELLER**

Seller represents and warrants as follows:

6.1 **Standing.**

6.1.1 Seller is a limited liability company organized and in good standing under the laws of the State of Oregon, and has the full power to own the Assets and to carry on the business of the Stations as it is now being conducted and is qualified and in good standing in the State of Oregon (if such qualification is required).

6.1.2 Seller has the full power and authority to enter into this APA and to execute all of Seller's Closing Documents (as defined below) that require Seller's signatures.

6.2 **Binding Effect of APA.** This APA constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with the terms of this APA, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization, or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) (collectively the "Enforceability Exceptions"). Upon execution, the Seller's Closing Documents will constitute valid and binding obligations of Seller enforceable against Seller in accordance with their terms except for the Enforceability Exceptions. The execution, delivery, and performance of this APA or any of Seller's Closing Documents do not violate any provisions of Seller's Articles of Organization, Operating Agreement, or By-Laws, or any contract provision or other commitment to which Seller or the Stations is a party or under which it or its property is bound, or any judgment or order of which Seller has received notice, and will not result in the creation or imposition of any lien, charge, security interest, or encumbrance of any nature whatsoever upon any of the Assets.

6.3 **Operation of Stations.** The Stations currently are silent, pursuant to special temporary authorities ("STAs") issued by the FCC, File Nos. BLESTA-20160603ADM and BLSTA-20151123AEA.

6.5 **Authorizations.** Seller is the authorized holder of all FCC Authorizations for the Stations, none of which is subject to any restrictions or conditions which limit in any respect the operation of the

Stations except as may be set forth on the face of such authorizations or would apply to all broadcast authorizations. All FCC Authorizations subject to this APA are valid, and authorize the operations of the facilities described therein. No action is pending, or to the best of Seller's knowledge threatened, before the FCC or other body to revoke, refuse to renew, suspend, or materially adversely modify any of the FCC Authorizations or, to Seller's knowledge, any action which may result in the issuance of any cease and desist orders or the imposition of any administrative sanctions whatsoever with respect to the Stations or its operation, other than those related to the current silent status of the Station pursuant to the STA's issued by the FCC.

## 6.6 **Litigation and Insurance.**

6.6.1 **Litigation; Compliance with Law.** When operating, the Stations were in compliance in all material respects with all applicable federal, state and local laws, ordinances, and regulations, including compliance with the Communications Act and all rules and regulations issued thereunder. Except as provided in Schedule 6.6.1, except for proceedings affecting segments of the broadcasting industry in general, there is no complaint, claim, litigation or judicial, administrative, or other proceeding of any nature, including, without limitation, a grievance, arbitration, or insolvency or bankruptcy proceeding pending, or to the best of Seller's knowledge, threatened (or to the best of Seller's knowledge, any investigation threatened) against the Stations, Seller, or any of the Assets being sold or transferred to Buyer, which may (a) materially adversely affect the Assets or the FCC Authorizations to be assigned hereunder, or the operation of the Stations in substantially the same manner as they were operated, or would subject Buyer to liability, (b) restrain or enjoin the Closing or the consummation of the transactions contemplated hereby, or (c) result in the revocation, material adverse modification, or suspension of the FCC Authorizations, or the issuance or imposition of any administrative sanction that would materially adversely affect the Assets or the FCC Authorizations, or the operation of the Stations or subject Buyer to liability. In addition, except as disclosed herein, there is no litigation or proceeding or, to the best of Seller's knowledge, any investigation or proceeding that has been threatened, which would result in a material adverse effect upon the Assets. Seller will give Buyer prompt notice of its discovery of any such basis or the institution or the threat of any such litigation, investigation, or proceeding. Except as disclosed herein or of which Buyer has otherwise been informed by Seller, Seller is not in default in respect to any judgment, order, writ, injunction, decree, rule, or regulation of any applicable court or governmental body, which default could have a materially adverse effect on the Assets or the Stations.

6.6.2 **Insurance.** Seller maintains insurance policies with respect to the Tangible Personal Property consistent with industry norms, and will maintain such policies in full force and effect until Closing.

6.7 **Bankruptcy.** No (i) voluntary or, to Seller's knowledge, involuntary petition in bankruptcy, receivership, insolvency, (ii) reorganization with respect to Seller, or (iii) petition to appoint a receiver or trustee of Seller's property has, to Seller's knowledge, been filed against Seller. Seller has not made any assignment for the benefit of its creditors, and has not permitted any judgment, execution, attachment, or levy against it or against any of the Assets to remain outstanding or unsatisfied for more than thirty (30) days.

**SECTION 7**  
**WARRANTIES, REPRESENTATIONS AND COVENANTS OF BUYER**

Buyer covenants, represents, and warrants as follows:

7.1 **Organization and Standing.** Buyer is a limited liability company organized and in good standing under the laws of the State of Oregon.

7.2 **Authorization and Binding Obligation.** Buyer has all necessary power and authority to enter into this APA and all of Buyer's Closing Documents (as defined below) that require Buyer's signature. The execution, delivery, and performance of this APA (as of the date of execution of this APA and on the Closing Date) and the Buyer's Closing Documents (on the Closing Date) are or will be authorized by all necessary actions of Buyer. This APA constitutes a valid and binding obligation of Buyer enforceable against Buyer in accordance with the terms of this APA, except as such enforceability may be limited in law or equity. Upon execution, the Buyer's Closing Documents will constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

7.3 **No Contravention.** The execution, delivery, and performance of this APA or any of Buyer's Closing Documents do not violate Buyer's Articles of Organization or By-Laws or any contract provision or other commitment to which Buyer is a party or under which it or its property is bound, or any judgment or order except as contemplated herein.

7.4 **Litigation.** Except for administrative rule making or other proceedings of general applicability to the broadcast industry, there is no litigation, proceeding, judgment, claim, action, investigation, or complaint threatened against or affecting it which would affect Buyer's authority or ability to carry out this APA.

7.5 **Buyer's Qualifications.** Buyer is legally, financially, and otherwise qualified to be the licensee of, acquire, own and operate the Stations under the Communications Act and the rules, regulations and policies of the FCC. There are no facts that would, under existing law and the existing rules, regulations, policies, and procedures of the FCC, disqualify Buyer as an assignee of the FCC Authorizations or as the owner and operator of the Stations. No waiver of or exemption from any FCC rule or policy is necessary for the FCC's consent to the Assignment Application to be obtained. There are no matters which might reasonably be expected to result in the FCC's denial or delay of approval of the Assignment Application. Buyer has the financial ability to pay the Purchase Price.

7.6 **Bankruptcy.** No (i) voluntary or, to Buyer's knowledge, involuntary petition in bankruptcy, receivership, insolvency, (ii) reorganization with respect to Buyer, or (iii) petition to appoint a receiver or trustee of Buyer's property has, to Seller's knowledge, been filed against Buyer. Buyer has not made any assignment for the benefit of its creditors, and has not permitted any judgment, execution, attachment, or levy against it or against any of its properties to remain outstanding or unsatisfied for more than thirty (30) days.

7.7 **No Untrue Statements or Omission.** No representation or warranty made by Buyer in this Agreement or any Schedule, exhibit, statement, certificate, or other document heretofore or hereafter furnished to Seller and pursuant to this Agreement or in connection with the transaction contemplated hereby contains or will contain any knowingly untrue statement or knowingly omits to state a material

fact necessary to make the statement contained therein not misleading. All representations and warranties of Buyer set forth in this Agreement shall be true, complete, and accurate in all material respects as of the Closing Date as if made on that date. Buyer acknowledges that (i) it has performed its own due diligence investigation of the Station Assets and its current engineering specifications and the power and coverage limitations expected for the Station, and (ii) that it has been made aware of the rules and policies of the FCC, and that he is accepting the Station with full knowledge of that information. Buyer acknowledges that he is aware that (i) the deadline date for restoration of operations by the Stations is November 1, 2016, and that such deadline date is beyond the control of Seller, and (ii) Buyer is required to acquire rights to transmitter site leases or space on existing towers in order to restore operations; and (iii) Buyer is acquiring all assets pursuant to this Agreement “as is, where is, with no additional representations and warranties. Buyer agrees that following Closing, all responsibility to restore operations of the Stations in a timely and legal manner shall be the sole responsibility of Buyer, and that any difficulty or failure on the part of Buyer to satisfy such deadline or any other requirement contained in the current or any future construction permit or in any other law or regulation (whether local, state, or federal) shall in no manner constitute breach of the representations or warranties contained in this Agreement or affect Buyer’s obligations under this Agreement, as long as Seller has neither made neither untrue statements or omissions in contravention of this Section 7.7.

**SECTION 8**  
**SELLER’S CONDUCT OF BUSINESS PRIOR**  
**TO CLOSING AND BUYER’S ACCESS TO INFORMATION**

8.1 **Affirmative Covenants of Seller.** From the date of this APA until the Closing Date, Seller shall have complete control and supervision of and sole responsibility for the Stations or its operation, and during such period, Seller shall:

8.1.1 In the event the Stations resume operations prior to Closing, operate the Stations in accordance in all material respects with the rules and regulations of the FCC and the FCC Authorizations and file all FCC ownership reports, FCC employment reports, and other documents required to be filed with the FCC during such period and maintain copies of the Stations’ required FCC filings in the ordinary course of business;

8.1.2 To the extent feasible, maintain all of the Tangible Personal Property in the ordinary course of business;

8.1.3 In the event the Stations resume operation prior to Closing, operate the Stations in the ordinary course of business and substantially in the same manner as heretofore operated; provided that no programming or format change and no change in staffing shall be deemed outside the ordinary course of business;

8.1.4 Use its commercially reasonable efforts to keep the Assets substantially intact, reasonable wear and tear excepted;

8.1.5 Deliver to Buyer within ten (10) business days after filing thereof with the FCC copies of any and all material reports, applications, and/or responses relating to the Stations which are filed with the FCC on or prior to the Closing Date, including a copy of any FCC inquiries to which the

filing is responsive (in the event of an oral FCC inquiry, Seller will furnish a written summary thereof); and

8.1.6 Give prompt notice to Buyer of any occurrence that comes to Seller's attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of the Seller or Buyer contained in this APA.

8.2 **Negative Covenants of Seller.** Between the date hereof and the Closing Date, Seller shall not, with respect to the Assets, the Stations, or the operation thereof, without the consent of Buyer, which consent shall not be unreasonably withheld:

8.2.1 By any act or omission surrender, modify materially adversely, forfeit, or fail to renew under regular terms the FCC Authorizations, or give the FCC grounds to institute any proceeding for the revocation, suspension, or material adverse modification of any such FCC Authorization, or fail to prosecute with due diligence any pending applications with respect to such FCC Authorizations. Notwithstanding the forgoing, except as otherwise provided herein, Seller shall not be obligated to restore operation of the Stations;

8.2.2 Other than in the usual and ordinary course of business or as required by court Order, sell or dispose of any of the Assets, and Seller shall replace all Assets thus disposed of in the usual and ordinary course of business with assets having utility at least equal to the utility of the Assets sold or otherwise disposed of; and

8.2.3 Create or suffer or permit the creation of any new Lien on any of the Assets;

8.3 **Failure of Broadcast Transmissions.** Buyer acknowledges the Stations currently are off the air. Seller, in turn, agrees to cooperate with Buyer to conduct commercially reasonable efforts to recommence broadcast operations so as to preclude any forfeiture of the Stations' licenses, whether as a matter of law, or as stated in any FCC authorization and shall do so commensurate with Seller's obligations as a licensee and public trustee to maintain control of the Stations pursuant to FCC Regulations and the Communications Act.

8.4 **Access to Equipment and Information.** Between the date hereof and the Closing Date, to the extent feasible, Seller will give to Buyer and its authorized representatives and agents, including engineers, accountants, lawyers, and other representatives, reasonable access by prior appointment during reasonable business hours to the Assets. Seller shall furnish to Buyer such information and materials concerning the Assets as Buyer may reasonably request, so far as such access, information and materials pertain to the operation of the Stations. Seller also agrees that prior to the Closing Date, Buyer's engineer may inspect the Assets. To the extent feasible, Seller agrees to extend full cooperation to said engineer, including such access to the equipment and to logs pertaining thereto at such time or times as said engineer shall reasonably request, but upon reasonable prior notice to Seller.

8.5 **Restrictions on Buyer.** Nothing contained in this APA shall give Buyer any right to control the programming or operations of the Stations prior to the Closing Date and Seller shall have complete control of the programming and operation of the Stations between the date hereof and the Closing Date and shall operate the Stations in conformity in all material respects with the requirements of law and this APA.

8.6 **Buyer's Covenants.** From the date of this APA until the Closing Date, Buyer covenants that it will take no action, or fail to take any action, that would disqualify it from becoming the licensee of the Stations or delay the grant of the Assignment Application by the FCC. Furthermore, Buyer shall give prompt notice to Seller of any occurrence that comes to Buyer's attention that may constitute a misrepresentation, breach of warranty or nonfulfillment of any covenant or condition on the part of Buyer or Seller contained in this APA.

## SECTION 9

### **CONDITIONS FOR CLOSING**

9.1 **Closing.** The Closing of the transactions contemplated by this APA ("Closing") shall take place on a date which is mutually agreeable to the parties on or before the fifth business day after the after the FCC grant to assign the Stations becomes a Final Order, as defined in Section 9.2 below. The term "Business Day" is expressly defined as in 47 C.F.R. § 1.4(e)(2).

9.2 **Definition of Final Order.** "Final Order" means: an order of the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which is not reversed, stayed, enjoined, or set aside, and with respect to which no timely request for stay, reconsideration, review, rehearing, or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the FCC or a court of competent jurisdiction, and for any reconsideration, stay or setting aside by the FCC on its own motion or initiative, has expired.

9.3 **Exclusions to Closing Obligations.** Notwithstanding the Closing obligations stated above, that the parties shall not be obligated to proceed to Closing if the conditions precedent to Closing set forth in Sections 9.4 and 9.5 have not been satisfied or waived. For purposes of this APA, The Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this APA and such other closing documents as the parties may reasonably require by mail, by email, by facsimile, or air courier and by Buyer's delivery of the Purchase Price in immediately available funds.

9.4 **Conditions Precedent to Obligations of Buyer.** The obligation of the Buyer to consummate the Closing under this APA is subject to the satisfaction of each of the following express conditions precedent on or before the Closing Date (provided that Buyer may, at its election, waive any of such conditions on or before the Closing Date, notwithstanding that such condition is not yet fulfilled):

9.4.1 Seller shall have delivered to Buyer the Seller's Closing Documents as described in Section 10.1 below.

9.4.2 Each of the Seller's representations and warranties contained in this APA shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this APA.

9.4.3 Seller shall have performed and complied in all material respects with all covenants, agreements and obligations required by this APA to be performed or complied with by it prior to the Closing Date.

9.4.4 Seller shall be the holder of the FCC Authorizations.

9.4.5 The Assignment Application shall have been granted.

9.4.6 Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

9.5 **Conditions Precedent to Obligations of Seller.** The obligation of the Seller to consummate the Closing under this APA is subject to the satisfaction of each of the following express conditions precedent (provided that Seller may, at its election, waive any of such conditions on or before the Closing Date, notwithstanding that such condition is not fulfilled) on the Closing Date:

9.5.1 Buyer shall have delivered to Seller the Buyer's Closing Documents as described in Section 10.2 below.

9.5.2 Each of Buyer's representations and warranties contained in this APA shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as if each such representation or warranty was made at and as of such time, except in respect of such changes as are contemplated or permitted by this APA.

9.5.3 Buyer shall have performed and complied in all material respects with all covenants, agreements and obligations required by this APA to be performed or complied with by it prior to the Closing Date.

9.5.4 The Assignment Application shall have been granted.

9.5.5 Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated herein.

## **SECTION 10** **OBLIGATIONS AT CLOSING**

10.1 **Closing Documents to be Delivered by Seller.** At the Closing, Seller shall deliver to Buyer the following ("Seller's Closing Documents"):

10.1.1 An executed Bill of Sale transferring to Buyer all Tangible Personal Property to be transferred as scheduled in Attachment A, hereto.

10.1.2 An executed Assignment/Assumption Agreement assigning to Buyer the legal obligations, if any, it is assuming upon Closing.

10.1.3 An executed Assignment of Licenses assigning the FCC Authorizations to Buyer.

10.1.4 A certificate executed by Seller stating that the conditions set forth in Sections 9.4.2 and 9.4.3 have been satisfied.

10.1.7 Any other instruments of conveyance, assignment, and transfer that may be reasonably necessary to convey, transfer, and assign the Assets, from Seller to Buyer, free and clear of Liens.

10.2 **Closing Documents to be Delivered by Buyer.** At the Closing, in addition to the Purchase Price, Buyer shall deliver to Seller the following (“Buyer’s Closing Documents”):

10.2.1 A certificate executed by Buyer stating that the conditions set forth in Sections 9.5.2 and 9.5.3 have been satisfied.

10.2.2 An Assignment/Assumption Agreement executed by Buyer as the counterpart to the document required of the Seller in Section 10.1.2.

10.2.3 Such other documents and instruments of assumption that may be necessary to complete conveyance as long as such documents and instruments do not negate any Buyer’s rights stated elsewhere in this Agreement.

## **SECTION 11** **BROKERAGE**

Seller and Buyer each represent and warrant to the other that each knows of no broker, finder, or intermediary who has been involved in the transactions provided for in this APA or who might be entitled to a fee or FCC upon the consummation of such transactions.

## **SECTION 12** **INDEMNIFICATIONS**

12.1 **Breach of Seller’s Agreements, Representations, and Warranties.** Subject to the cap set forth below in this Section 12.1, Seller shall indemnify and hold harmless Buyer from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including, without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys’ fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by reason of:

(a) any breach of any warranty or representation of Seller contained in this APA or in any certificate or other instrument furnished to Buyer pursuant to this APA or in connection with any of the transactions contemplated hereby;

(b) any default of Seller included in this APA or in any certificate or other instrument furnished to Buyer pursuant to this APA or in connection with any of the transactions contemplated hereby;

(c) Seller’s operation of the Stations or the ownership of the Assets prior to Closing (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Seller under any lease, contract, or agreement prior to Closing);

(d) except for the Assumed Obligations, any transaction entered into by Seller or arising in connection with the Stations or the operation of the business thereof or any of the Assets prior to the Closing.

Notwithstanding the foregoing or anything else herein to the contrary, after Closing, the maximum aggregate liability of Seller under Section 12.1(a) shall be the Purchase Price. Seller shall not in any manner be responsible for indemnification to Buyer with regard to any litigation that may ensue against Buyer from any third party (including, specifically, Toni Carson, Trevor Carson, or B&H Radio, Inc.) due to Buyer's efforts to purchase the Station licenses, or for Buyer's operation of the Stations pursuant to any Time Brokerage Agreement as may be entered into between Buyer and Seller.

12.2 **Breach of Buyer's Agreements, Representations and Warranties.** Buyer shall indemnify and hold harmless Seller from and against, any loss, damage, liability, obligation, deficiency, claim, suit, cause of action, demand, judgment, or expense (including, without limitation, payments, fines, penalties, interest, taxes, assessments, and reasonable attorneys' fees and accounting fees), contingent or otherwise, whether incurred or asserted prior to or after the Closing Date, arising out of or sustained by reason of:

(a) any breach of any warranty or representation of Buyer contained in this APA or in any certificate or other instrument furnished to Seller pursuant to this APA or in connection with any of the transactions contemplated hereby;

(b) any default under any agreement of Buyer included in this APA or in any certificate or other instrument furnished to Seller pursuant to this APA or in connection with any of the transactions contemplated hereby;

(c) any transaction entered into by Buyer or arising in connection with the Stations or the operation of the business thereof or any of the Assets subsequent to the Closing or during any operation of the Stations as may occur pursuant to any Time Brokerage Agreement as may be entered into between Buyer and Seller.

12.3 **Procedures.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in Section 17.1.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying

party's cost (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise, or settlement of the Claim; (ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which provides any injunctive or equitable remedy with respect to the indemnified party and does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim; (iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim; and (iv) neither party shall have any liability to the other under any circumstances for the other's special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

12.4 **Sole Remedy.** Except as provided to the contrary in this APA, the right to indemnification pursuant to this Section 12 shall be the sole and exclusive remedy of each party following the Closing in connection with any breach or other violation by the other party of its representations and warranties contained in this APA.

### **SECTION 13** **RISK OF LOSS**

The risk of any loss or damage to the Assets by fire, theft, breakage, explosion, earthquake, accident, flood, rain, storm, riot, act-of-God, or public enemy, or any other casualty or cause, reasonable wear and tear excepted, which impairs the ability of the Stations to broadcast shall be borne by the Seller at all times before the Closing of this APA, and shall be borne by Buyer at all times from and after the Closing of this APA. If any such loss or damage occurs, Seller shall give prompt written notice of the loss or damage to Buyer, and Seller shall take all steps in the ordinary course of business to rebuild, replace, restore, or repair any such damaged property at its own cost and expense. In the event that Seller does not replace or restore in all material respects any such lost or damaged Asset or Assets having an aggregate replacement value of at least One Thousand Dollars (\$1,000) or which have a material adverse impact upon the operation of the Stations by the time of Closing, then the parties shall proceed to Closing and Buyer shall accept the Assets in their then-current condition and the Purchase Price shall be reduced by the reasonably estimated cost to complete any such repair, replacement, or restoration as full satisfaction of any claim by Buyer against Seller with respect to the condition of any such Asset.

### **SECTION 14** **FEES AND EXPENSES**

Each party shall pay its own attorneys' fees and expenses which it initiates, creates, or incurs in connection with the negotiation, preparation and execution of this APA. Buyer shall pay FCC filing fee associated with the Assignment Application. All other expenses incurred in connection with this transaction shall be borne by the party incurring same, except that Buyer shall be solely responsible for all governmental taxes, fees and charges applicable to the transfer of the Assets under this APA.

**SECTION 15**  
**BULK SALES LAW**

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this APA. Buyer therefore waives compliance by Seller with the requirements of any such statutes, and Seller agree to indemnify and hold Buyer harmless against any claim made against Buyer by any creditor of Seller as a result of a failure to comply with any such statute.

**SECTION 16**  
**DEFAULT AND TERMINATION**

16.1 **Termination.** This APA may be terminated prior to the Closing by either Buyer or Seller as the case may be, if the party seeking to terminate is not in material default or breach of this APA, upon written notice to the other promptly upon the occurrence of any of the following:

(a) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this APA and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (as defined below);

(b) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this APA and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligations to submit the Earnest Money on the date hereof and to pay the Purchase Price at Closing;

(c) by Seller or Buyer if the FCC denies the Assignment Application or designates it for a trial-type hearing; or

(d) by Buyer, unilaterally and without any Seller right to cure, on or after October 31, 2016, if Closing has not been consummated as a result of FCC failure to approve the Assignment Application with sufficient time for a Final Order, as defined in Section 9.2, before licenses for the Stations expire as a matter of law under terms of any FCC Special Temporary Authority by which the Stations remain silent;

(e) by Seller or Buyer if Closing does not occur on or before March 30, 2017.

16.2 A party shall be in "default" under this APA if it makes any material misrepresentation to the other party in connection with this APA, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this APA. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this APA. If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) fifteen (15) calendar days thereafter or (ii) the Closing Date under Section 9.1; provided, however, that if the breach or default is non-monetary

and cannot reasonably be cured within such period but can be cured before the Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date.

16.3 Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this APA is not specifically enforced. Therefore, in the event of failure or threatened failure by Seller to comply with the terms of this APA, Buyer shall have the right specifically to enforce Seller's performance under this APA as its sole remedy, subject to obtaining any necessary FCC consent, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

16.4 Buyer agrees that in the event Seller terminates this APA pursuant to Section 16.1(b), it is agreed that Seller shall be entitled to release of the Escrow Deposit to Seller as liquidated damages as its sole and exclusive remedy for a breach by Buyer of this APA. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by material breach or default under this APA, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

16.5 Except as provided by Section 16.4, the termination of this APA shall not relieve any party of any liability for breach or default under this APA prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 14 (Fees and Expenses) and 19.11 (Confidentiality) shall survive any termination of this APA.

## **SECTION 17**

### **SURVIVAL OF WARRANTIES**

17.1 All representations and warranties made in this APA shall survive the Closing for a period of one year, at which time they shall expire and be of no further force or effect. Any claim to indemnification in respect of a covenant or representation or warranty shall be made within eighteen months of the Closing Date. In either case, if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations.

17.2 Except as set forth in this APA, neither the acceptance nor the delivery of property hereunder shall constitute a waiver of any covenant, representation, warranty, agreement, obligation, undertaking, or indemnification of Seller or Buyer contained in this APA, all of which shall, unless otherwise specifically provided, survive the Closing hereunder in accordance with the terms of this APA and shall be binding upon and inure to the benefit of all of the parties hereto, their heirs, legal representatives, successors, and assigns.

**SECTION 18**  
**NOTICES**

Any notice, demand, or request required or permitted to be given under the provisions of the APA shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery, on the date of confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received if sent to the following addresses:

If to Seller:

Harney County Radio, LLC  
c/o Dan J. Alpert, Esq.  
The Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201  
Email: [dja@commlaw.tv](mailto:dja@commlaw.tv)  
Facsimile: (703) 539-5418

If to Buyer:

Starlight Broadcasting LLC  
138 East C St.  
Burns, OR 97720

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

Michael W. Richards, Esq.  
Law Office of Michael W. Richards LC  
7008 Westmoreland Ave.  
Suite E-8  
Takoma Park, MD 20912  
Email: [michael@michaelrichards.us](mailto:michael@michaelrichards.us)

Any party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as provided in this Section shall be invalid and shall have no force or effect.

**SECTION 19**  
**MISCELLANEOUS**

19.1 **Headings.** The headings of the Sections of this APA are for convenience of reference only, and do not form a part thereof, and do not in any way modify, interpret, or construe the meaning of the sections themselves or the intentions of the parties.

19.2 **Entire Agreement.** This APA (including the Schedules hereto) sets forth the entire agreement of the parties with respect to the subject matter herein and is intended to supersede all prior negotiations, understandings, and agreements (including the Old Agreement, which is terminated and

superseded in its entirety hereby) between Buyer and Seller regarding the assets subject to the APA. The APA cannot be altered, amended, changed, or modified in any respect unless each such alteration, amendment, change, or modification shall have been agreed to by each of the parties hereto and reduced to writing in its entirety and executed by both Buyer and Seller. No provision, condition, or covenant of this APA shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver. No party makes any representation or warranty with respect to the transactions contemplated by this APA except as expressly set forth in this APA, or in a duly executed modification thereof, as described in this Section 19.2.

19.3 **Binding Effect and Assignment.** This APA shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns. Buyer may freely assign this APA to an entity under common control of Buyer upon written notice to Seller, provided that (i) any such assignment does not delay processing of the Assignment Application, grant of the Order or Closing, (ii) any such assignee delivers to Seller a written assumption of this APA and (iii) Buyer shall remain liable for all of its obligations hereunder. No assignment shall relieve any party of any obligation or liability under this APA. Nothing in this APA expressed or implied is intended or shall be construed to give any rights to any person or entity other than the Parties and their successors and permitted assigns.

19.4 **Additional Documents.** The parties hereto agree to execute, acknowledge, and deliver, at or after the Closing Date, such other and further instruments and documents as may be reasonably necessary to implement, consummate, and effectuate the terms of this APA and the effective vesting in Buyer of title to the Assets.

19.5 **Counterparts.** This APA may be executed in one or more counterparts, all of which together shall comprise one and the same instrument.

19.6 **Legal Actions.** If, notwithstanding the provisions of Section 14, either Seller or Buyer initiates any legal action or lawsuit against the other involving this Agreement, the prevailing party in such action or suit shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in such proceeding.

19.7 **Governing Law.** The parties agree that this APA and the transaction herein contemplated shall be interpreted, construed, and enforced under and according to the laws of the State of Oregon without regard to its conflict of law principles. The venue to resolve any dispute arising under the APA shall be in a court of competent jurisdiction in Oregon.

19.8 **Time is of the Essence.** Time shall be of the essence in this APA and the performance of each and every provision hereof.

19.9 **Severability.** If any term or provision of this APA or its application shall, to any extent, be declared to be invalid or unenforceable, so long as no party is deprived of the benefits of this APA in any material respect, the remaining terms and provisions shall not be affected and shall remain in full force and effect to such extent severable; provided, however, that nothing in this provision shall impair a party's rights pursuant to Sections 12 or 16 hereof.

19.10 **Publicity.** Seller and Buyer agree that, except as may be required by applicable law or regulation, all public announcements relating to this APA or the transactions contemplated hereby will be made only as may be agreed upon in writing by the parties, which consent shall not be unreasonably withheld.

19.11 **Confidentiality.** Buyer and Seller, and their respective employees, agents and representatives, shall each keep confidential all non-public information obtained with respect to the other in connection with the negotiation and performance of this APA, except where such information is known or available through other lawful sources or where its disclosure is required in accordance with applicable law. If the transactions contemplated hereby are not consummated for any reason, Buyer and Seller, and their respective employees, agents, and representatives, shall return to the other, without retaining a copy thereof, any written information, including all financial information, obtained from the other in connection with this APA and the transactions contemplated hereby, and shall forever preserve the confidentiality of such information. The parties recognize that a breach of this covenant of confidentiality may cause substantial, irreparable harm to the other's business and therefore agree that injunctive relief would be appropriate to enforce any breach of this covenant.

19.12 **Schedules.** A disclosure on any of the attached Schedules to this APA is a disclosure for all purposes. Except as set forth in such Schedules, all disclosures are made as of the date of this APA. The attached Schedules qualify all representations, warranties and covenants set forth in this APA.

19.13. **Supersedes Previous Agreements.** This APA supersedes and replaces any prior agreement(s) between Buyer and Seller for assignment of the Stations.

**IN WITNESS WHEREOF**, the parties hereto have caused this APA to be signed and executed by their proper individuals or officers thereunto duly authorized as of the day and year first above written.

**SELLER:**

**HARNEY COUNTY RADIO, LLC**

By: \_\_\_\_\_  
Leighton M. Reed-Nickerson  
Title: Member

**BUYER:**

**STARLIGHT BROADCASTING LLC**

By: \_\_\_\_\_  
Christopher Pruett  
Title: Manager

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Title: Member

**BUYER:**

**STARLIGHT BROADCASTING LLC**

By: \_\_\_\_\_

Christopher Pruett

Title: Manager

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**SCHEDULE A.1  
FCC AUTHORIZATIONS**

Call Sign: KORC(FM), Burns, Oregon

Facility ID 62264

Frequency: 92.7 MHz

Licensee: Harney County Radio, LLC

<b><u>DESCRIPTION</u></b>	<b><u>FILE NUMBER/TYPE</u></b>	<b><u>EXPIRATION DATE</u></b>
License Authorization	BLH-20130320ABT	<i>Renewed BRH- 20131017ACB</i>  2/1/2022
WPNH984	STL	2/1/2022
Special Temporary Authority (Silent)	BLSTA- 20151123ADZ	11/1/2016

Call Sign: KBNH(AM), Burns, Oregon

Facility ID 62265

Frequency: 92.7 MHz

Licensee: Harney County Radio, LLC

<b><u>DESCRIPTION</u></b>	<b><u>FILE NUMBER/TYPE</u></b>	<b><u>EXPIRATION DATE</u></b>
License Authorization	BL- 20120113AEY	<i>Renewed BR- 20131017ACD</i>  2/1/2022
Special Temporary Authority (Silent)	BLSTA- 20151123AEA	11/1/2016