

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of \_\_\_\_\_, 2007, by and between WAMC ("Buyer") and Susan Clinton ("Seller").

WITNESSETH:

WHEREAS, Seller is the licensee of and owns and operates FM Translator Station W295AA, Middletown, New York, Facility ID Number 46502, and is the permittee of FM Translator Stations W234AY, Highland, New York, Facility ID Number 147219 and W280DJ, Beacon, New York, Facility ID Number 147411 (collectively, the "Stations"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC");

WHEREAS, Seller recently completed construction of Station W280DJ and a license application is now pending before the FCC;

WHEREAS, Seller plans to complete construction of Station W234AY and file a license application with the FCC before its construction permit expiration date; and

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Buyer, and Buyer desires to acquire from Seller, certain of the assets owned and held by Seller and used or useful solely in connection with the operation of the Stations.

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

1. **Sale of Assets.** On the Closing Date (as hereinafter defined in Section 4), Seller agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer agrees to purchase and assume, all of the right, title and interest of Seller in and to those certain assets and properties of Seller owned or held by Seller and used or useful solely in connection with the operation of the Stations (the "Assets"), which are limited to the following:

(a) all FCC licenses, permits and authorizations to operate the Stations (the "FCC Authorizations") together with all licenses, permits and authorizations issued by any other governmental authority in connection with the operation of the Stations, as set forth on Schedule 1; and

(b) that certain equipment, supplies, spare parts, and other tangible personal property owned or held by Seller solely in connection with the operation of the Stations (the "Personal Property"), as set forth on Schedule 2.

2. **Purchase Price.** In consideration of the sale, transfer, assignment, conveyance and delivery of the Assets to Buyer, Buyer shall pay to Seller at Closing (as hereinafter defined)

the aggregate sum of One Hundred Seventy Thousand Dollars (\$170,000) (the "Purchase Price") by wire transfer of immediately available funds, or such other payment method mutually satisfactory to the parties. The Purchase Price of One Hundred Seventy Thousand Dollars (\$170,000) reflects Fifty Thousand Dollars (\$50,000) for Station W295AA, Sixty Thousand Dollars (\$60,000) for Station W234AY, and Sixty Thousand Dollars (\$60,000) for Station W280DJ.

(a) Concurrently with the execution of this Agreement, Buyer shall deliver to Barry Skidelsky (the "Escrow Agent") the sum of Seventeen Thousand Dollars (\$17,000) to be held as an earnest money deposit (the "Earnest Money Deposit") pursuant to an Escrow Agreement (the "Escrow Agreement") of even date herewith. The Earnest Money Deposit shall be paid to Seller as partial payment of the Purchase Price due at Closing to Seller, or shall otherwise be made available to Seller or released to Buyer in accordance with the provisions of the Escrow Agreement.

(b) The parties acknowledge that the Escrow Agent is legal counsel for the Seller and agree to waive any potential conflict between its role as such legal counsel and its duties as Escrow Agent hereunder, provided that in all matters relating to the duties of the Escrow Agent under the Escrow Agreement, the duty of the Escrow Agent to fulfill its obligations under the Escrow Agreement shall prevail over any conflicting duty it may owe to Seller.

3. **FCC Consent; Assignment Application.** It is specifically understood and agreed by Seller and Buyer that the assignment of the FCC Authorizations is subject to the prior consent of the FCC ("FCC Consent"). Within ten (10) business days after execution of this Agreement, Seller and Buyer shall jointly file with the FCC an application for assignment of the FCC Authorizations (the "Assignment Application") from Seller to Buyer. Seller and Buyer shall thereafter prosecute the Assignment Application with all reasonable diligence and otherwise use their best efforts to obtain the grant of the Assignment Application as expeditiously as practicable. Any filing fees for the Assignment Application shall be paid by the Buyer.

4. **Closing Date.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur on a date (the "Closing Date") mutually agreed upon by Buyer and Seller within sixty (60) days following the date on which the FCC releases Public Notice of grant of the FCC consent. The Parties agree that the Closing for the assignment of these Stations will occur simultaneously with the closing of the assignments to Buyer of FM translator stations W215BG and W243BZ.

5. **Permit Expiration Date.**

(a) Seller shall use its best efforts to complete construction of and file the necessary application for license to cover construction permit for Station W234AY prior to July 19, 2007 (the "Permit Expiration Date"). The Purchase Price in Section 2 above accounts for Seller's costs and expenses associated with the construction. In the event the Closing shall not have occurred (and Seller not have filed the necessary license application with the FCC) for Station W234AY by the Permit Expiration Date, either party may terminate the provisions of this Agreement as applied to that particular Station, provided that the terminating party is not in

material default of this Agreement, and the Agreement shall be deemed reformed to apply only to the remaining Stations with a corresponding pro-rata adjustment to the Purchase Price in accordance with Section 2 above. Within a period of ten (10) business days after the filing of a license to cover application for Station W234AY: Buyer shall be entitled to conduct a site inspection of the Station W234AY facility to confirm completion of construction as authorized by the station's construction permit. If Buyer reasonably determines that Station W234AY was not constructed as authorized, Buyer may upon notice to Seller within such period terminate the provisions of this Agreement as applied to Station W234AY.

(b) Within a period of ten (10) business days after execution of this Agreement, Buyer shall be entitled to conduct a site inspection of the Station W280DJ facility to confirm completion of construction as authorized by the station's construction permit. If Buyer reasonably determines that Station W280DJ was not constructed as authorized, Buyer may upon notice to Seller within such period terminate the provisions of this Agreement as applied to Station W280DJ.

6. **Seller's Representations, Warranties and Other Obligations.** Seller represents and warrants, to the best of its knowledge and belief, that:

(a) Seller is an individual residing in the State of Tennessee. Seller has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of her obligations under this Agreement.

(b) Seller is the authorized legal holder of the FCC Authorizations and the other licenses, permits and authorizations.

(c) The FCC Authorizations are in full force and effect and have not been revoked, canceled or rescinded.

(d) Seller has good and marketable title to the Personal Property, free and clear of all liens, liabilities and encumbrances, it being understood by the parties that the Personal Property is conveyed in "as is" condition.

(e) Between the date of this Agreement and the Closing Date: (i) Seller shall operate the Stations in good faith, in the usual manner, and with due diligence to maintain the Stations and their operations and to preserve the Stations' FCC Authorizations and Assets; and (ii) Seller shall operate the Stations in compliance with all applicable laws, regulations and policies; and (iii) Seller shall not, except in the ordinary course of the Stations' business, dispose of any Assets, or enter into or modify any agreements or commitments regarding the Stations or their operation, without the prior written consent of Buyer, which consent may not be unreasonably withheld, delayed or conditioned.

(f) At Closing, Buyer shall receive clear and unencumbered title to the Personal Property.

7. **Buyer's Representations and Warranties.** Buyer represents and warrants that Buyer is a nonprofit corporation duly formed under the laws of the State of New York, and is

validly existing and in good standing. Buyer has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement. The execution and performance of this Agreement do not constitute a violation, breach, or default under any law, regulation, agreement or other obligation to which Buyer is or will become subject.

8. **Further Assurances.** Each party shall, from time to time at the request of, and without further cost or expense to the other, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

9. **Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder are subject to the satisfaction of each of the following express conditions precedent:

(i) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date.

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Seller.

(iv) Buyer shall have delivered to Seller on the Closing Date the Purchase Price.

(b) The performance of the obligations of Buyer hereunder are subject to the satisfaction of each of the following express conditions precedent:

(i) Seller shall have performed and complied in all material respects with all the agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date.

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Buyer.

(iv) The Stations shall be validly operating in accordance with their FCC authorizations as of the Closing Date. Buyer may elect to visit and inspect the Stations' sites and Seller shall cooperate with such visits.

10. **Closing Deliveries.** At the Closing, the parties shall deliver to each other such documents, instruments and agreements as either party shall request and as shall be reasonably necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to counsel for the requesting party.

11. **Assignment.** No party shall assign or attempt to assign any of the rights or obligations under this Agreement without the prior written consent of the other party hereto.

12. **Indemnification by Seller.** Seller shall indemnify and hold harmless Buyer against and in respect of:

(a) **Operations Prior to Closing.** Any and all liabilities, obligations, claims, and demands arising prior to the Closing Date out of: the right to own or operate the Stations (including, but not limited to, claims related to compliance with FCC rules and regulations), any breach by Seller of this Agreement, or any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein.

(b) **Defense.** Should any claim covered by the foregoing indemnity be asserted against Buyer, Buyer shall notify Seller promptly and give it an opportunity to defend the same and Buyer shall extend reasonable cooperation to Seller in connection with such defense. In the event that Seller fails to defend the same within a reasonable time, Buyer shall be entitled to assume, but need not assume, the defense thereof and Seller shall be liable to repay Buyer for all damages suffered by Buyer and all of its expenses reasonably incurred in connection with such defense (including, but not limited to, reasonable attorney fees and settlement payments).

13. **Indemnification by Buyer.** Buyer shall indemnify and hold harmless Seller against and in respect of:

(a) **Operations after Closing.** Any and all liabilities, obligations, claims, and demands arising after the Closing Date out of the right to own or operate the Stations (including, but not limited to, claims related to compliance with FCC rules and regulations), any breach by Buyer of this Agreement, or any inaccuracy in or breach of any representation, warranty, or covenant made by Buyer herein.

(b) **Defense.** Should any claim covered by the foregoing indemnity be asserted against Seller, Seller shall notify Buyer promptly and give it an opportunity to defend the same, and Seller shall extend reasonable cooperation to Buyer in connection with such defense. In the event Buyer fails to defend the same within a reasonable time, Seller shall be entitled to assume, but need not assume, the defense thereof, and Buyer shall be liable to repay Seller for all damages suffered by Seller and all its expenses reasonably incurred in connection with such defense (including, but not limited to, reasonable attorney fees and settlement payments).

14. **Specific Performance.** The parties recognize the uniqueness of the Stations and the assets, authorizations, and attributes that are associated with their operations, and for that reason agree that Buyer shall have the right to specific performance of this Agreement upon default of Seller.

15. **Termination.**

(a) **Termination by Seller.** In addition to the termination rights set forth in Section 5 above, this Agreement may be terminated by Seller and the purchase and sale of the Assets abandoned, if Seller is not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(i) **Conditions.** If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied or waived in writing by Seller.

(ii) **Judgments.** If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Seller, that would prevent or make unlawful the Closing.

(iii) **Upset Date.** If the Closing shall not have occurred by January 31, 2008.

(b) **Termination by Buyer.** In addition to the termination rights set forth in Section 5 above, this Agreement may be terminated by Buyer and the purchase and sale of the Assets abandoned, if Buyer is not then in material default, upon written notice to Seller, upon the occurrence of any of the following:

(i) **Conditions.** If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Buyer.

(ii) **Judgments.** If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Buyer, that would prevent or make unlawful the Closing.

(iii) **Upset Date.** If the Closing shall not have occurred by January 31, 2008.

(c) If this Agreement is terminated pursuant to subsection (a) or (b) above and neither party is in material breach of any provision of this Agreement, the parties hereto shall not have any further liability to each other with respect to the purchase and sale of the Assets, except that Seller shall promptly release to Buyer the Earnest Money Deposit made by Buyer pursuant to Section 2(a) hereof.

(d) If this Agreement is terminated by Seller due to Buyer's material breach of this Agreement and Seller is not in material breach of any provision of this Agreement, then the Deposit shall be liquidated damages and shall constitute full payment and the exclusive remedy

for any damages suffered by Seller by reason of Buyer's material breach of this Agreement. Seller and Buyer agree in advance that actual damages would be difficult to ascertain and that the amount of the Earnest Money Deposit is a fair and equitable amount to reimburse Seller for damages sustained due to Buyer's material breach of this Agreement.

(e) If this Agreement is terminated by Buyer due to Seller's material breach of any provision of this Agreement, and Buyer is not in material breach of any provision of this Agreement, Buyer shall be entitled to a release of its Earnest Money Deposit, and Buyer shall have all rights and remedies available at law or equity, including the right to seek specific performance of this Agreement.

16. **Miscellaneous.**

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and permitted assigns.

(b) Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

(c) The construction and performance of this Agreement shall be governed by the laws of the State of New York, without regard to its conflict of law provisions.

(d) This Agreement embodies the entire agreement and understanding of the parties hereto relating to the matter provided for herein, and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

(e) No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

(f) The representations, covenants, and warranties herein shall survive the Closing Date for a period of twelve months.

17. **Notices.** All notices and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, including U.S. Postal Service Express Mail, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller to:

Susan Clinton  
2310 Armstrong Road  
Linden, TN 37096  
Tel: 931-589-9583  
Fax: 931-589-9592  
Email: ddaclinton@earthlink.net

With copy (which shall not constitute notice) to:

Barry Skidelsky  
185 East 85<sup>th</sup> Street  
# 23-D  
New York, NY 10028  
Tel: 212-832-4800  
Fax: 917-492-9444  
Email: bskidelsky@mindspring.com

If to Buyer, to:

WAMC  
318 Central Avenue  
Albany, NY 12206  
Attn: David Galletly  
Tel: 518-465-5233  
Fax: 518-432-6974  
Email: david@wamc.org

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

Margaret L. Miller, Esq.  
Dow Lohnes PLLC  
1200 New Hampshire Avenue, NW  
Suite 800  
Washington, DC 20036-6802  
Tel: 202-776-2914  
Fax: 202-776-4914  
Email: mmiller@dowlohn.com

18. **Counterparts.** This Agreement may be signed in counterpart originals, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Agreement may be signed and exchanged by facsimile or email (PDF) transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

19. **Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

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

**SUSAN CLINTON**

By: \_\_\_\_\_  
An Individual

**WAMC**

By: \_\_\_\_\_  
Name:  
Title:

19. **Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

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

SUSAN CLINTON

By: Susan Clinton  
An Individual

WAMC

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

Name:

Title:

19. **Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

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

**SUSAN CLINTON**

By: \_\_\_\_\_  
An Individual

**WAMC**

By: \_\_\_\_\_  
Name: **ALAN CHARNOCK**  
Title: **PRESIDENT & CEO**

## **SCHEDULE 1**

### **FCC Authorizations**

<u>Main Station Call Sign</u>	<u>Facility ID Number</u>	<u>Community of License</u>	<u>File Number(s)</u>	<u>Expiration Date</u>
W295AA	46502	Middletown, NY	BLFT-20060201BCQ	06/01/2014 (license)
W234AY	147219	Highland, NY	BNPFT-20030828AGK	07/19/2007 (permit)
W280DJ	147411	Beacon, NY	BNPFT- 20030828ALX BLFT-20070425AIE	04/26/2007 (permit) N/A (license pending)

## **SCHEDULE 2**

### **Personal Property**

The personal property to be sold and purchased shall be conveyed "as is" and includes all equipment, supplies, spare parts, and other tangible personal property owned or held by Seller solely in connection with the operation of the Stations located at the transmission sites for the Stations, including the following for Station W295AA, which the Seller believes, but does not guarantee, to be a complete, current, and accurate list.

#### **Middletown Station W295AA:**

- 1 Studer Receiver Model A764, Serial # 2198
- 1 Studer Receiver Model A764, Serial # 2199
- 1 Energy Onix Transmitter Model SST150, Serial # 951304
- 1 Energy Onix Transmitter Model SST150, Serial # 951231
- 2 Microwave Filter Company Transmit Filters Model 9494
- 3 Microwave Filter Company Receive Filters Model 46367
- 1 48" High Rack
- 2 Rack Shelves
- 2 Gold Plated TX jumpers
- 1 RX Splitter
- 9 RG6 Jumpers
- 1 N Type Elbow
- 2 Shively Transmit Antennas Model 6312
- 1 Receive Antenna APS-14
- 1 Receive Antenna Channel Master 9