

## UNWIND AGREEMENT

FITZGERALD AND HAWRAS, PARTNERSHIP, a General Partnership (the *Assignor*, and a *Party*), SOUTHERN BELLE, LLC, a Delaware Limited Liability Company (*Southern Belle*, a *Party*, and one of the *Assignees*) and SEVEN MOUNTAINS MEDIA OF NY, LLC, a New York Limited Liability Company (*Seven Mountains*, a *Party*, and one of the *Assignees*), hereby enter into this UNWIND AGREEMENT (this *Agreement*) as of this \_\_\_th day of \_\_\_\_\_, 2020.

### PRELIMINARY STATEMENTS

A. The Assignor holds the licenses for Radio Station WPHD(FM), Facility ID Number 165342, and associated FM Translators W226BA, Facility ID Number 156749, and W300DH, Facility ID Number 140304, and Aural Studio-Transmitter Link WPYX345 (the *Licenses* for the *Stations*). The Assignor is also the owner of certain personal assets used in the operation of the *Stations* (the *Broadcasting Assets*).

B. The Parties entered into an ASSET PURCHASE AGREEMENT (the *APA*), dated December 16, 2019 (the *APA*), pursuant to which:

- the Assignor agreed to assign to Southern Belle, subject to the prior approval of the Federal Communications Commission (the *FCC*), the Licenses, and to convey to Seven Mountains the Broadcasting Assets; and
- Southern Belle agreed to receive from the Assignor an assignment of the Licenses, and
- Seven Mountains agreed to acquire from the Assignor the Broadcasting Assets.

C. On December \_\_, 2019, the Assignor and Southern Belle filed an Assignment Application, FCC File No. BALH-201912\*\*\*\*\* (the *Assignment Application*), seeking the FCC's consent to the Assignor's assignment of the Stations' Licenses to Southern Belle (the *FCC Consent*).

D. On \_\_\_\_\_, 2020, the FCC granted the Assignment Application and issued the FCC Consent.

E. On \_\_\_\_\_, 2020, by means of Broadcast Actions, Report No. \_\_\_\_\_, the FCC gave public notice of the grant of the Assignment Application.

F. The grant of the Assignment Application and the issuance of the FCC Consent have not yet collectively become a Final Order, as the APA defines that phrase, i.e., one beyond administrative or judicial reconsideration or review.

G. The APA states:

- that the consummation of the assignment of the Stations shall take place on or before the tenth (10th) day of the date on which the FCC Consent shall have become a Final Order; and

- that the finality of the grant of the FCC Consent is a condition precedent to each Party's obligation to close,

unless the Parties agree otherwise.

H. The Parties desire to proceed with the contemplated assignment and purchase, and it is lawful for them to do so.

I. In the event that the FCC Consent does not become a Final Order, the FCC (or a court of competent jurisdiction) is likely to require the Parties to unwind the sale of the Broadcasting Assets to Seven Mountains, and to unwind the assignment of the License to Southern Belle.

J. The Parties desire to set forth the procedures that they will follow in the event that the FCC (or a court of competent jurisdiction) requires the Parties to unwind the sale of the Stations to Seven Mountains, and the assignment of the Licenses for the Stations to Southern Belle. Such procedures will unwind the transaction, and will permit, to the maximum extent possible, the fair and equitable restoration of each of the Parties to the *status quo ante*, i.e., to its respective position prior to the consummation of the sale of the Broadcasting Assets and the assignment of the License pursuant to the APA.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good, and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties, intending to be legally bound hereby agree as follows:

## STATEMENT OF AGREEMENT

### 1. DEFINED TERMS

1. **Definitions.** In this Agreement, the following terms, not defined in the APA or elsewhere in this Unwind Agreement, will have the meanings specified in this Section.

A. The *Act* means the Communications Act of 1934, as amended.

B. The *Initial Closing* is the Closing taking place on \_\_\_\_\_, 2020, pursuant to the APA and the Parties' desire to close prior to finality.

C. The *Initial Closing Date* is \_\_\_\_\_, 2020, the date on which the Initial Closing is taking place.

D. *Interim Period* means the period commencing on the date of execution of this Unwind Agreement (the Initial Closing Date), and concluding on the Rescission Consummation Date, or upon such later date as the rescission to which Article 2 hereof refers, will have occurred.

E. *Rescission Consummation Date* means the tenth (10th) business day following the issuance of the Rescission Order, as defined below, or such other date on which a reassignment

of the License from Southern Belle to the Assignor must take place, consistent with the Act, pursuant to a mandate that the FCC or a court of competent jurisdiction may issue.

F. *Rescission Order* means either an order or decree that:

- (a) either is no longer subject to administrative or judicial reconsideration, rehearing or review; or
- (b) is a non-final order that nevertheless, by its terms, is effective and binding upon the Assignees and the Assignor, and

that mandates a rescission either of the sale of the Stations to the Assignees, or a reassignment of the License from Southern Belle to the Assignor, or both.

## **2. Other Definitional Provisions.**

A. Any capitalized terms used herein which are not defined herein will have the same meanings which the APA assigns to such terms.

B. In the event of any conflict of definitions, the definition set forth in the APA will control.

C. The masculine form of words will be construed to include the feminine and the neuter, and vice versa, and, unless the context otherwise requires, the singular form of words will be construed to include the plural, and vice versa.

D. The word “will” connotes an obligation of a Party to act or to forbear from acting in a specified manner, and is not merely predictive.

E. The words “herein,” “hereof,” “hereto,” and “hereunder,” and other words of similar import, when used in this Agreement, refer to this Agreement as a whole, and not to any particular Article, Section, or Subsection.

## **2. TERMS OF RESCISSION.**

2.1. **In General.** If, before the FCC Consent will have become a Final Order, the FCC, or a court of competent jurisdiction, will have issued a Rescission Order, then the Parties will cooperate with one another, and will use their respective best efforts to bring about the fair and equitable restoration of each Party to the *status quo ante*, with respect to the Stations and the Transmitter-Site Infrastructure, that is, the transmitter sites and broadcasting equipment associated with the Stations, to its respective position prior to the Initial Closing.

2.2. In that event, and to that end:

2.2.1. **Rescission.** On the Rescission Consummation Date, the Parties will rescind the transactions previously carried out on the Initial Closing Date pursuant to the APA.

**2.2.2. Cancellation of Initial Closing.** The Parties will cancel, rescind, and return all Closing Documents executed and exchanged as part of the Initial Closing.

**2.2.3. Return of Assets.** Southern Belle will, subject to any necessary prior consent of the FCC, assign the License to the Assignor. Seven Mountains will convey to the Assignor all Broadcasting Assets previously conveyed and assigned to Seven Mountains pursuant to the APA, free and clear of all liens, security interests and encumbrances (other than those permitted by the APA, and any existing prior to the transfer from Assignor to Seven Mountains on the Initial Closing Date). The Broadcasting Assets will be in substantially the same condition as on the date hereof, reasonable wear and tear in ordinary usage excepted. Such reconveyed assets will not include any of either Assignees' cash, notes receivable, claims, securities, cash equivalents or proceeds arising from the operation of the Stations during the Interim Period.

**2.2.4. Assignment of Assumed Liabilities.** The Assignees will assign to the Assignor, and the Assignor will assume, all obligations assigned to and assumed by either of the Assignees pursuant to the APA, if any.

**2.2.5. Return of Purchase Price; Reestablishment of Escrow and Earnest-Money Deposit.** The Assignor will return to the Assignees, via electronic transfers of funds, all sums remitted to the Assignor on the Initial Closing Date in payment of the Purchase Price pursuant to the APA. The Assignees will tender to their counsel an amount equal to that which they had previously tendered to their counsel for counsel to hold in escrow as the Assignees' earnest-money deposit under the APA, so that counsel may reestablish the holding in escrow of the Assignees' earnest-money deposit under the APA.

**2.2.6. Instruments of Reconveyance.** The reconveyance of the Broadcasting Assets and the reassignment of the Licenses will be by such assignments, bills of sale, deeds and other instruments of transfer and conveyance as are being employed at the Initial Closing to convey title to the Broadcasting Assets to Seven Mountains and to assign the Licenses from the Assignor to Southern Belle, as well as such other instruments of transfer or assignment as may be reasonably necessary to transfer to the Assignor good and marketable title to such assets and properties, free and clear of all liens and encumbrances, except those existing immediately prior to the Initial Closing Date.

**2.2.7. FCC Filings.** The Parties will diligently prepare and will execute any and all applications, documents and instruments for filing with the FCC that the law or the applicable requirements of the Rescission Order may require.

**2.2.8. Certain Claims.** The Assignees will be, and will remain, solely responsible for any and all liabilities and obligations arising out of any litigation, proceeding or claim by any person or entity relating to the business or operations of the Stations and the ownership of the

Broadcasting Assets during the Interim Period (but not after the Interim Period, which will be the Assignor's responsibility), whether or not such litigation, claim or proceeding is pending, threatened or asserted before, on, or after the Rescission Consummation Date.

**2.2.9. Prorations.** To the extent necessary, the Parties will adjust the income and expenses attributable to the operation of the Stations arising during the Interim Period in a manner similar to that set forth in the APA. During the Interim Period, all income and expenses related to the operation of the Stations will be for the account of the Assignees, and following the Rescission Consummation Date, all such income and expenses will be for the accounts of the Assignor.

**2.2.10. Respective Postures.** Subject to the provisions of § 2.2.8, above, upon the unwinding of the Initial Closing, the Parties will resume their respective postures under the APA, and will proceed under the terms of the APA, as if the Initial Closing had not occurred.

### **3. INTERIM OPERATION OF THE STATIONS.**

3.1. The Assignees covenant and agree with the Assignor that, between the initial Closing Date and the Rescission Consummation Date:

**3.1.1. Maintenance of Business.** The Assignees will carry on the business of the Stations and keep their books of account, records and files in the ordinary and prudent course of business for commercial Radio Stations. The Assignees will, in all material respects, comply with the terms of the Licenses and with all applicable laws, including the FCC's rules, regulations, and policies. The Assignees will further make timely payment of all obligations of the Stations, and will maintain the Broadcasting Assets in normal operating condition, wear and tear in ordinary usage excepted.

**3.1.2. Insurance.** The Assignees, at their own cost and expense, will maintain in full force and effect adequate property damage, liability and other forms of insurance necessary for the responsible operation of the Stations.

**3.2. Control or Supervision.** Nothing contained in this Unwind Agreement will give to the Assignor, either directly or indirectly, the right to control or to supervise the Stations' programming or operations during the Interim Period. Southern Belle will exercise complete control and supervision of the Stations' programming and operations during the Interim Period.

### **4. PROSECUTION OF MATTERS BEFORE THE FCC AND THE COURTS.**

**4.1. Pleadings.** Unless the Parties terminate this Agreement by their mutual agreement, each of the Parties will, at its own expense, expeditiously and diligently prosecute the defense of any petition for reconsideration, application for review, any request for stay, or any appeal of the

grant of the FCC Consent. Each Party will also take all actions necessary or appropriate to secure a favorable outcome in the proceeding involving any such petition for reconsideration, application for review, request for stay, or appeal. The Parties will cooperate with one another in connection with such efforts.

4.2. **Other Documents.** Each of the Parties, at its own expense, will execute and deliver to the other Parties such other documents, and will use its best efforts to perform such other acts and to do such other things, as are reasonably necessary for the implementation and consummation of the transactions contemplated by this Agreement.

## 5. MISCELLANEOUS PROVISIONS

5.1. **APA.** Nothing in this Agreement will affect or limit the rights, obligations or liabilities of the Parties under the APA or of any agreement executed pursuant thereto.

5.2. **Termination.** This Unwind Agreement will terminate either:

5.2.1. on the date upon which the FCC Consent has become a Final Order; or

5.2.2. on the Rescission Consummation Date (or, if later, upon such date as the rescission referred to in Article 2, above, will have occurred); or

5.2.3. pursuant to the Parties' subsequent, mutual written agreement .

5.3. **Notices.** All notices, requests, demands or other communications relating to this Agreement will be in writing and will be given in accordance with the APA.

5.4. **Amendments.** The Parties may only amend, supplement, or modify this Agreement by means of a written agreement signed by each of them.

5.5. **Assignment.** Neither the Assignees nor the Assignor will be entitled to assign their or its rights and obligations to a third party without the other Parties' written consent.

5.6. **Successors and Assigns.** This Unwind Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

5.7. **Governing Law.** The construction and performance of this Unwind Agreement will be governed by the Act, by the Rules, Regulations, and policies of the FCC, and by the laws of the State of New York, without giving effect to that State's choice-of-law provisions. The Parties consent and submit in advance to the jurisdiction of the Courts sitting in Chemung County, New York.

5.8. **No Draftsman.** Each of the Parties has had the right, ability, and opportunity to avail itself of the advice and assistance of legal counsel with respect to the wording and wisdom of

entering into this Agreement. This Agreement is the arms'-length agreement of the Parties, and neither of the Parties will be considered the draftsman of this Agreement.

5.9. **Time of Essence.** Time is of the essence in the performance of this Agreement.

5.10. **Headings.** The section and subsection headings do not constitute any part of this Agreement and are inserted herein for convenience of reference only.

5.11. **Severability.** If the FCC or any court of competent jurisdiction rules invalid or unenforceable any provision of this Agreement or the application of this Agreement to any Person or circumstance, such invalidity will not affect any other provision that can be given effect without the invalid provision or application. Any such invalid provision will be given effect to the extent possible, or it will be reformed so as to make it enforceable and valid while preserving, to the maximum extent, the Parties' original intent.

5.12. **Counterparts.** The Parties may execute this Agreement in one or more counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument.

**[The Signature Page Follows Immediately.]**

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<b>ASSIGNEE</b>	<b>ASSIGNEE</b>
<b>SEVEN MOUNTAINS MEDIA OF NY, LLC</b>	<b>SOUTHERN BELLE, LLC</b>
BY: _____ <b>KRISTIN CANTRELL</b> <b>ITS MANAGER AND PRESIDENT</b>	BY: _____ <b>KRISTIN CANTRELL</b> <b>ITS MANAGER AND PRESIDENT</b>
<b>ASSIGNOR</b>	
<b>FITZGERALD AND HAWRAS, PARTNERSHIP</b>	
BY: _____ <b>GEORGE HAWRAS</b> <b>A GENERAL PARTNER</b>	