

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is entered into as of June 6, 2016, by and among Starboard Media Foundation, Inc. ("Seller"), a Wisconsin not-for-profit corporation, and Coloff Media, LLC, an Iowa limited liability company ("Buyer").

**WHEREAS**, Seller holds a construction permit associated with FM translator station K293CH, 106.5 MHz, Waterloo, Iowa, Facility No. 142511 ("Station"), pursuant to authorizations issued by the Federal Communications Commission ("FCC"); and

**WHEREAS**, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the FCC Licenses (defined below) in connection with the Station, on the terms and subject to the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder (collectively, "Communications Laws").

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### **ARTICLE 1 – PURCHASE OF ASSETS**

1.1 Transfer of Assets. On the Closing Date (defined below), subject to the conditions contained herein, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase, assume and accept from Seller, the construction permit, including any pending applications and other authorizations relating to the Station, as identified on Schedule 1.1 (collectively, "FCC Licenses").

1.2 No Liens. The FCC Licenses shall be transferred to Buyer free and clear of all liens, except for liens for taxes not yet due and payable and liens that will be released at or prior to the Closing Date. Buyer shall not assume or be liable for, and does not undertake or attempt to assume or discharge, any obligation of Seller arising prior to the Closing Date (as defined below).

### **ARTICLE 2– CONSIDERATION**

2.1 Purchase Price; Deposit. In consideration for the transfer, assignment and sale of the FCC Licenses, Buyer shall pay Seller, at the Closing, the sum of Twenty Thousand U.S. Dollars (\$20,000) (the "Purchase Price"), payable via wire transfer in immediately available funds.

### **ARTICLE 3– FCC CONSENT**

3.1 FCC Consent. The transactions contemplated hereby are expressly conditioned on and subject to the prior consent and approval of the FCC to the assignment of the FCC Licenses from Seller to Buyer ("FCC Consent") without the imposition of any conditions that would reasonably be expected to have a material adverse effect on the Buyer or the Station. No Closing shall occur prior to Buyer's receipt of FCC Consent.

### 3.2 FCC Application.

(a) Within five (5) business days after the date of this Agreement, each party shall prepare, execute and submit its respective portion of an assignment application for FCC Consent (“FCC Application”). Each party further agrees expeditiously to prepare amendments to the FCC Application whenever such amendments are required by the FCC. The parties shall prosecute the FCC Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Application as expeditiously as reasonably practicable (but no party shall have any obligation to satisfy complainants or the FCC by taking any steps that would have a material adverse effect on the results of operations of such party, unless a failure to take such action would constitute or perpetuate a breach of such party’s representations, warranties or covenants herein). In the event any objections or challenges to the FCC Application or any requests for reconsideration or review of the FCC Consent are filed at the FCC, the parties shall cooperate with respect to any responses thereto. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the FCC Application; however, the fee to be paid to the FCC in conjunction with the filing of the FCC Application (the “FCC Fee”) will be shared equally by Buyer and Seller.

(b) Neither Buyer nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby.

## **ARTICLE 4 – CLOSING**

4.1 Closing. The consummation of the transactions contemplated herein (the “Closing”) shall take place on the later of : (a) five (5) business days after the date the FCC Consent has become a Final Order (defined below), provided that such condition may be waived by Buyer in its sole discretion; and (b) the date on which each of the other conditions to Closing set forth herein have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time). The date on which the Closing is to occur is referred to herein as the “Closing Date.” “Final Order” means an action by the FCC: (x) that has not been vacated, reversed, stayed, enjoined, set aside, annulled or suspended; (y) with respect to which no request for stay, motion or petition for rehearing, reconsideration or review, or application or request for review or notice of appeal or *sua sponte* review by the FCC is pending; and (z) as to which the normal time for filing any such request, motion, petition, application, appeal or notice, and for any reconsideration, stay or setting aside by the FCC on its own motion or initiative, has expired.

## **ARTICLE 5 – REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents, warrants and covenants to Buyer as follows:

5.1 Organization and Standing. Seller is duly organized, validly existing and in good standing under the laws of the state of Wisconsin.

## 5.2 Authority.

(a) Seller has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates and instruments delivered or to be delivered hereunder by Seller (collectively, the “Seller Documents”), to perform each of its obligations thereunder, and to consummate the transactions contemplated thereby. Each of the Seller Documents has been, or at or prior to the Closing will be, as the case may be, duly executed and delivered by Seller and constitutes, or will constitute at the Closing, as the case may be, a valid and binding obligation of Seller, enforceable against Seller in accordance with its respective terms.

(b) The execution and delivery by Seller of the Seller Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of Seller’s organizational documents; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Seller is bound; (iii) create any lien; or (iv) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Seller.

5.3 No Defaults. Neither the execution, delivery and performance by Seller of this Agreement nor the consummation by Seller of the transactions contemplated hereby is an event that, of itself or with the giving of notice or the passage of time or both, will: (a) violate any judgment, decree, order, statute, law, rule or regulation of any court, arbitrator or government or regulatory body applicable to Seller or the Station; or (b) result in the creation or imposition of any lien, charge or encumbrance against the Station.

5.4 Litigation. There is no action, suit, or proceeding pending or, to Seller’s knowledge, threatened against Seller which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Seller to perform its obligations hereunder.

## 5.5 FCC Licenses.

(a) Schedule 1.1 hereto contains a true and complete list of the FCC Licenses. Seller is the authorized legal holder of the FCC Licenses. The FCC Licenses are in full force and effect, unimpaired by any act or omission of Seller. The FCC Licenses are all of the licenses, permits or other authorizations issued by the FCC necessary to construct the Station and there are no conditions upon the FCC Licenses except those conditions stated thereon or generally applicable to broadcast stations comparable to the Station.

(b) No proceedings are pending or to Seller’s knowledge, threatened (other than proceedings applicable to the radio industry as a whole) nor, to Seller’s knowledge, do any facts exist which may reasonably result in the revocation or materially adverse modification of any of the FCC Licenses, the denial of any pending material applications related to the FCC Licenses, or, in any material respect, the issuance of any cease and desist order related to the FCC Licenses or the imposition of any administrative actions by the FCC with respect to the FCC Licenses.

5.6 No Other Agreements to Sell the Station. Seller has no legal obligation, absolute or contingent, to any other person or firm to sell, assign, or transfer the FCC Licenses (whether through a merger, reorganization or sale of stock or otherwise) or to enter into any agreement with respect thereto.

5.7 No Broker. There is no broker, finder or other person or entity who would have any valid claim through Seller against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, Seller.

## **ARTICLE 6 – REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents, warrants and covenants to Seller as follows:

6.1 Organization and Standing. Buyer is duly organized, validly existing and in good standing under the laws of the State of Iowa.

6.2 Authority.

(a) Buyer has all necessary power and authority to enter into this Agreement and all other agreements, documents, certificates and instruments delivered or to be delivered hereunder by Buyer (collectively, the “Buyer Documents”), to perform each of its obligations thereunder, and to consummate the transactions contemplated thereby. Each of the Buyer Documents has been, or at or prior to the Closing will be, as the case may be, duly executed and delivered by Buyer and constitutes, or will constitute at the Closing, as the case may be, a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms.

(b) The execution and delivery by Buyer of the Buyer Documents does not or will not, and the consummation of the transactions contemplated thereby will not: (i) conflict with, or result in a violation of, any provision of Buyer’s organizational documents; (ii) constitute or result in a breach of or default (or an event which with notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Buyer is bound; or (iii) constitute, or result in, a violation of any judgment, ruling, order, writ, injunction, decree, statute, law, rule or regulation applicable to Buyer.

6.3 Litigation. There is no action, suit, or proceeding pending or, to Buyer’s knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

6.4 Qualification. To Buyer’s knowledge: (a) Buyer is legally, financially, and otherwise qualified to be the permittee of the Station under the Communications Laws; (b) there are no facts that would, under the Communications Laws, disqualify Buyer as an assignee of the FCC Licenses or that that would reasonably be expected to delay the FCC’s processing of the FCC Application because of Buyer’s qualifications; and (c) no waiver of or exemption from any existing Communication Law on the part of Buyer is necessary for the FCC Consent to be obtained.

**ARTICLE 7**  
**COVENANTS OF SELLER PENDING THE CLOSING**

7.1 Seller Covenants. Before the Closing Date, Seller shall not, without the prior written consent of Buyer:

- (a) Make or attempt to make any change in the FCC Licenses, other than to keep the FCC Licenses in full force and effect;
- (b) Enter into any contract, lease or commitment relating to the Station or incur any other obligation with respect to the Station;
- (c) Take any action that would make the consummation of the this transaction contrary to the Communications Laws or require a waiver of the Communications Laws; or
- (d) Authorize or permit any officer, director or employee of Seller, or any investment banker, attorney, accountant or other advisor or representative retained by Seller to, solicit, initiate, encourage (including by way of furnishing information), endorse or enter into any agreement with respect to, or take any other action to facilitate, any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any proposal to purchase, directly or indirectly, the Station.

**ARTICLE 8 – CONDITIONS**

8.1 Conditions Precedent to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Buyer shall have waived in writing satisfaction of such condition (other than the FCC Consent, which cannot be waived):

- (a) the representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date;
- (b) Seller shall have performed and complied in all material respects with all covenants, agreements and undertakings required by this Agreement to be performed or complied with prior to the Closing;
- (c) Buyer shall have received a certificate dated as of the Closing Date from Seller to the effect that the conditions set forth in Sections 8.1(a) or 8.1(b) have been satisfied;
- (d) Seller shall have delivered to Buyer customary instruments of conveyance as shall be effective to transfer title of the FCC Licenses to Buyer, including but not limited to, an assignment and assumption agreement;
- (e) there shall be no material adverse effect upon any FCC License;
- (f) the FCC Consent shall be effective; and

- (g) all liens shall have been released.

8.2 Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or at the Closing, of each of the following conditions, except to the extent Seller shall have waived in writing satisfaction of such condition (except for the FCC Consent, which cannot be waived):

- (a) the representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects as of the date of this Agreement and on the Closing Date as though such representations and warranties were made on such date;

- (b) Buyer shall have performed and complied in all material respects with all covenants, agreements and undertakings required by this Agreement to be performed or complied with by it prior to the Closing;

- (c) Seller shall have received a certificate dated as of the Closing Date from Buyer, executed by an authorized officer of Seller, to the effect that the conditions set forth in Sections 8.2(a) or 8.2(b) have been satisfied;

- (d) Buyer shall have delivered the Purchase Price to Seller; and

- (e) the FCC Consent shall be effective pursuant to a Final Order.

## **ARTICLE 9 FEES AND EXPENSES**

9.1 Expenses; FCC Fees. Except as set forth below, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation and preparation of this Agreement and the transactions contemplated thereby. Each party represents to the other that it has not retained and does not owe any fee to any broker in connection with the transactions contemplated herein. If any amount paid by Seller or Buyer on account of the fees and expenses pursuant to this Section 9.1 is in excess of one-half thereof, the party that paid such excess amount shall be entitled to prompt reimbursement of such amount (plus all reasonable and documented attorneys' fees and expenses incurred in connection with enforcing this provision in the event of a dispute between Seller and Buyer, if any) from the other.

## **ARTICLE 10 TERMINATION RIGHTS**

10.1 Termination. This Agreement may be terminated, by written notice given by any party (provided such party is not in breach of any of its obligations, representations, warranties or duties hereunder) to the other party hereto, at any time prior to the Closing Date as follows:

- (a) by mutual written consent of the parties hereto;

(b) by either Buyer or Seller, if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;

(c) by Buyer (provided it is not in default hereunder), if Seller fails to perform or breach any of its obligations, representations, warranties, covenants or duties under this Agreement and Seller has not cured such failure to perform or breach within thirty (30) days after receipt by Seller of written notice from Buyer;

(d) by Seller (provided it is not in default hereunder), if Buyer fails to perform or breaches any of its obligations, representations, warranties, covenants or duties under this Agreement, and Buyer has not cured such failure to perform or breach within thirty (30) days after delivery of written notice from Seller;

(e) by Seller or Buyer if the FCC by Final Order: (i) dismisses the FCC Application; (ii) denies the FCC Application; or (iii) designates the FCC Application for an evidentiary hearing; provided that the right to terminate this Agreement under this Section 10.1(e) shall not apply to any party whose action or inaction in fulfilling a material obligation under this Agreement shall have been a cause for the failure of the FCC to dismiss, deny or designate for hearing the FCC Application as provided herein; or

(f) by Seller or Buyer, if the FCC has not granted the FCC Application by the twelve (12) month anniversary of the date hereof, provided that the right to terminate this Agreement under this Section 10.1(f) shall not apply to any party whose action or inaction in fulfilling a material obligation under this Agreement shall have been a cause for the failure of the FCC to grant the FCC Consent during such twelve (12) month period.

10.2 Effect of Termination. Upon termination of this Agreement, neither Buyer nor Seller shall have any liability to the other party, and this Agreement in its entirety shall be deemed null, void, and of no further force and effect, except as provided in Section 11.6. In the event of termination of this Agreement, each party shall bear its own expenses.

10.3 Specific Performance. Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled, in addition to any other rights and remedies on account of such failure, to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

11.1 General. This Agreement and the rights of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of Iowa. This Agreement and the Schedules attached hereto and the ancillary documents provided for herein, constitute the entire agreement and understanding of the parties hereto relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to the matters provided for herein. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Any and all notices or other communications required or desired to be given hereunder by any party shall be in writing to the applicable address set forth on the signature page.

11.2 Construction. The language used in this Agreement will be deemed to be language chosen by the parties to express their mutual intent. In the event an ambiguity or question of intent arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any person or entity by virtue of the authorship of any of the provisions of this Agreement.

11.3 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement or (b) diminish the benefits or burdens of this Agreement.

11.4 Assignment. This Agreement and Seller's or Buyer's rights or obligations hereunder shall not be assigned without the prior written consent of the non-assigning party, provided, however, that Buyer may assign its rights hereunder to a party under common control as long as such assignment is not reasonably expected to materially delay the processing by the FCC of the FCC Application. This Agreement shall be binding upon and inure only to the benefit of the parties hereto and their respective successors and assigns.

11.5 Further Assurances. After Closing, 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 of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

11.6 Survival. The representations and warranties in this Agreement shall survive for a period of twelve (12) months from the Closing Date, whereupon they shall expire and be of no further force or effect, except (a) those under Sections 5.1 and 5.2 (Seller Organization and Authority), which shall survive until the expiration of any applicable statute of limitations; and (b) those with respect to title to the FCC Licenses, which shall survive indefinitely. The covenants and agreements in this Agreement that are to be performed after the Closing shall survive until

performed and any other covenants and agreements shall survive for a period of twelve (12) months from the Closing Date.

11.7 Waivers. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.8 No Third Party Beneficiaries. 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.

[Remainder of page left intentionally blank. Signature page follows.]

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

**SELLER:**

**STARBOARD MEDIA FOUNDATION,  
INC.**

By: Fr. Francis R. Hoffman  
Fr. Francis R. Hoffman,  
Executive Director

Address:

1496 Bellevue, Suite 202  
Green Bay, WI 54311  
Attention: Amy Vanden Langenberg  
e-mail: [avanden@relevantradio.com](mailto:avanden@relevantradio.com)

Copy to (which shall not constitute notice):

Mark B. Denbo, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W., Suite 301  
Washington, DC 20016  
e-mail: [mdenbo@fccworld.com](mailto:mdenbo@fccworld.com)

**BUYER:**

**COLOFF MEDIA, LLC**

By: \_\_\_\_\_  
James Coloff  
President

Address:

3407 Apollo Street  
Cedar Falls, Iowa 50613  
e-mail: [jim@coloffmedia.com](mailto:jim@coloffmedia.com)

Copy to (which shall not constitute notice):

Mark B. Denbo, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W., Suite 301  
Washington, DC 20016  
e-mail: [mdenbo@fccworld.com](mailto:mdenbo@fccworld.com)

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

**SELLER:**

**STARBOARD MEDIA FOUNDATION,  
INC.**

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

Fr. Francis R. Hoffman,  
Executive Director

Address:

1496 Bellevue, Suite 202  
Green Bay, WI 54311  
Attention: Amy Vanden Langenberg  
e-mail: [avandem@relevantradio.com](mailto:avandem@relevantradio.com)

Copy to (which shall not constitute notice):

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5028 Wisconsin Avenue, N.W., Suite 301  
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e-mail: [mdenbo@fccworld.com](mailto:mdenbo@fccworld.com)

**BUYER:**

**COLOFF MEDIA, LLC**

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

  
James Coloff  
President

Address:

3407 Apollo Street  
Cedar Falls, Iowa 50613  
e-mail: [jim@coloffmedia.com](mailto:jim@coloffmedia.com)

Copy to (which shall not constitute notice):

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**Schedule 1.1**

**FCC Licenses**

Construction Permit for FM translator K293CH, 106.5 MHz, Waterloo Iowa, Facility No. 142511 (FCC File No. BNPFT-20151216AFS), expires January 7, 2019