

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made this 9<sup>th</sup> day of May, 2012, between **DTV ENTERPRISES, LLC**, a Colorado limited liability company ("Seller"), and **TUTT MEDIA GROUP, INC.**, a North Carolina Subchapter S corporation ("Buyer").

**WHEREAS**, Seller holds construction permits ("Permits") issued by the Federal Communications Commission ("Commission" or "FCC") to construct Digital Low Power Television broadcast stations ("Stations") to operate on (1) Channel 26, W26DW-D, Kinston, North Carolina; (2) Channel 39, W39DG-D, Jacksonville, North Carolina; and Channel 41, W41DU-D, Jacksonville, North Carolina. These Permits were granted by the Commission on September 28, 2010 and will expire on September 27, 2013; and

**WHEREAS**, the W39DG-D, Jacksonville Permit has a pending displacement application, File No. BDISDTL-20101101ACG, for a site move to Holden Beach, NC, that due to the nature of the FCC's changing policies regarding displacement application qualification, there is no guarantee that the pending application will be granted; and

**WHEREAS**, Seller desires to sell and Buyer desires to purchase certain of the assets, including the Permits, used and useful to construct the Stations; and

**WHEREAS**, the parties hereto will be unable to complete the Closing of this Agreement until after the Commission has granted its consent to the assignment of the Permits for the construction of the Stations contemplated herein together with the terms of this Agreement; and.

**NOW, THEREFORE**, for and in consideration of the premises, and of the terms and conditions set out below, and with intent of being bound hereby, the parties agree to the following:

1. Conditioned upon the Commission granting approval of the assignment of the Permits for the Stations to Buyer on terms and conditions set forth herein, Buyer agrees to purchase from Seller, and Seller agrees to sell and assign to Buyer on the Closing Date, as hereinafter defined, the assets described on the attached Exhibit A, (collectively, the "Assets"). Buyer understands and agrees that it is purchasing those certain assets, including Permits, associated with those Permits for which assignment is approved by the FCC. Excluded from this transaction are Stations cash, bank accounts or deposit accounts of any kind, utility deposits, security deposits, accounts receivable, land and buildings.

2. Seller warrants that it possesses Permits from the Commission to construct the Stations. The Permits for the construction of the Stations are not subject to any pending or threatened adverse action or proceedings by the Commission or other controlling governmental authority and that pending approval of the assignment of the Permits for the Stations, Seller will continue to hold the Permits in accordance with the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and the Rules and Regulations of the Commission.

3. In consideration of the performance by Seller of the covenants and agreements contained herein, Buyer agrees to pay Purchase Price of Forty-Two Thousand Dollars (\$42,000.00) for W26DW-D, Twenty-One Thousand Dollars (\$21,000.00) for W39DG-D and Twenty-Three Thousand Dollars (\$23,000.00) for W41DU-D to Seller (the "Purchase Price") for

a total of Eighty-Six Thousand (\$86,000.00) for all three of the Stations assets, including Permits, which will be payable as follows:

- (a) A non-refundable Escrow payment to Seller in the amount of Ten-Thousand Dollars (\$10,000.00) which, within five (3) days of the signing of this Agreement by both parties, will be placed in an interest bearing account with the firm of Kepper, Tupper & Company, (Escrow Agent) pursuant to an Escrow Agreement (Exhibit B) to be applied to Purchase Price, with the accrued interest going to Buyer, and the Escrow Agent shall notify the Buyer of the bank and account number in which the escrow payment was deposited; and,
- (b) The balance of the Purchase Price of Seventy-Six Thousand Dollars (\$76,000.00), less adjustments, in the form of a bank Wire Transfer to Seller pursuant to wire instructions that the Seller will provide to Buyer prior to Closing.
- (c) Notwithstanding (a), above, the Escrow payment shall be refundable, with accrued interest, in the event this Agreement is terminated pursuant to Paragraphs 8 or 10(b) herein.

4. Seller warrants and represents to Buyer as follows:

- (a) Seller has, and on the Closing Date shall have, good and transferable title to all of the Assets listed on Exhibit A. All Assets are sold "as is/where is." On the Closing Date, there shall be no liens or encumbrances of any kind on the assets listed on Exhibit A.
- (b) On the date hereof, Seller has, and on the Closing Date will have, valid Permits from the Commission for the Stations, and there is neither pending nor to the best

of Seller's knowledge threatened any action by the Commission to revoke or modify said Permits.

- (c) Seller has the right, power and authority to hold the Assets, including the Permits for the Stations, and to sell the Permits to Buyer. All requisite legal action has been taken to approve this Agreement and the sale and assignment of the Assets, including the Permits and the undersigned manager of Seller is authorized to execute this Agreement and all associated documents on its behalf to Buyer.
- (d) To the best of Seller's knowledge, the execution and delivery of this Agreement and the consummation of this transaction do not conflict with or result in a breach of any of the terms, provisions or conditions of any statute, regulation or court or administrative order or process, or any agreement or instrument to which Seller is a party or is bound or constitute a default thereunder.
- (e) Seller will, prior to the date of Closing, take all requisite action to assist in the approval of this Agreement and the assignment of the Permits from Seller to Buyer as contemplated by this Agreement.
- (f) No litigation at law or in equity and no proceeding before any commission or other administrative or regulatory authority is pending or to the knowledge of Seller threatened against or affecting the Assets, including the Permits of the Stations.
- (g) As of the Closing, there will be no liens, security interests or encumbrances of any kind against the Permits.

- (h) No representation or warranty by Seller contains any untrue statement of a material fact or fails to state a material fact necessary to make the statements contained herein not misleading or necessary in order to provide Buyer with complete and accurate information as to the Permits.

5. Buyer warrants and represents to Seller as follows:

- (a) Buyer has the right, power and authority to hold said Permits for the Stations and to buy the Permits from Seller.
- (b) To the best of Buyer's knowledge, the execution and delivery of this Agreement and the consummation of this transaction do not conflict with or result in a breach of any of the terms, provisions or conditions of any statute, regulation or court or administrative order or process, or any agreement or instrument to which buyer is a party or by which it is bound or constitute a default thereunder.
- (c) Buyer has, prior to the date of the execution of this Agreement, taken all requisite corporate action to approve this Agreement and the assignment of the Permits from Seller as contemplated by this Agreement, and the undersigned officer of Buyer is authorized to execute this Agreement and all associated documents on its behalf.
- (d) Buyer knows of no reason why it should not be qualified before the Commission to carry out the terms of this Agreement.
- (e) No representation or warranty by Buyer contains any untrue statement of a material fact or fails to state a material fact necessary to make the statements

contained herein not misleading or necessary in order to provide Seller with complete and accurate information.

- (f) Buyer will, prior to the date of Closing, take all requisite action to assist in the approval of this Agreement and consummation of this Agreement in a timely fashion.

6. This entire Agreement is subject to the approval of the Commission of the assignment of the Permits contemplated hereby, without any conditions materially adverse to Buyer. Seller, with the assistance and support of the Buyer, shall as soon as practicable make such application and take such other steps as may be necessary to secure the written consent of the Commission to all actions contemplated herein. Each party agrees to cooperate with the other fully in securing the necessary approval of the Commission and to file an application with the Commission within five (5) days or less from the date of this Agreement. All FCC filing costs for such application shall be paid equally by Buyer and Seller, and Buyer and Seller each will be responsible for their own legal costs.

7. It is agreed that Seller shall maintain and control the ownership of the Assets, including the Permits, for the Stations until the Closing Date following approval by the Commission of the assignment application contemplated herein. Prior to completion of the Closing, Seller will timely file with the Commission all documents required to keep its Permits in full force and effect.

8. In the event consent of the Commission to the arrangements, terms and conditions provided for in this Agreement shall not have become Final, as defined herein, on or before six (6) months from the date of this Agreement, or such application is designated for hearing by the

Commission, Seller or Buyer may terminate this Agreement by giving notice to the other in writing. In the event that this Agreement is terminated pursuant to the provisions of this paragraph, both parties hereto shall execute any documents and take any action necessary with the Commission to withdraw or rescind the application for the transfer of the Permits to Buyer and shall thereafter stand fully released and discharged of any and all obligations.

9. The sale and assignment of the Assets, including the Permits, as contemplated by this Agreement (the "Closing") shall take place on a date (the "Closing Date") selected by Buyer following the Commission's consent to the assignment of the Permits. Buyer shall at its option select a Closing Date as follows:

- (a) Ten (10) business days after the Commission's consent to the application for assignment of each Permit has become final (*i.e.*, no longer subject to Administrative or judicial review); or
- (b) Ten (10) business days after Commission staff grant of the application for assignment of each Permit has been issued and appears on FCC public notice.

The Closing shall take place by electronic transmission with overnight delivery of original documents. The date and place of Closing may be changed by mutual consent of the parties. At the Closing, the parties shall execute and deliver any documents necessary to effectuate the transfer of the Permits and the Assets to Buyer and such other documents as may be necessary or appropriate to effectuate this Agreement.

10. In the event either party hereto commits a substantial breach of any material agreement set forth herein, then the remedies for such breach shall be as follows:

- (a) If such default be by Buyer, Seller shall be entitled to Ten-Thousand Dollars (\$10,000.00) from the Escrow account as liquidated damages from Buyer, with the accrued interest to Seller, as its sole and exclusive remedy for any and all breaches or defaults by Buyer hereunder. Seller and Buyer hereby agree that it would be impracticable and extremely difficult to fix the amount of Seller's actual damages and further agreeing that the liquidated damages provided for herein is a reasonable estimate of the amount Seller might be damaged as a result of Buyer's failure to perform hereunder.
- (b) If such default be by Seller, Buyer shall be entitled to return of the Escrow plus all accrued interest.

11. In the event of any default, as herein provided, the party not in default shall give written notice to the defaulting party of the specific nature of the default. The defaulting party shall have fifteen (15) days from receipt of the written notice to cure the default.

12. The risk of loss regarding the personal property being purchased in accordance with the terms of this Agreement shall transfer to the Buyer on the date of closing.

13. All this Agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado. Any controversy or dispute arising out of or relating to this Agreement or the breach thereof shall be settled by non-binding arbitration. Such arbitration shall be effected by arbitrators selected as hereinafter provided and shall be conducted in accordance with the rules of the American Arbitration Association existing at the date thereof. The dispute shall be submitted to three (3) arbitrators who are located in Washington, D.C. and listed on the construction or real estate panels of the American Arbitration Association, with one arbitrator

being selected by Buyer, one arbitrator selected by Seller, and one arbitrator being selected by agreement of Buyer and Seller. In the event that any of the parties hereto shall have failed to select its arbitrator and given notice thereof to the others, within ten (10) days after any notification of any demand for arbitration hereunder, such arbitrator shall be selected by the American Arbitration Association. Judgment may be entered on any decision rendered by the arbitrators in any Federal or State court having jurisdiction. Each party shall bear the costs of the fees and expenses of the arbitrator selected by or for it and the fees and expenses of the third arbitrator shall be shared by the parties.

14. Any notices required or permitted to be given to Seller by Buyer shall be deemed sufficient if mailed with postage prepaid by certified or by registered mail, return receipt requested, or by Federal Express/Postal Overnight restricted delivery to:

William A Vanderpoel, Manager  
DTV Enterprises, LLC  
13079 Whisper Canyon Road  
Castle Rock, CO 80108

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

James M. Talens Esq.  
6017 Woodley Road  
McLean, VA 22101

Any notice required or permitted to be given to Buyer by Seller shall be deemed sufficient if mailed with postage prepaid by certified or registered mail, return receipt requested, or by Federal Express/Postal Overnight restricted delivery to:

Clark Tutt  
136 N. Queen Street  
Kinston, North Carolina 28501

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

Rose Rand Wallace, Attorneys, P.A.  
Richard F. Landis, II  
PO Box 3557  
131 S. Queen Street  
Kinston, NC 28501

The above addresses may be changed by written notice of such change to the last address designated. All notices shall be deemed given upon the earlier of actual delivery to the intended recipient or three (3) calendar days after being deposited in the United States Mail as provided above.

15. This Agreement shall inure to and be binding upon the successors, representatives, heirs and assigns of the respective parties hereto. Buyer shall be entitled to assign its rights under this Agreement to another entity prior to submission of the Application For Assignment to the Commission, and provided that said request does not create additional delay, upon written consent of Seller, which consent shall not be withheld unreasonably.

16. This Agreement may be executed in any number of counterparts.

17. This Agreement may be amended, modified, superseded or canceled, and the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto. No waiver by any party of any condition, or of any breach of any term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any

such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

18. The duties, responsibilities and obligations of each party hereunder are expressly conditioned on the compliance or performance in all material respects, unless waived, of all of the terms, covenants and conditions to be complied with or performed by each of the other parties on or before Closing.

19. The representations, warranties, covenants and agreements contained herein shall be deemed to be material and relied upon by the party to which they are made and shall survive the execution, delivery and performance of this Agreement, consummation of the transaction contemplated hereunder and any investigation made by or on behalf of the parties at any time.

20. This Agreement contains the entire understanding among the parties and supersedes all prior written or oral agreements between them respecting the within subject matter unless otherwise provided herein. There are no representations, agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

21. The representations and warranties of the parties contained in this Agreement shall be true and correct in all material respects at and as of Closing as though such representations and warranties were made at and as of such time.

22. In the event that either party hereto institutes an action or other proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or other proceeding shall be entitled to an award of all reasonable costs and reasonable attorneys' fees as determined by the Court, in addition to any other relief granted.

23. Seller shall defend, indemnify, save and hold harmless Buyer and its successors and assigns, from and against any and all costs, losses, liabilities, obligations, lawsuits, claims and expenses (whether or not arising out of third-party claims), including without limitation interest, penalties, reasonable attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing, (collectively, "Claims") incurred in connection with or arising out of or resulting from (a) any breach of any covenant, representation or warranty made by Seller in this Agreement; or, (b) any liability, obligation or commitment of any nature (absolute, accrued, contingent or otherwise) of Seller relating to the Permits, or the Assets arising out of a transaction entered into by Seller or an event occurring prior to the Closing (except for post-Closing obligations of Seller under any agreements being assumed by Buyer). Within fourteen (14) days after Buyer receives actual knowledge of any claims which Buyer reasonably and in good faith determines may give rise to Seller's liability hereunder, Buyer shall provide written notice of such potential claims to Seller.

24. Buyer shall defend, indemnify, save and hold harmless Seller, and its successors and assigns, from and against any and all costs, losses, liabilities, obligations, lawsuits, claims and expenses (whether or not arising out of third-party claims), including without limitation interest, penalties, reasonable attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing, (collectively, "Claims") incurred in connection with or arising out of or resulting from (a) any breach of any covenant, representation or warranty made by Buyer in this Agreement; or (b) any liability or obligation incurred by Buyer relating to Buyer's ownership or operation of the Stations, License, Permits or Assets after the Closing. Within fourteen (14) days after Seller receives actual knowledge of any claims which Seller reasonably and in good faith

determines may give rise to Buyer's liability hereunder, Seller shall provide written notice of such potential claims to Buyer.

25. Buyer and Seller acknowledge that there is a broker involved in the sale of these stations and the Seller is responsible to pay any fees due the broker.

**IN WITNESS WHEREOF**, this Agreement has been executed in duplicate, with each version deemed an original, on the date and in the place first mentioned above.

**SELLER:**

**DTV ENTERPRISES, LLC**

By: William A Vanderpoel  
William A Vanderpoel  
Manager

**BUYER:**

**TUTT MEDIA GROUP, INC.**

By: Clark Tutt  
Clark Tutt  
President

## **EXHIBIT A**

### **PERMITS**

- 1. Federal Communications Commission Digital Low Power Broadcast Station  
Construction Permit Facility ID: 184344 and Call Sign: W26DW-D**
- 2. Federal Communications Commission Digital Low Power Broadcast Station  
Construction Permit Facility ID: 184347 and Call Sign: W39DG-D**
- 3. Federal Communications Commission Digital Low Power Broadcast Station  
Construction Permit Facility ID: 184346 and Call Sign: W41DU-D**

**EXHIBIT B**

**ESCROW**