

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "*Agreement*") is made as of March __, 2015 (the "Effective Date") by and between VIRGINIA TECH FOUNDATION, INC., a Virginia corporation ("*Seller*"), and WBTX RADIO LLC, PO Box 337, Broadway, VA 22815, a Virginia Limited Liability Corporation ("*Buyer*"). Buyer and Seller may be referred to in this Agreement individually as a *Party* and collectively as the *Parties*.

Recitals

A. Seller currently holds a Construction Permit issued by the Federal Communications Commission (the "*FCC*") for FM translator station W271CC, Broadway, Virginia (Facility Identification Number 150808; FCC File No. BNPFT-20130829ADU) (the "*Translator*").

B. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Construction Permit for the Translator and all rights relating thereto (collectively, the "*Translator CP*").

C. The Parties understand and acknowledge that the proposed sale of the Translator CP must be approved by the FCC prior to closing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: PURCHASE OF THE TRANSLATOR CP

1.1. Translator CP. On the terms and subject to the conditions contained in this Agreement, at the Closing (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to the Translator CP set forth on Schedule 1.1, including any modifications or extensions issued by the FCC between the Effective Date and the Closing. The Translator CP shall be transferred to Buyer free and clear of all liens, claims and encumbrances ("*Liens*").

1.2. Purchase Price. In consideration for the sale of the Translator CP to Buyer, Buyer shall pay Seller the sum of Twenty Six Thousand Two Hundred Fifty Dollars (\$26,250.00) for the Translator CP (the "*Purchase Price*"). The Purchase Price will be paid by Buyer to Seller at the Closing by check.

1.3. Closing. The consummation of the sale and purchase of the Translator CP (the "*Closing*") shall take place on or before the tenth business day after the date the FCC shall have granted the FCC Assignment Application (as defined in Section 1.4) without any provision or condition adverse to Buyer or the Translator CP and such grant shall have become Final (as defined in Section 1.5) and be in full force and effect on such date or such later date as Buyer and Seller may mutually agree, subject to the satisfaction or waiver of the conditions set forth in Articles 3 and 4 below. The date on which the Closing is to occur is referred to in this Agreement as the "*Closing Date*."

1.4. FCC Matters.

(a) Within five (5) business days after the Effective Date, Seller shall file, with Buyer's cooperation, an application with the FCC (the "*FCC Assignment Application*") requesting FCC consent to the assignment of the Translator CP to Buyer. FCC consent to the FCC Assignment Application without any provision or condition adverse to Buyer or the Translator CP is referred to in this Agreement as the "*FCC Consent*". Buyer and Seller shall diligently prosecute the FCC Assignment Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) 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 transaction contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing in connection with this Agreement.

(c) Upon filing of the FCC Assignment Application, Buyer will prepare and Seller will file a minor change application to relocate the transmitting site of and make other changes in the Translator CP (the "*Modification Application*"). Buyer shall pay all expenses and fees applicable to the preparation and filing of the Modification Application, including Seller's reasonable legal fees.

1.5 Final Order.

(a) For purposes of this Agreement, the term "Final" shall mean that action shall have been taken by the FCC (including action duly taken by the FCC staff pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(b) If the Closing occurs prior to a Final FCC Consent, and prior to becoming Final, the FCC Consent is reversed or otherwise set aside and there is a Final order of the FCC (or court of competent jurisdiction) requiring the reassignment of the Translator CP to Seller, then the purchase and sale of the Translator CP shall be rescinded. At the closing of such event, the approval of the Modification Application shall be surrendered by Buyer.

(c) Any required rescission shall be consummated on a mutually agreeable date within thirty (30) days of the issuance of a Final order to such effect. In connection therewith, Buyer and Seller shall each execute such documents and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission.

ARTICLE 2: REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 Authorization. Each of Buyer and Seller represents, warrants, and covenants that (a) it has the full right and legal authority to enter into and fully perform this Agreement in

accordance with the terms and conditions hereof; (b) the execution, delivery and performance of this Agreement does not and will not violate or cause a breach of any other agreements or obligations to which it is a party or by which it is bound; (c) this Agreement constitutes the Party's valid and binding obligation, enforceable in accordance with its terms, except as limited by laws affecting creditors' rights or equitable principles generally; and (d) the execution, delivery, and performance of this Agreement and the consummation of the transaction contemplated by this Agreement do not and will not require the consent of any third party or any governmental authority other than the FCC.

2.2 Seller's Covenants. Between the Effective Date and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, Seller shall not modify and shall maintain the Translator CP in full force and effect.

2.3 Seller's Representations and Warranties. Seller represents and warrants to Buyer that: (a) Seller is duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia; (b) is legally qualified to execute this Agreement and there are no legal impediments to the execution or consummation of the transaction contemplated by this Agreement; (c) Seller holds the Translator CP listed on Schedule 1.1 pursuant to Final order of the FCC; (d) the Translator CP is in full force and effect, is not subject to any restriction or condition not evident on the face of the authorization, and is not the subject of any complaint or proceeding pending or to the best knowledge of Seller threatened before the FCC, other than proceedings affecting the broadcasting industry and translator stations generally; and (e) Seller knows of no reason that the transaction cannot be consummated as proposed in this Agreement. Seller shall promptly notify Buyer should any of these representations change and shall take all steps to protect the Translator CP from material adverse impacts.

2.4 Specific Performance. Seller agrees that the Station Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right, if Buyer is not in material default in its obligations hereunder, specifically to enforce Seller's performance under this Agreement, 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.

2.5 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that: (a) Buyer is duly organized, validly existing, and qualified to do business in and is in good standing under the laws of the Commonwealth of Virginia; (b) is legally qualified to execute this Agreement and there are no legal impediments to the execution or consummation of the transaction contemplated by this Agreement; and (c) Buyer knows of no reason that the transaction cannot be consummated as proposed in this Agreement. Buyer shall promptly notify Seller should any of these representations change.

ARTICLE 3: SELLER CLOSING CONDITIONS

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

3.1. Representations and Covenants. The representations and warranties of Buyer made in this Agreement shall be true and correct on and as of the Closing Date as if made on that date, and Buyer shall have delivered to Seller a duly executed certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Seller, certifying to the satisfaction of this condition, and the covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

3.2. Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

3.3. FCC Consent. The FCC Consent shall have been granted and such grant shall be in full force and effect.

3.4. Deliveries. Buyer shall have complied with its obligations set forth in Section 5.2.

ARTICLE 4: BUYER CLOSING CONDITIONS

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

4.1. Representations and Covenants. The representations and warranties of Seller made in this Agreement shall be true and correct in on and as of the Closing Date as if made on that date, and Seller shall have delivered to Buyer a duly executed certificate, dated as of the Closing Date, in form and substance reasonably satisfactory to Buyer, certifying to the satisfaction of this condition, and the covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

4.2. Proceedings. 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.

4.3. FCC Consent. The FCC Consent shall have been granted and such grant shall be in full force and effect and shall have become a Final order; *provided*, that Buyer, in its sole discretion, may waive the requirement that the FCC Consent be Final.

4.4. Deliveries. Seller shall have complied with its obligations set forth in Section 5.1.

4.5. Modification Application. The FCC shall have granted the Modification Application and that grant shall have become a Final order.

ARTICLE 5: CLOSING DELIVERIES

5.1. Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer the certificate described in Section 4.1; a document assigning the Translator CP from Seller to Buyer, free and clear of all Liens; a signed receipt of payment of the Purchase Price; and such other documents as Buyer may reasonably request.

5.2. Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller the certificate described in Section 3.1 and the Purchase Price in accordance with Section 1.2.

ARTICLE 6: INDEMNIFICATION AND TERMINATION

6.1 Indemnification. Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses incurred by Buyer arising out of or resulting from (a) any breach by Seller of its representations and warranties made under this Agreement; or (b) any default by Seller of any covenant or agreement made under this Agreement.

6.2. Termination. This Agreement may be terminated prior to Closing (a) by mutual written consent of Buyer and Seller; (b) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date twelve (12) months after the date of this Agreement; (c) by either Buyer or Seller upon written notice if there is a material breach or default under this Agreement by the other Party following a fifteen (15) day period for cure by the breaching Party after delivery of written notice of breach from the other Party, provided that the Party seeking to terminate is not also then in material default or breach of this Agreement; (d) by Buyer upon written notice to Seller of the filing of an objection to or petition to deny the Modification Application or the FCC designates the Modification Application for a hearing; (e) by either Buyer or Seller upon written notice if the FCC denies the FCC Assignment Application or designates it for hearing; or (f) by either Buyer or Seller upon written notice if there shall be in effect any judgment, final decree or order that would prevent or make the Closing unlawful. Except as set forth in Section 6.3 below, the termination of this Agreement shall not relieve any Party of any liability for breach of this Agreement prior to the date of termination.

6.3. Effect of Termination. If this Agreement is terminated by Seller pursuant to Section 6.2(c) due to an uncured material breach by Buyer, then Seller shall be paid Five Thousand Dollars (\$5,000) as liquidated damages and such payment shall be Seller's sole and exclusive remedy for damages of any nature or kind that Seller may suffer as a consequence of Buyer's breach of default under this Agreement. The Parties understand and agree that the amount of liquidated damages represents Seller's and Buyer's reasonable estimate of actual damages and does not constitute a penalty.

ARTICLE 7: MISCELLANEOUS

7.1. Expenses. Each Party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The Parties shall each pay one half of all fees and charges applicable to the FCC Assignment Application. Buyer shall pay all fees and charges applicable to the Modification Applications set forth in Paragraph 1.4(c) above. Each Party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action by it or by any party acting on its behalf in connection with this Agreement.

7.2. 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.

7.3. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, *provided*, however, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without obtaining consent of, Seller, and *provided further* that (i) any such assignment does not delay processing of the FCC Assignment Application, grant of the FCC Consent or Closing; (ii) any such assignee delivers to Seller a written assumption of this Agreement; and (iii) Buyer shall remain liable for all of its obligations under this Agreement. The terms of this Agreement shall bind and inure to the benefit of the Parties' respective successors and any permitted assigns, and no assignment shall relieve any Party of any obligation or liability under this Agreement.

7.4. Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, or on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any Party may request by written notice):

If to Buyer: David M. Eshleman, Manager
 WBTX Radio LLC
 PO Box 337
 Broadway, VA 22815

With a copy to: David Tillotson, Esq.
 4806 Charleston Terrace, NW
 Washington, DC 20007

If to Seller: Glenn Gleixner
 Virginia Tech Foundation, Inc.
 c/o WVTF
 3520 Kingsbury Lane
 Roanoke, Virginia 24014

With a copy to: Steven C. Schaffer, Esq.
 Schwartz, Woods & Miller
 Suite 610
 The Lion Building
 1233 20th Street, N.W.
 Washington, D.C. 20036-7322

7.5. Amendments. No amendment or waiver of compliance with any provision of, or consent pursuant to, this Agreement shall be effective unless evidenced by an instrument in writing signed by the Party against whom enforcement of such amendment, waiver, or consent is sought.

7.6. Entire Agreement. All covenants, agreements, representations, warranties and indemnities will be binding upon, and inure to the benefit of, the parties and their respective

successors and permitted assigns. This Agreement (including the Schedules) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Translator CP, which shall remain in full force and effect.

7.7. No Beneficiaries. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

7.8. Governing Law. The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Virginia without giving effect to the choice of law provisions thereof. Any action relating to this Agreement shall be instituted and prosecuted in the appropriate court in and for the City of Roanoke, Virginia. Seller and Buyer hereby irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating in any way to this agreement, including any counterclaim made in such action or proceeding, and agree that any such action or proceeding shall be decided solely by a judge.

7.9. Counterparts. This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

7.10. Survival of Representations and Warranties. The representations and warranties given herein shall survive the closing for a period of one year.

7.11 Waiver. Buyer and Seller, by written notice to the other, may (a) extend the time for performance of any of the obligations or other actions of the other under this Agreement, (b) waive any inaccuracies in the representations or warranties of the other contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with any of the conditions or covenants of the other contained in this Agreement, or (d) waive or modify performance of any of the obligations of the other under this Agreement; *provided* that neither Party may without the written consent of the other make or grant any extension of time, waiver of inaccuracies or compliance, or waiver or modification of performance, with respect to its own obligations, representations, warranties, conditions or covenants in this Agreement.

7.12 Exclusive Dealings. Seller agrees that for as long as this Agreement is in effect, neither Seller, nor its officers, directors, employees, or agents will solicit, make or accept any offers from third parties to sell the Translator CP or discuss the assignment of the Translator CP to any person or party other than Buyer.

7.13 No Brokers. Buyer and Seller represent and warrant to each other that neither it nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity, nor has it or any person or entity acting on its behalf taken any action on which a claim for any such payment could be based. Buyer and Seller further agree to indemnify and hold the other harmless from and against any and all claims, losses, liabilities and expenses (including reasonable attorneys' fees) arising out of a claim by any person or entity based on any such arrangement or agreement made or alleged to have been made.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SELLER:

VIRGINIA TECH FOUNDATION, INC.

By: 

Name:

Title:

JOHN E. DOOLEY
CEO AND SECRETARY-TREASURER

BUYER:

WBTX RADIO LLC

By: 

Name: David M. Eshleman

Title: Manager

**VTF OFFICE OF
GENERAL COUNSEL
REVIEWED**


SCHEDULE 1.1
TRANSLATOR CP

<u>Call Sign/ FCC Facility Id. No.</u>	<u>Community of License</u>	<u>FCC File Number</u>	<u>Grant Date</u>	<u>Expiration Date</u>
W271CC 150808	Broadway, VA	BNPFT- 20130829ADU	1/03/2014	1/03/2017