

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is dated as of July 14, 2020 (the “Agreement”), by and between Xana Oregon, LLC, a Washington Limited Liability Company, (“Seller”), and PACNW Broadcasting, LLC, a Washington Limited Liability Company, (“Buyer”).

### Recitals

**WHEREAS**, Seller holds a license issued by the Federal Communications Commission (“FCC”) for broadcast station KPPT-FM (FCC ID No. 642), at Depoe Bay, Oregon (“Station”), and Seller owns tangible assets used and useful in the operation of the Station; and

**WHEREAS**, Buyer and Seller (“Parties”) have agreed that the Seller will assign and transfer to the Buyer, and the Buyer will acquire from the Seller, all rights, title and ownership to the Station’s licenses and assets as specified in this Agreement, and that the Buyer will assume those post-purchase obligations associated with the post-purchase operation of the Station that are more fully set forth herein; and

**WHEREAS**, the Parties must obtain the prior consent of the FCC for the lawful assignment of the Station from Seller to Buyer.

### Agreement

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1        **Sale and Transfer of Assets.** Subject to and in reliance upon the closing (“Closing”), Seller will sell, assign, transfer and deliver to Buyer the Station’s assets (“Assets”) as defined below, free and clear of liens, mortgages, pledges, security interests, debts, claims and encumbrances of any kind or nature:

1.1       **Licenses.** All transferable municipal, state and federal franchises, licenses, permits or other governmental authorizations issued by any governmental or regulatory agency including without limitation, the FCC, for the operation of the Station (“FCC Licenses”), together with all auxiliary licenses for studio transmitter links and remote pick-ups, which are transferable or assignable, if any, as are used or useful in the operation of, or in connection with the operation of, the Station, as listed on Schedule 1.1;

1.2       **Leased Real Property.** Seller’s rights and interests in and to that certain real property leased from third parties, and which is identified as follows:

(a)       **Studios and Offices.** Buyer will not assume the lease for the studios/offices of the Station. However, Seller will permit Buyer to occupy the studios/offices of the Station for up to forty-five (45) days post-Closing, for a rental amount equal to half what Seller

is paying, for the purpose of moving the Station's broadcast equipment and other tangible personal property to a location of Buyer's choice.

(b) **Tower Site.** The real property used as the Station's transmitter site is located at 44-45-23 North Latitude; 124-03-01 West Longitude, known locally as Cape Foul Weather. Seller currently leases space on a tower and in the equipment building, below the tower, from Wave Business. Seller has agreed to work with Buyer to negotiate a new, long-term lease for space on the tower and in the equipment building. A new long-term lease, satisfactory to Buyer "Tower Site Lease," is a condition precedent to Closing.

1.3 **Tangible Personal Property.** All equipment, electrical devices, antennas, cables, transmitters, transmission lines, furniture, fixtures, towers, office materials and supplies, hardware, tools, spare parts and other tangible personal property of every kind and description used in the operations of the Station, owned by Seller and limited to the list of Tangible Personal Property on Schedule 1.3, except Excluded Assets (as detailed in Section 1.7), together with any replacements thereof and additions made thereto (the "Tangible Personal Property").

1.4 **Records.** All files, records, books of account, and logs relating to the Station, including, without limitation, the Station's public inspection files, filings with the FCC related to the Station, invoices, statements, technical information and engineering data relating to the Station's facilities, filings with the FCC and copies of all written contracts to be assigned hereunder.

1.5 **Call Letters.** All right, title and interest of the Seller in and to the use of the call letters KPPT-FM ("Call Letters").

1.6 **Intangible Assets.** All goodwill, software, software licensing agreements, logos, copyrights, trademarks, intellectual property and goodwill specifically associated therewith, or other similar rights, if any, which the Seller may have acquired or used in the operation of the Station together with all logs, books, files, data, software, FCC and other governmental applications, equipment manuals and warranties, and other records relating to the full on-air broadcast operations of the Station, including without limitation all electronic data processing files and systems, FCC filings and all records required by the FCC to be kept by the Station as set forth on Schedule 1.6 ("Intangible Assets").

1.7 **Excluded Assets.** The Assets to be transferred hereunder shall not include any of Seller's other assets, cash, accounts receivable, bank accounts, investments, deposits, books and records pertaining to company organization, contracts of insurance (including the cash surrender value thereof, and all insurance proceeds or claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date, as defined in Section 10.1, duplicate copies of such records as are necessary to enable Seller to file its tax returns and reports, as well as any other records or materials relating to Seller generally and not involving the Station specifically, any items detailed on Schedule 1.7, and any and all liabilities with respect thereto all of which shall remain the property of Seller (the "Excluded Assets").

1.8 **Schedules.** Seller is delivering herewith to Buyer the Schedules required by this Agreement in a form reasonably acceptable to Buyer. Each such Schedule constitutes the representations, warranties and obligations of the Seller and shall be accurate, true and correct as of the date of this Agreement and accurate, true and correct as of the Closing Date, except as updated by Seller in writing prior to the Closing. Each Schedule shall be accompanied by a copy of each document referred to therein. Between the date of the Agreement and the Closing Date, Seller shall, from time to time, promptly update the Schedules so as to maintain the accuracy of the information contained therein and shall promptly supply to Buyer copies of any new documents referenced in such Schedules.

1.9 **Assumed Contracts.** Seller shall assign to Buyer, at Closing, those contracts which Buyer has expressly agreed to assume ("Assumed Contracts"), which are attached to Schedule 1.9. The Assumed Contracts include true and complete memoranda of all oral contracts agreed to be assumed by Buyer, if any. Following Closing, Buyer will not assume any contract not identified in Schedule 1.9 with the exception of broadcast advertising contracts booked prior to Closing; provided, however, that all such contracts shall be reasonably in accordance with the Station's prior business practices and standards.

## 2 **Purchase Price.**

2.1 **Purchase Price.** In consideration for all of the Assets to be sold and bought hereunder pursuant to Section 1, the purchase price ("Purchase Price") shall be One Hundred Seventy Thousand Dollars (\$170,000.00), paid to Seller, as follows:

(a) At the time of the signing of this Asset Purchase Agreement, Buyer shall deposit into an escrow account ("Escrow Account"), governed by the Escrow Agreement attached to Schedule 2.3, the sum of Five Thousand Dollars (\$5,000.00) (the "Escrow Deposit") which shall be credited toward the purchase price at the Closing.

(b) The balance of the Purchase Price shall be paid to Seller, at Closing, as follows: One Hundred Sixty Five Thousand Dollars (\$165,000.00), as may be adjusted in accordance with the provisions of Section 2.1(f), shall be paid to Seller by wire transfer of funds at Closing;

(c) If the purchase of the Assets under this Agreement is not consummated as a result of a material breach by the Buyer of any of its obligations under this Agreement (and Seller has not breached any of its material obligations under this Agreement), the Parties agree that Seller shall be entitled to the Escrow Deposit and Buyer shall direct the Escrow Agent to release the Escrow Deposit to the Seller. The Seller agrees to accept said sum as full and complete payment for any and all claims Seller may have for Buyer's failure to consummate the purchase of the Assets and, upon such a breach by Buyer, Seller hereby covenants not to sue or initiate any action against Buyer to recover damages other than Seller's right to receive the Escrow Deposit. Seller acknowledges that its damages in the event of termination of this Agreement would be difficult to determine and that the Escrow Deposit is a reasonable and satisfactory substitution for the amount such damages.

(d) If the purchase of the Assets under this Agreement is not consummated due to the non-fulfillment of any of the terms of this Agreement or for any other reason except Buyer's default in the performance of its obligations under this Agreement, Seller shall not be entitled to the Escrow Deposit (and interest thereon) and, promptly after the termination of this Agreement by Buyer, the Escrow Deposit (together with interest thereon) shall be paid by the Escrow Agent to Buyer and Seller shall promptly direct the Escrow Agent to deliver the Escrow Deposit to Buyer..

(e) Any fees associated with the creation and maintenance of the Escrow Account provided for in this Section shall be paid one-half by Buyer and one-half by Seller, and the fees shall be subject to their mutual agreement

(f) At least five (5) business days prior to the Closing, Seller shall deliver to Buyer a report ("Preliminary Report") showing in reasonable detail the preliminary determination of the suggested adjustments to the Purchase Price, subject to the proposition that all income and expenses arising from Seller's ownership of the Assets to be conveyed hereunder shall be prorated between Buyer and Seller in accordance with U.S. generally accepted accounting principles as of 12:01 a.m., Pacific time, on the Closing Date (the "Adjustment Time"), on the basis that all income and expenses which accrue prior to the Adjustment Time are for the account of Seller, and all income and expenses which accrue after the Adjustment Time are for the account of Buyer. Within two (2) business days after Buyer's receipt of such Preliminary Report, Buyer shall provide to Seller any material objections, if any, that it may have with respect to Seller's version of the Preliminary Report and provide an alternative Preliminary Report. The Preliminary Report (Seller's or, if delivered, Buyer's version) shall serve as the basis of any adjustments to the Purchase Price. Within sixty (60) days after the Closing Date, Buyer shall deliver to Seller a report ("Final Report") showing in reasonable detail (a) Buyer's final determination of the proposed adjustments to the Purchase Price, (b) all adjustments to the Purchase Price that were not calculated as of the Adjustment Time, and (c) any corrections to any of the estimated adjustments contained in the Preliminary Report, together with appropriate documents substantiating the calculations, determinations and adjustments proposed in the Final Report. Any resulting payment shall be made to the party entitled thereto within thirty (30) days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments in the Final Report, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent CPA, chosen jointly by the parties. The CPA's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such CPA shall be paid one-half by Seller and one-half by Buyer.

2.2 **Allocation of Purchase Price.** Buyer and Seller will allocate the Purchase Price and other consideration received by Seller in accordance with Schedule 2.2. Buyer and Seller each further agrees to file its federal income tax returns and its other tax returns reflecting such allocation.

3       **Assumption of Contracts.** Upon assumption by Buyer of the Assigned Contracts, if any, Buyer shall be entitled to all of Seller's rights and benefits thereunder and shall relieve Seller of its obligations to perform the same after the Closing Date. Any lease agreements of Seller, for items of tangible personal property used by Station shall be paid in full at the closing and the leased tangible personal property delivered unencumbered to Buyer.

4       **Seller's Representations and Warranties.** The following representations and warranties shall survive for one (1) year from the Closing Date. Seller represents and warrants to Buyer, as of the date hereof and as of the Closing Date, with respect to the Station, as follows:

4.1       **Formation, Standing and Power.** Seller's Limited Liability Company has all necessary power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and represents and warrants that it is the owner of all of the Assets, as described in this Agreement. Seller will, by the Closing Date, deliver to Buyer documentation reasonably requested by Buyer pertaining to Seller's authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby together with a certificate of good standing from the State of Washington. At a minimum, Seller shall deliver a duly executed resolution authorizing the transactions described in this Agreement.

4.2       **Authority for Transaction.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

4.3       **Licenses and Permits.** Schedule 1.1 contains a true and complete list of the FCC Licenses. The FCC Licenses listed in Schedule 1.1 are validly held by Seller and are in full force and effect. Seller, on the Closing Date, will be the holder of the FCC Licenses, which licenses will not be subject to any adverse conditions, litigation or reporting conditions. Seller has all permits, licenses, franchises and other authorizations necessary to, and has complied with all laws applicable to, the conduct of the Station's business in the manner and in the areas in which such business is presently being conducted. The Station is operating in material compliance with the terms of the FCC Licenses. Seller has filed or made all material applications, reports and other disclosures required by the FCC to be filed or made by Seller with respect to the Station and has timely paid all FCC regulatory fees with respect to the Station. To the best of its knowledge, (a) Seller has not engaged in any activity or failed to perform any required act which would cause revocation or suspension of any FCC Licenses, and, (b) no complaint, action or proceeding looking to or contemplating the revocation or suspension of any thereof is pending or threatened, at the time of Closing. Further, at the time of Closing, all FCC Licenses will be in good standing, without adverse condition, the Station will have full operating authority under its FCC Licenses, all FCC requirements for such authority will have been met, and there will be no uncorrected FCC violations, unpaid FCC or other regulatory fees, notices or unsatisfied FCC inquiries or other



litigation, informal objections or petitions for reconsideration or appeals regarding any FCC action regarding the license(s) of the Station, other than as disclosed herein.

4.4 **Assumed Contracts.** The Assumed Contracts shall constitute valid and binding obligations of Seller, and, to the best of Seller's knowledge, of all other parties thereto, and shall be in full force and effect as of the date hereof and at the time of Closing. At the time of Closing, Seller shall not be in default under any of the Assumed Contracts. Seller has not received or been given written notice of any default thereunder from or to any of the other parties thereto. Except as disclosed herein, at Closing, Seller shall have all requisite power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement and such assignment will not affect the validity, enforceability or continuity of any such Assumed Contracts. Seller shall obtain the consent of each party to the Assumed Contracts, where such consent is required, for the assignments referenced hereunder, in a form reasonably acceptable by Buyer.

4.5 **Taxes.** Seller has duly, timely and in the required manner filed all federal, state, local, withholding, FICA, foreign income, franchise, sales, use, property, excise, and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid. As of the time of filing, such returns were true, complete and correct in all material respects. There are no governmental investigations or other legal, administrative, or tax proceedings pending, or to the best of Seller's knowledge, threatened pursuant to which Seller is or could be made liable for any taxes, penalties, interest, or other charges, the liability for which could extend to Buyer as transferee of the Station, or could result in a lien on any of the Assets, and no event has occurred that could impose on Buyer any transferee liability for any taxes, penalties, or interest due or to become due from Seller. To Seller's knowledge, no deficiencies have been proposed or assessed against the Seller by the Internal Revenue Service or any other taxing authority, and no waivers of statutes of limitations or other extensions of time for the assessment of any tax against the Seller are currently in effect.

4.6 **Bankruptcy.** No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Assets, are pending or, to the best of Seller's knowledge, threatened, and Seller has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

4.7 **Compliance With Laws.** To the best of its knowledge, Seller is in compliance with all laws, regulations and governmental orders applicable to the operation of the Station. Seller is not in default or in violation of any law, regulation, court order, or order of any federal, state, municipal, foreign or other government department, board, bureau, agency, or instrumentality, wherever located, that would materially adversely affect operation of the Station, the Assets, or the FCC Licenses, including but not limited to state and federal environmental laws and regulations. There is no pending or threatened investigation, audit, review or other examination of the Station, the Assets or the FCC Licenses and Seller is not subject to any order, agreement, memorandum of understanding or other regulatory enforcement action or proceeding with or by the FCC or any other federal or state governmental agency having supervisory or

regulatory authority with respect to the Station, the Assets, or the FCC Licenses, nor is Seller aware of any basis for any such investigation or audit.

4.8 **Legal Proceedings, Etc.** No litigation, court or administrative proceeding is pending or, so far as is known to the Seller, threatened against Seller relating to the Station or any one of the Assets to be conveyed hereunder which would affect Buyer's enjoyment of the Assets, or which would hinder or prevent the consummation of the transactions contemplated by this Agreement, and Seller does not know, or have reasonable grounds to know, of any basis for any such possible action.

4.9 **Title.** Seller warrants that it has legal, unencumbered title to each item comprising the Assets. To Seller's knowledge: (a) there is no proceeding in eminent domain or any similar proceeding pending, to the Seller's knowledge, threatened, affecting the Leased Real Property; and (b) there exists no writ, injunction, decree, order, or judgment outstanding, nor any litigation pending or threatened, relating to the use, occupancy, or operation of the Leased Real Property.

4.10 **No Conflict.** Except for the approval of the FCC and such consents and/or notices as are necessary for assignment of the Assigned Contracts, no consent, waiver or approval by, notice to or filing with any person or entity is required in connection with the execution and delivery of this Agreement by Seller, compliance by Seller with any of the provisions hereof or the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by Seller, nor compliance by Seller with any of the provisions hereof, nor the consummation of the transactions contemplated hereby, will:

(a) result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any contract, last will and testament, encumbrance or other instrument or obligation to which Seller or any of Seller's members, is a party or by which Seller or any of the Assets may be bound; or

(b) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller, or any of Seller's members, or any of the Assets.

4.11 **Liabilities.** After payment from the proceeds disbursed on the Closing Date, all of Seller's liabilities, except for those liabilities arising on or after the Closing Date relating to the Assumed Contracts, shall have been fully paid and discharged and, to Seller's knowledge, no creditors of Seller, including barter creditors, if any, shall have any claim on the Assets for payment of such liabilities.

4.12 **No Misleading Statements.** The representations and warranties of Seller herein, or in any Schedule hereto, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading.

4.13 **Intentionally Left Blank.**

#### 4.14 **Environmental Matters.**

(a) Seller is not aware, nor has reasonable grounds to suspect, that any party has a basis for any possible action concerning the environment, public health and safety and employee health and safety. To Seller's knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released by Seller on, in, from or to the Leased Real Property, except for fuels associated with back-up power generation. To the best of Seller's knowledge, Seller has complied in all material respects with all Environmental Laws applicable to the Station. "Environmental Laws" are those environmental, health or safety laws and regulations applicable to Seller's activities at the Leased Real Property in effect as of the date of this Agreement.

(b) Seller has not received written notification that it is a potentially responsible party under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as a result of acts or omissions on or in any manner affecting the Leased Real Property. Seller has not received written notification from any federal or local government under any similar provisions of federal or local law.

**4.15 Seller's Qualifications.** Seller knows of no fact or circumstance which would, under the federal antitrust laws, the Communications Act of 1934, as amended, or the rules, regulations, and published policies of the FCC (collectively, the "Communications Laws"), disqualify or preclude Seller from assignment of the Licenses. Should Seller become aware of any such fact or circumstance, it will promptly inform Buyer and Seller will use its best efforts to remove any such disqualification or preclusion. Seller will not take any action that Seller knows, or has reason to believe, would result in such disqualification. Seller knows of no facts which, under the Communications Laws, or the antitrust policies as applied to the broadcasting industry by the Federal Trade Commission and the U.S. Department of Justice, which would delay the consummation of the transactions contemplated by this Agreement. Seller has no reason to believe that the Assignment Application contemplated by this Agreement might be challenged by any governmental agency or third party or might not be granted by the FCC in the ordinary course. To Seller's knowledge, there are no proceedings, complaints, notices of forfeiture, claims, or investigations pending or threatened against Seller or any principal, Member or owner of Seller that would materially impair the qualification of Seller to assign the FCC Licenses or which would materially impede Seller's ability to prosecute FCC applications or seek the grant of the Assignment Application.

**4.16 Equipment.** Seller warrants that the Station's transmitter, antenna, coax, STL transmitter and receiver and audio processor are FCC type-accepted and FCC type-approved. The Station's EAS equipment is operational and type-accepted. All items of Tangible Personal Property listed in Schedule 1.3 are being sold on an "as-is, where is" basis, with Seller making no representations or warranties whatsoever regarding the fitness or suitability of such items of Tangible Personal Property.

**4.17 Employee Compensation.** Seller warrants that it will not materially increase the compensation of any employee nor will it make any other arrangements whatsoever



with any employee concerning their employment, compensation or benefits, unless prior approval has been given by Buyer.

5     **Buyer's Representations and Warranties.** The following representations and warranties shall survive for one year from the Closing Date. The Buyer represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

5.1     **Buyer's Qualifications.** Buyer knows of no fact or circumstance which would, under the federal antitrust laws or the Communications Laws, disqualify or preclude Buyer from being approved as an assignee of the Licenses. Should Buyer become aware of any such fact or circumstance, it will promptly inform Seller and Buyer will use its best efforts to remove any such disqualification or preclusion. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification. There are no facts which, under the Communications Laws, or the antitrust policies as applied to the broadcasting industry by the Federal Trade Commission and the U.S. Department of Justice, would delay the consummation of the transactions contemplated by this Agreement. Buyer has no reason to believe that the Assignment Application contemplated by this Agreement might be challenged by any governmental agency or third party or might not be granted by the FCC in ordinary due course. To Buyer's knowledge, there are no proceedings, complaints, notices of forfeiture, claims, or investigations pending or threatened against Buyer or any principal, officer, director, or owner of Buyer that would materially impair the qualification of Buyer to assume the FCC Licenses or which would materially impede Buyer's ability to prosecute FCC applications or seek the grant of the FCC Consent (defined below).

5.2     **Formation, Standing and Power.** Buyer is limited liability company duly formed, validly existing and in good standing under the laws of the State of Washington. Buyer has all necessary power and authority to execute and deliver this Agreement, to comply with the provisions hereof and to consummate the transactions contemplated hereby.

5.3     **Authority for Transaction.** Buyer's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Buyer, and this Agreement is valid and binding upon Buyer in accordance with its terms.

5.4     **No Conflict.** Except for the approval of the FCC, no consent, waiver, or approval by, notice to or filing with any person or entity is required in connection with the execution and delivery of this Agreement by Buyer, compliance by Buyer with any of the provisions hereof or the consummation of the transactions contemplated hereby. Neither the execution and delivery of this Agreement by Buyer, nor compliance by Buyer with any of the provisions hereof, nor the consummation of the transactions contemplated hereby will:

(a)     conflict with or result in a breach of any provision of the governing documents of any entity named as Buyer herein;

(b) result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any contract, encumbrance or other instrument or obligation to which Buyer is a party or by which it or any of its properties or assets may be bound; or

(c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its properties or assets.

5.5 **Legal Proceedings, Etc.** There are no legal, equitable, administrative or arbitration actions, suits, proceedings or known investigations pending or, to Buyer's knowledge, threatened against or affecting Buyer or any of its assets which, if adversely determined, would adversely affect the ability of Buyer to consummate the transactions contemplated hereby.

5.6 **No Misleading Statements.** The representations and warranties of Buyer herein do not contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading.

5.7 **Financial Qualifications.** Buyer is financially qualified to consummate this transaction and has funds available to consummate the sale.

## 6 **Seller's Covenants.**

### 6.1 **Indemnification.**

(a) Except as provided in Section 11 of this Agreement, the sole and exclusive remedy which Buyer shall have against Seller under this Agreement after the Closing Date shall be the right to proceed for indemnification in the manner and only to the extent provided by this Section 6. Seller hereby indemnifies Buyer and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Buyer within one (1) year after the Closing and in respect of:

(1) all liabilities, obligations, claims against and contracts of Seller of every kind and nature whatsoever, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Seller, arising out of or by reason of this or any other transaction or event occurring prior to the Closing, which have not been expressly assumed by Buyer pursuant to the terms of this Agreement;

(2) all losses, damages and deficiencies resulting from any failure or breach of any representation or warranty, or any breach or nonfulfillment of any covenant or agreement, of Seller made in this Agreement;

(3) all actions, suits, proceedings, claims, demands, assessments, judgments, fines, amounts paid in settlement, costs and expenses (including reasonable attorneys' fees and expenses) incident to any of the foregoing; and

(b) If a demand for indemnification arises out of a claim made against Buyer by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Buyer Third Party Claim"), Buyer shall give prompt notice thereof to Seller, stating in reasonable detail the nature of the Buyer Third Party Claim, the identity of the Buyer Third Party Claimant and the specific representations, warranties or covenants which Buyer and/or the third party claimant contends Seller has breached. Such notice shall also indicate whether Buyer intends to defend against the Buyer Third Party Claim. If Buyer elects to defend against the Buyer Third Party Claim, Seller shall cooperate in all reasonable respects with Buyer in such defense, shall make available to Buyer all records and other materials reasonably required by Buyer in such defense, and shall have the right to participate in such defense. If Buyer does not intend to defend against the Buyer Third Party Claim, then Seller shall assume defense of the Buyer Third Party Claim through legal counsel of its choice reasonably satisfactory to Buyer, in which event Buyer shall cooperate in all reasonable respects with Seller in such defense, and shall make available to Seller and its counsel all records and other materials reasonably required by them in such defense, but Seller shall at all times control such defense. So long as a Buyer Third Party Claim is pending and is not resolved, Buyer shall hold in abeyance its demand for indemnification. If Seller reaches a settlement with the Buyer Third Party Claimant which results in any liability to Buyer, or if a judgment is rendered against Buyer which judgment is not properly appealed or appealable, then Buyer shall be entitled to indemnification in an amount sufficient to discharge the Buyer Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a Buyer Third Party Claim except that Seller shall pay Buyer's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to Seller and which shall be found to have constituted a breach of Seller's representations, warranties and covenants hereunder.

(c) If Buyer asserts a demand for indemnification hereunder, but such demand is not based upon a Buyer Third Party Claim, Buyer shall notify Seller thereof in writing, stating in reasonable detail the nature of Buyer's claim and the specific representations, warranties and covenants which Buyer contends Seller has breached. Seller shall have fifteen (15) days after the date of such notice to accept or reject Buyer's demand for indemnification. If Seller accepts such demand for indemnification, Seller shall pay the amount of indemnification claimed by Buyer. If no acceptance is received by Buyer within such 15-day period, Seller shall be deemed to have rejected the demand.

(d) Seller's liability for all Claims under this Section 6 shall be subject to the following limitations: Seller shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds One Thousand Dollars (\$1,000.00) (the "Seller Minimum Loss"); after the Seller Minimum Loss is exceeded, Buyer shall be entitled to be paid the entire amount of the Claims, including the Seller Minimum Loss, subject to the limitations on recovery and recourse set forth in this Section 6.

6.2 **Access and Information.** Seller shall give Buyer and its officers, employees and representatives full and reasonable access during normal business hours throughout the period prior to Closing to the offices, operations, properties, books, contracts, agreements,

leases, commitments and records (financial and otherwise) of the Station; provided, however, that Buyer shall give Seller reasonable advance notice of exercising this right. Seller shall furnish to Buyer all information concerning the Station's affairs as Buyer may reasonably request.

6.3 **Conduct of Station Business.** Prior to Closing, Seller will promptly deliver to Buyer copies of any application filed with the FCC with respect to the Station after the filing of the same with the FCC. Seller shall operate the Station in the ordinary course of business consistent with past practice and in all material respects in accordance with the Communications Laws and with all other applicable laws, regulations, rules and orders. Seller shall maintain the FCC Licenses in full force and timely file and prosecute any necessary applications for renewal of the FCC Licenses, timely file all reports required to be filed with the FCC with respect to the FCC Licenses, and timely pay when due all annual regulatory fees with respect to the FCC Licenses, which shall be prorated at Closing. Seller shall not, other than in the ordinary course of business in accordance with past practice, sell, lease or dispose of or agree to sell, lease or dispose of any of the Assets, or create, assume or permit to exist any liens upon the Assets.

6.4 **Risk of Loss or Damage.** Seller shall bear all risk of loss or damage to any of the Assets to be transferred to Buyer hereunder occurring prior to the Closing and shall maintain in effect its current insurance policies with respect to the Assets. In the event any loss or damage occurs, the proceeds of any insurance policy covering such loss shall be used by Seller to repair, replace or restore any such loss prior to the Closing; provided, however, that, if the proceeds of such insurance would not be sufficient to repair, replace or restore the loss, and Seller does not wish to provide additional funds for such purpose upon request by Buyer may terminate this Agreement or may elect to proceed with Closing with a credit toward the Purchase Price in the amount of the cost to repair, replace or restore. If such damage or destruction materially disrupts the operations of the Station, then Buyer may postpone Closing until the date five (5) business days after operations are restored in all material respects. In the event of any such termination pursuant to this Section 6.4 neither party shall have any further right or liability hereunder.

6.5 **Other Proposals.** Seller shall not, nor shall Seller permit any of its employees or agents to solicit or entertain any inquiries or proposals or participate in any discussions, negotiations or agreements relating to the sale of the Station.

## 7 **Buyer's Covenants.**

### 7.1 **Indemnification.**

(a) Except as provided in Section 11 of this Agreement, the sole and exclusive remedy which Seller shall have against Buyer under this Agreement after the Closing Date shall be the right to proceed for indemnification in the manner and only to the extent provided by this Section 7. Buyer hereby indemnifies Seller and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Seller within one (1) year after the Closing and in respect of:

(1) all liabilities, obligations, claims against and contracts of Buyer of every kind and nature whatsoever, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Buyer, arising out of or by reason of this or any other transaction or event occurring after to the Closing;

(2) The operation of the Station subsequent to the Closing, including, but not limited to any and all claims, liabilities and obligations arising or required to be performed under the Assigned Contracts assumed by Buyer;

(3) All losses, damages and deficiencies resulting from any failure or breach of any representation or warranty, or any breach or non-fulfillment of any covenant or agreement, of Buyer made in this Agreement; and

(4) All actions, suits, proceedings, claims, demands, assessments, judgments, fines, penalties, amounts paid in settlement, costs and expenses (including reasonable attorneys' fees and expenses) incident to any of the foregoing.

(b) If a demand for indemnification arises out of a claim made against Seller by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Seller Third Party Claim") (a), Seller shall give prompt notice thereof to Buyer, stating in reasonable detail the nature of the Seller Third Party Claim, the identity of the Seller Third Party Claimant and the specific representations, warranties or covenants which Seller and/or the Seller third party claimant contends Buyer has breached. Such notice shall also indicate whether Seller intends to defend against the Seller Third Party Claim. If Seller elects to defend against the Seller Third Party Claim, Buyer shall cooperate in all reasonable respects with Seller in such defense, shall make available to Seller all records and other materials reasonably required by Seller in such defense, and shall have the right to participate in such defense. If Seller does not intend to defend against the Seller Third Party Claim, then Buyer shall assume defense of the Seller Third Party Claim through legal counsel of its choice, reasonably satisfactory to Seller, in which event Seller shall cooperate in all reasonable respects with Buyer in such defense and shall make available to Buyer and its counsel all records and other materials reasonably required by them in such defense, but Buyer shall at all times control such defense. So long as a Seller Third Party Claim is pending and is not resolved, Seller shall hold in abeyance its demand for indemnification. If Buyer reaches a settlement with the Seller Third Party Claimant which results in any liability to Seller, or if a judgment is rendered against Seller which judgment is not properly appealed or appealable, then Seller shall be entitled to indemnification in an amount sufficient to discharge the Seller Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a Seller Third Party Claim except that Buyer shall pay (i) Seller's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to Buyer and which shall be found to have constituted a breach of Buyer's representations, warranties and covenants hereunder.

(c) If Seller asserts a demand for indemnification hereunder, but such demand is not based upon a Seller Third Party Claim, Seller shall notify Buyer thereof in writing,



stating in reasonable detail the nature of Seller's claim and the specific representations, warranties and covenants which Seller contends Buyer has breached. Buyer shall have fifteen (15) days after the date of such notice to accept or reject Seller's demand for indemnification. If Buyer accepts such demand for indemnification, Buyer shall pay the amount of indemnification claimed by Seller. If no acceptance is received by Seller within such fifteen (15)-day period, Buyer shall be deemed to have rejected the demand.

(d) Buyer's liability for all Claims under this Section 7 shall be subject to the following limitations: (i) Buyer shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds One Thousand Dollars (\$1,000.00) (the "Buyer Minimum Loss"); after the Buyer Minimum Loss is exceeded, Seller shall be entitled to be paid the entire amount of the Claims, including the Buyer Minimum Loss, subject to the limitations on recovery and recourse set forth in this Section 7.

## **8 Application for FCC Approval.**

8.1 **Filing and Prosecution of Application.** Buyer and Seller shall, not later than five (5) business days from the date hereof, file with the FCC an application requesting its written consent to the assignment of the license of the Station from Seller to Buyer ("Assignment Application"). Buyer and Seller shall proceed with due diligence and promptly take all steps necessary to the expeditious prosecution of the Assignment Application to a favorable conclusion, using their best efforts throughout.

8.2 **Expenses.** Buyer and Seller shall each pay their separate costs of preparing the documents required to effectuate the transaction contemplated by this Agreement. Buyer and Seller shall each be responsible for their own costs and expenses associated with the retention of separate, local legal counsel. Buyer and Seller shall equally pay the FCC filing fees associated with the Assignment Application.

8.3 **Designation for Hearing.** If, for any reason, with respect to any application for assignment of the FCC licenses, or pending litigation referenced in Section 2.3, above, the staff of the FCC advises that designation for hearing will be required, either party, if not then in default, shall have the right, by written notice within sixty (60) days of such notification, to terminate this Agreement, in which event neither party shall have any rights or liabilities hereunder, and the Escrow Deposit will be returned to Buyer.

8.4 **Time of FCC Consent.** (a) The Parties shall use their mutual and collective best efforts to secure FCC approval of the Assignment Application ("FCC Consent"). If the FCC Consent has not been granted by December 31, 2020, either Party, if not then in default, may terminate this Agreement by giving written notice to the other, provided, however, that the ability of either Party to terminate this Agreement pursuant to this Section 8.4 shall not apply if the reason for the failure of the FCC Consent to be granted by December 31, 2020 is due to the action or inaction of the Party seeking termination. If, however there is a delay in obtaining the FCC Consent because the Station's license renewal application is pending but remains ungranted, neither Party shall have the right to terminate this Agreement while such license renewal

application is pending. Upon any such termination pursuant to Section 8.4, neither Party shall have any further right or liability hereunder.

(b) Buyer and Seller have agreed to consummate this transaction upon the initial grant of the Assignment Application. Buyer will waive finality with the following understanding: in the event there is an objection of any kind or any Petition to Deny the Assignment of the FCC Licenses to Buyer (an event which would not be known until after consummation) Seller will defend to the best of its ability against the objection or Petition to Deny, at Seller's expense, provided the objection is directed against the Seller. If the objection or Petition to Deny results in the Seller's inability to assign the license to Buyer, or if the FCC rescinds the grant of the Assignment Application or adds restrictions to the license which are not common to all radio licensees, Seller will refund the Purchase Price to Buyer. If the objection or Petition to Deny is directed against the Buyer, Buyer shall defend to the best of its ability against the objection or Petition to Deny, at Buyer's expense. In the event that there is no resolution of an objection or a Petition to Deny within four (4) months of the date of the filing of any objection or Petition to Deny, Buyer, if not then in default, may demand that this Agreement be terminated, the parties returned to their previous status, nunc pro tunc and receive a full and prompt refund from Seller. Seller shall comply with Buyer's request for said refund within ten (10) days of receiving Buyer's notice.

8.5 **FCC Approval.** This Agreement shall not be consummated until the FCC has issued the FCC Consent.

## 9 **Conditions to Parties' Obligations.**

9.1 **Conditions to Buyer's Obligations.** The obligations of Buyer to complete the transactions provided for herein shall be subject to satisfaction on or before the Closing Date of each of the following conditions:

(a) **Representations and Warranties:** All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date (except as may be otherwise provided in this Agreement), and Buyer shall have received a certificate to that effect, dated as of the Closing Date, signed by the Managing Member of Seller;

(b) **Pre-Closing Obligations:** Seller shall have performed all obligations required to be performed by Seller hereunder, the performance of which has not been waived by Buyer, and Buyer shall have received a certificate to that effect, dated the Closing Date, signed by the Managing Member of Seller;

(c) **Due Authorization:** Seller's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby shall have been duly and validly authorized by all necessary company action on the part of Seller and Buyer shall have received a duly certified copy of all actions taken effecting the same;

(d) Seller's Consents, etc. All necessary notices, filings, consents, waivers and approvals set forth in Section 4.10 shall have been given, made or obtained, as the case may be, by Seller, and Buyer shall have received a true copy of each thereof;

(e) No Bar: there shall not be in effect any judgment, decree or order of, or position taken by, any court or administrative body of competent jurisdiction, nor shall there have been any action, suit, proceeding or known investigation instituted or threatened, nor shall any law or regulation have been enacted or any action taken thereunder, which would, restrain or prohibit, make illegal, or subject Buyer to material damage as a result of, the consummation of the transactions contemplated hereby;

(f) FCC Consent: the FCC shall have issued the FCC Consent and the provisions of Section 8.4 shall control.

(g) Further Closing Documents: Seller shall have delivered to Buyer the following documents and instruments in form reasonably satisfactory to counsel to Buyer:

(1) Bill of Sale transferring to Buyer title to the Station's Assets

(2) Assignment and Assumption Agreements assigning to Buyer the FCC Licenses and the Assumed Contracts

(3) Certificate of the Secretary of the State of Washington attesting to the existence of Seller's Limited Liability Company as of a date reasonably proximate to the Closing Date.

(h) Prorations. Except as otherwise expressly provided herein, all taxes, assessments, utilities, insurance and water charges shall have been prorated between Buyer and Seller to the Closing Date;

(i) Prepaid Credits: Except as otherwise provided herein, all prepaid expenses and pre-paid revenues shall have been prorated between Buyer and Seller to the Closing Date.

(j) Possession: Seller shall have delivered to Buyer actual possession of the tangible Assets.

9.2 Conditions to Seller's Obligations. The obligations of Seller to complete the transactions provided for herein shall be subject, at its election, to satisfaction on or before the Closing Date of each of the following conditions:

(a) Representations and Warranties: All representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except as

may be otherwise provided in this Agreement), and Seller shall have received a certificate to that effect, dated the Closing Date, signed by an officer of Buyer;

(b) Pre-Closing Obligations: Buyer shall have performed all obligations required to be performed by it hereunder, the performance of which has not been waived by Seller, and Seller shall have received a certificate to that effect, dated the Closing Date, signed by an officer of Buyer;

(c) Due Authorization: Buyer's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby shall have been duly and validly authorized by all necessary action on the part of Buyer, and Seller shall have received a duly certified copy of all required consents effecting the same;

(d) No Bar: There shall not be in effect any judgment, decree or order of, or position taken by, any court or administrative body of competent jurisdiction, nor shall there have been any action, suit, proceeding or known investigation instituted or threatened, nor shall any law or regulation have been enacted or any action taken thereunder, which would, in Seller's reasonable judgment, restrain or prohibit, make illegal, or subject Seller to material damage as a result of, the consummation of the transactions contemplated hereby;

(e) FCC Consent: the FCC shall have issued the FCC Consent and the provisions of Section 8.4 shall control.

(f) Further Closing Documents: Buyer shall have delivered to Seller the following documents and instruments:

(1) Certificate from the Secretary of State of Washington attesting to the good standing of Buyer as of a date reasonably proximate to the Closing Date;

(2) The required payment of the Purchase Price.

(3) Assignment and Assumption Agreements assuming from Seller the FCC Licenses and the Assumed Contracts; and

10 Closing. Subject to the terms and conditions herein stated, the parties agree as follows:

10.1 Closing Date. The Closing Date of the transaction provided for in this Agreement shall be held not later than fifteen (15) business days following the date of the FCC Consent, subject to the provisions of Section 8. The Closing shall take place at the offices of Richard J. Hayes, Jr., or by overnight courier, at 10:00 a.m, Pacific Time. on the Closing Date, or such other place and time as mutually agreed.

10.2 **Failure to Close; Termination.** This Agreement may be terminated at any time prior to the Closing Date, as follows:

- (a) by the mutual consent of Seller and Buyer;
- (b) as provided by Sections 6.4, 8.3, or 8.4 of this Agreement;
- (c) By Seller, if Buyer fails to perform in any material respect or materially breaches any of its material 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, (a “Buyer’s Breach”), and there also is not a Seller’s Breach (defined below) at the time of the purported termination by Seller, provided however that such opportunity to cure shall not apply to the failure of Buyer to perform its obligations set forth in Section 9.2 herein;
- (d) By Buyer, if Seller fails to perform in any material respect or materially breaches any of its material representations, warranties, covenants or duties under this Agreement, and Seller has not cured such failure to perform or breach within thirty (30) days after delivery of written notice from Buyer (a “Seller’s Breach”), and there also is not a Buyer’s Breach at the time of the purported termination by Buyer, provided however that such opportunity to cure shall not apply to the failure of Seller to perform its obligations set forth in Section 9.1 herein;
- (e) 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 a “Final Order,” provided the agency action shall not have been due to the action or inaction of the party seeking to exercise such termination right. For purposes of this Agreement, the term “Final Order” shall mean an order which is not reversed, stayed, enjoined or set aside, and with respect to which no timely application for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review, and for any reconsideration, stay or setting aside has expired;
- (f) **Effect of Termination.** In the event of any termination as provided by Section 10.2 (a), (b), (d) and (e) this Agreement shall thereupon become void and of no effect, without any further liability on the part of any party and the Deposit and all accrued interest shall be returned to the Buyer. In the event that there is a termination pursuant to Section 10.2(c) or (d), the Parties shall have the remedies provided for in Section 11.

11 **Remedies.** Seller’s sole and exclusive remedy for material breach by Buyer shall be the retention of the Escrow Deposit. In the event that Seller materially breaches this Agreement, it is agreed that the rights and privileges granted to Buyer in this Agreement are special and unique and that the Buyer shall be entitled to seek injunctive and other equitable relief, including without limitation, specific performance, in a court of competent jurisdiction, and if such relief is granted,



the Buyer shall be entitled to recover from the Seller all costs and expenses (including reasonable attorneys' fees) incurred in securing such injunctive or other equitable relief.

## 12 **Further Covenants.**

12.1 **Taxes.** All taxes originating from this transaction shall be paid by the Party responsible by law to pay such tax.

12.2 **Expenses of the Parties.** Except as otherwise expressly provided in this Agreement, all expenses involved in the preparation, negotiation, authorization and consummation of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel and accountants, shall be borne solely by the Party who shall have incurred the same, and no other Party shall have any responsibility with respect thereto.

12.3 **Confidentiality.** Except for necessary disclosure to such Party's directors, officers, members, employees, counsel, accountants, lenders and other agents, and except for the disclosure contemplated by the Assignment Application and such disclosure as may be required by law, each Party shall keep confidential the provisions of this Agreement and any documents or other materials it receives from the other Party, both prior and subsequent to the Closing Date. Without limiting the generality of the foregoing, no party shall make any press release or advertisement with respect to the transactions contemplated hereby without the prior consent of the other party, unless the disclosing party determines, upon the advice of counsel, that such action is required by law, and then the disclosing party shall promptly notify the other Party of such disclosure. If this Agreement is terminated, each Party shall deliver, and cause its directors, officers, members, employees, counsel, accountants, lenders and other agents who obtain confidential information from or regarding the other Party pursuant to investigations permitted hereunder to deliver to such other Party all such confidential information that is written (including copies or extracts thereof), whether such confidential information was obtained before or after the execution hereof. All information concerning the Assets or operations of the Stations obtained by Buyer or its affiliates pursuant to or in connection with negotiation of this Agreement will be used by Buyer and its affiliates solely for purposes related to this Agreement and, in the case of nonpublic information, will be kept in strict confidence by Buyer and its affiliates and will not be disclosed except as provided for above.

12.4 **Broker's Fee.** Seller will be solely responsible for the brokerage fees due to MCH Enterprises, Inc. associated with this transaction.

12.5 **Further Assurances.** Each Party shall cooperate with the other, take such further action, and execute and deliver such further documents, as may be reasonably requested by any other Party in order to carry out the terms and purposes of this Agreement. Without limiting the generality of the foregoing, from and after the Closing Date:

(a) each Party shall file all tax returns consistent with the allocation of the Purchase Price set forth in Section 2.2, and no Party shall take any position on audit or in

litigation which is inconsistent with such allocation if such position would result in the payment of any additional tax by, or the disallowance of any deduction or credit to, any other party; and

(b) upon request, each Party shall take such action and deliver to the requesting party such further instruments of assignment, conveyance or transfer and other documents of further assurance as in the opinion of counsel to the requesting party may be reasonably desirable to assure, complete and evidence the full and effective transfer, conveyance and assignment of the Assets and possession thereof to Buyer, its successors and assigns, and the performance of this Agreement by Seller and Buyer in all respects.

12.6. **Cooperation.** Subject to express limitations contained elsewhere herein, each Party (i) shall cooperate fully with one another in taking any reasonable actions (including without limitation, reasonable actions to obtain the required consent of any governmental instrumentality or any third party) necessary or helpful to accomplish the transactions contemplated by this Agreement, including but not limited to the prompt satisfaction of any condition to Closing set forth herein, and (ii) shall not take any action that conflicts with its obligations hereunder or that causes its representations and warranties to become untrue in any material respect.

12.7. **Employment and Related Matters.**

(a) Schedule 12.7(a) consists of a list which sets forth all current employees and independent contractors of the Station and indicates for each employee such employee's job title and current hourly rate of compensation or base salary (as applicable) and bonus structure.

(b) Nothing in this Agreement, expressed or implied, except as set forth in this Agreement shall (i) obligate the Buyer to employ any employee of the Seller, to engage any independent contractor currently providing services to the Seller or to assume any obligations relating to the employment of any person as an employee, independent contractor or otherwise; or (ii) confer upon any person any right to employment or to continued employment for any specified period, as an employee, independent contractor or otherwise.

(c) The Seller shall remain responsible for complying with all aspects of COBRA with respect to individuals whose COBRA qualifying event occurred prior to the Closing Date.

(d) Effective as of the Closing Date, Seller shall terminate all of Seller's employees at the Station and its independent contractors. The Buyer shall not be liable to any such employees, contractors or other persons for any severance obligations, benefit obligations, vacations or any other similar obligations owed by it. Buyer may interview Seller's employees, at a mutually agreeable time and place, and may, at its discretion, offer employment to any of Seller's employees.

13. **Miscellaneous.**

13.1 **Survival of Representations, Warranties and Covenants.** The several representations, warranties and covenants of the parties herein contained, and the provisions hereof which by their terms are to be performed after the Closing Date, shall survive the Closing Date for the periods set forth herein, and shall be effective regardless of any investigation which may have been or may be made at the time by or on behalf of the party to whom such representations, warranties, covenants and agreements are made.

13.2 **Amendment and Waiver.** This Agreement may be amended only by a writing executed by each of the Parties hereto. No waiver of compliance with any provision or condition hereof, and no consent provided for herein, shall be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any Party to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any Party of any right preclude any other or future exercise thereof or the exercise of any other right.

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

13.4 **Notices, Etc.** Each notice, report, demand, waiver, consent and other communication required or permitted to be given hereunder shall be in writing and shall be sent either by registered or certified first-class mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier, addressed as follows:

**If to Seller, to:**

Mr. Tom Hodgins, Managing Member  
Xana Oregon, LLC  
45 Campbell Road  
Walla Walla, WA 99362

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

Mark B. Denbo, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W., Suite 301  
Washington DC 20016

**If to Buyer, to:**

Jeff Montgomery, President  
PACNW Broadcasting LLC  
PO Box 68190  
Seattle, WA 98168

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

Richard J. Hayes, Jr.  
Attorney at Law  
27 Water's Edge Drive  
Lincolnton, ME 04849

Each such notice or other communication given by mail shall be deemed to have been received five (5) days after it is deposited in the United States mail in the manner specified herein, and each such notice or other communication given by nationally recognized overnight courier shall be deemed to have been received on the next business day after it is deposited with such courier for overnight delivery. Any party may change its address for the purpose hereof by giving notice in accordance with the provisions of this Section 13.4.

13.5 **Binding Effect.** Subject to the provisions of Section 13.3, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement creates no rights of any nature in any person not a party hereto.

13.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any dispute by the parties shall be resolved by the state or federal courts located in Portland, Oregon.

13.7 **Effect of Agreement.** This Agreement, together with its schedules and exhibits, sets forth the entire understanding of the parties, and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.

13.8 **Headings and Counterparts.** The Article and Section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the Parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement. Any Party who delivers such a signature page by facsimile agrees to deliver later an original counterpart to any party that requests it.

13.9 **Entire Agreement.** The foregoing and the attached schedules, constitute the entire and whole agreement of the parties with respect to the subject matter hereof. Failure of any party hereto to enforce any provisions of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this agreement or any part hereof, or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**Xana Oregon, LLC**

By: 

TOM HODGINS, MANAGING MEMBER

**PACNW Broadcasting, LLC**

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

JEFF MONTGOMERY, MANAGING MEMBER

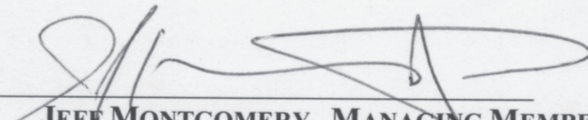


IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

**Xana Oregon, LLC**

By: \_\_\_\_\_  
**TOM HODGINS, MANAGING MEMBER**

**PACNW Broadcasting, LLC**

By:  \_\_\_\_\_  
**JEFF MONTGOMERY, MANAGING MEMBER**

## **Schedule 1.1**

### **FCC Licenses**

1. KPPT-FM License:  
FCC File Number: BLH-20030926AQJ  
Original Date of Issue: 2/9/2004  
Original Expiry: 2/1/2006
2. KPPT-FM License Most Recent Renewal:  
Renewal Application Number: BRH-20130930AYI  
Date of Renewal: 1/2/2014  
Expiry: 2/1/2022
3. KPPT-FM Aural STL License:  
FCC License Number: WPXZ2835  
Grant Date: 7/8/2003  
Effective: 4/2/2020  
Expiry: 2/1/2022

## Schedule 1.3

### Tangible Personal Property

Note: Condition of HD transmission equipment is unknown with no reps or warranties as to operability

#### ***KPPT-FM TRANSMITTER SITE***

- 1- 5 Bay Jampro Penetrator FM Antenna
- 80 feet of 3-1/8-inch Feed Line
- 1-Scala Mini-Flector 950 MHz receive antenna
- 100 feet 7/8-inch Feed Line
- 1-4-foot Harris Solid 5.6 GHz microwave dish
- 150 feet of ½ Inch Feed Line
- 1-LEA Line surge Protector
- 1-Harris Z-16 HD+Analog FM Transmitter
- 1-Harris Power Supply and Rack
- 1-Harris HDXFM Flexstar Digital Exciter
- 1-Harris Intraplex HD Digital program link
- 1-Energy Onix STL 950 MHz STL Receiver
- 1-Energy Onix FM Exciter
- 1-Harris 5.8 GHz Receiver/Transmitter
- 1-Belkin Surge Protector
- 1-Belkin Uninterruptible Power Supply
- 1-Cyber Power Uninterruptible Power Supply
- 1-Nitrogen tank and regulator
- 1-Netgear Digital Switch

#### ***IN STUDIO BUILDING – BROADCAST ELECTRONICS***

- 2-Audioarts Consoles, not the R55e on the AM
- 4-Senneheiser MD421 Microphones
- 1-Rolls Mixer
- 1-4 Foot Harris 5.8 GHz Antenna
- 1-Scala Mina Paraflector 950Mhz and associated mounting pole and hardware
- 1-Kenwood Tuner
- 1-TIE Telephone System with 4 Phones
- 1-BSI Simian Automation
- 1-DBX-166A Processor/Equalizer
- 1-Telos 1X6 Telephone Hybrid + matching handsets
- 1-Electro Voice RE-20 Microphone
- 1-Optimod 8500 FM Processor
- 1-Harris HDE-100 HD Exporter
- 1-Harris Dell Power Edge HD Importer
- 1-Intraplex HD STL
- 1-Harris 5.8 GHz Receiver/Transmitter

- 1-Energ-Onix 950 MHz STL Transmitter
- 1-Broadcast Tools PSCII Controller
- 1-Sage Endec EAS Unit (will be updated as of Closing)

### ***COMPUTERS / EQUIPMENT***

- 1-Printer
- 1-Netgear Router
- 1-Belkin Router
- 1-Dell Laptop Computer
- 1-Dell Optiplex Computer
- 1-Dell Other Computer
- 1-Dell 17 Inch Monitor
- 1-HP 17 Inch Monitor
- 1-A-Line half Rack
- 1-Extended size equipment racks and associated wiring and termination blocks
- 2-Event Speakers
- 1-Industrial Case Dell Computers (Simian I think)
- 2-GE Super Radios
- 1-CD Production Library
- 1-Canon Copier

### ***FURNITURE / OFFICE EQUIPMENT***

- 2-Executive Chairs
- 8-Office Chairs
- 3-Desks
- 2-Book Cases
- 2-2 Drawer Files
- 2-4 Drawer Files
- 1-Clock
- 1-CD Rack
- 2-Couches
- 2-Tables
- 1-Coat Rack
- 1-Coffee Machine
- 1-Ladder
- 1-Storage Rack
- 1-Pop-up Tent
- 1-Glass Coffee Table
- 1-Refrigerator
- 1-Microwave

## **Schedule 1.6**

### **Intangible Property**

1. Call Letters “KPPT-FM”
2. Domain Registration: [www.bossfmradio.net](http://www.bossfmradio.net)
3. Slogan: “100.7BossFM” (This has not been trademarked or registered)
4. Right to use BSI Simian automation software



## **Schedule 1.7**

### **Excluded Assets**

All assets owned, leased or controlled by Seller except as expressly provided in this Agreement. In particular, all items of tangible personal property are excluded, except as expressly set forth on Schedule 1.3 hereto. In addition, KPPT currently uses Natural Log for its traffic purposes. It is understood that Buyer will obtaining its own traffic/billing software and the right to Natural Log in association with KPPT-FM will not be assigned.

## **Schedule 1.9**

### **Assumed Contracts**

1. Rick Dees Weekly Top 40
2. Securenet Systems
3. Benztown Productions
4. Domain Registration with Bluehost.com (this should be verified)

## **Schedule 2.3**

### **Escrow Agreement**

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of the \_\_\_\_\_ day of July, 2020, by and between PACNW BROADCASTING, LLC, a Washington Limited Liability Company ("Buyer") and XANA OREGON, LLC, a Washington Limited Liability Company ("Seller"). The parties hereto shall be known as the "Parties" collectively and a "Party" in the singular.

### WITNESSETH:

WHEREAS, the Parties have entered into an Asset Purchase Agreement (the "Purchase Agreement") of even date herewith, providing for the sale by Seller and the purchase by Buyer of the Purchased Assets set forth in the Purchase Agreement, used or useful in the operation of the following radio broadcast station (the "Station") subject to approval of the Federal Communications Commission (the "FCC" or "Commission"):

(a) KPPT-FM, Depoe Bay, Oregon: Facility ID# 642

WHEREAS, the form of this Escrow Agreement is an exhibit to the Purchase Agreement;

WHEREAS, pursuant to the Purchase Agreement, an Escrow Deposit of Five Thousand Dollars (\$5,000.00) has been placed in the client trust fund account with the law firm of Hawkins Law, PLLC, Walla Walla, Washington (as "Escrow Agent"), which has agreed to serve as a stakeholder to the benefit of the Parties. Upon the execution of the Purchase Agreement and a filing of an Assignment Application requesting FCC approval of an assignment of the Station's FCC Licenses from Seller to Buyer, the Escrow Deposit shall be held to the benefit of the Parties until such time that the Parties provide written instructions to Escrow Agent for the disposition of the Escrow Deposit.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained in the Purchase Agreement and in this Escrow Agreement, the Parties agree as follows:

1. Pursuant to the terms of the Purchase Agreement, Buyer has deposited an Escrow Deposit in the amount of Five Thousand Dollars (\$5,000.00) with Escrow Agent. The Escrow Deposit shall be held in Escrow Agent's client trust fund (IOLTA) account. Consistent with Washington rules regarding such IOLTA accounts, any interest accrued while Escrow Agent holds the Escrow Deposit will accrue to the benefit of the Legal Foundation of Washington (and shall not be disbursed to Seller or Buyer).

2. Escrow Agent shall deliver the Escrow Deposit upon receipt of written notification executed jointly by Buyer and Seller as directed. The Parties agree that the Escrow Deposit shall be held in escrow until the Closing Date as defined in the Purchase Agreement or until the occurrence of an event provided in this Escrow Agreement. Upon the delivery of any or all of the Escrow Deposit via cashier's check or wired funds, the costs associated with the generation of the cashier's check or the cost of the wiring shall be borne by the Party to receive such payment.

a. On the thirtieth (30th) day after Escrow Agent's receipt of written notice from Seller (with evidence of service of such notice on Buyer) that the Purchase Agreement has been terminated due to Buyer's material breach of the Purchase Agreement ("Seller's Notice"), Escrow Agent shall deliver the Escrow Fund, plus any interest earned thereon, to Seller by certified or bank cashier's check or wire transfer; provided, however, that Escrow Agent shall make no such payment if Buyer, prior to the expiration of the aforesaid 30-day period, has provided written notice to Escrow Agent and Seller of its countervailing claim to the Escrow Fund or otherwise claims that Seller is not entitled to the Escrow Fund ("Buyer's Rebuttal Notice").

b. On the thirtieth (30th) day after Escrow Agent's receipt of written notice from Buyer (with evidence of service of such notice on Seller) that the Purchase Agreement has been terminated by Buyer for any reason permitted in the Purchase Agreement ("Buyer's Notice"), Escrow Agent shall deliver the Escrow Fund, plus any interest earned thereon, to Buyer by certified or bank cashier's check or wire transfer; provided, however, that Escrow Agent shall make no such payment if Seller, prior to the expiration of the aforesaid 30-day period, has provided written notice to Escrow Agent and Buyer of its countervailing claim to the Escrow Fund or otherwise claims that Buyer is not entitled to the Escrow Fund ("Seller's Rebuttal Notice").

c. After timely receipt by Escrow Agent of Seller's Rebuttal Notice or Buyer's Rebuttal Notice, Escrow Agent shall not deliver the Escrow Fund until such time as Escrow Agent receives: (a) a written agreement signed by Seller and Buyer providing instructions as to the disposition of the Escrow Fund, or (b) a certified copy of a court order or judgment from a court of competent jurisdiction which has become final (meaning that the order or judgment is no longer subject to appeal to or review by a court of competent jurisdiction) with respect to the disposition of the Escrow Fund. Escrow Agent shall deliver the Escrow Fund and any interest earned thereon in accordance with said agreement, order or judgment. Notwithstanding the foregoing, after receipt by Escrow Agent of Seller's Rebuttal Notice or Buyer's Rebuttal Notice, Escrow Agent may: (a) deposit the Escrow Fund with any court which has properly assumed jurisdiction of any dispute hereunder, or (b) commence an action in interpleader in any court of competent jurisdiction and deposit the Escrow Fund and any interest earned thereon with such court.

d. If any provision of Sub-paragraphs 2(a) through 2(c) above with respect to the disposition of the Escrow Deposit is in conflict with any provision of the Purchase Agreement with respect to such disposition, then such provision in the Purchase Agreement shall control.

3. The undersigned agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Agent:

(a) Escrow Agent shall not be bound in any way to the Purchase Agreement or any other agreement or contract out of which this escrow may arise (whether or not Escrow Agent has knowledge thereof).

(b) Escrow Agent serves as a depository only, and is not responsible or liable in any matter or validity of the subject matter of the escrow, or any part thereof, or for the form of execution thereof, or for the identity or authority of any person executing or depositing it.

(c) In the event there is a dispute or disagreement by and between the Buyer and Seller regarding the disbursement of the Escrow Deposit, and no written instructions regarding

disbursement of the Escrow Deposit have been provided to Escrow Agent, then Escrow Agent shall continue to hold the Escrow Deposit until there is a final judgement or arbitration decision directing disbursement of the Escrow Deposit, subject to the terms of Sub-paragraphs 3(e) and 3(g) herein.

(d) If Seller is unsuccessful in any arbitration or litigation relating to the Escrow Deposit or any portion thereof, then the fees and expenses of Escrow Agent in connection therewith shall be paid by Seller, but if Buyer is the unsuccessful Party, then Buyer will bear the fees and expenses of Escrow Agent in connection therewith.

(e) Escrow Agent may resign and be discharged from its duties hereunder at any time by giving written notice of such resignation to Buyer and Seller specifying the date when such resignation shall take effect. Upon such notice, a successor stakeholder shall be appointed with the consent of both Buyer and Seller and the service of such successor stakeholder shall be effective as of the date of resignation specified in the notice, which date shall not be less than thirty (30) days after the giving of such notice.

(f) Escrow Agent undertakes to perform only such duties as are specifically set forth herein and may rely and shall be protected in acting or refraining from acting, on any written notice, instrument, or signature believed by it to be genuine and to have been signed or presented by the proper Party or Parties duly authorized to do so.

(g) In the event there is a dispute or disagreement by and between the Buyer and Seller on the disbursement of the Escrow Deposit, Escrow Agent may, at its option and in accordance with applicable law, file an action, bill, or interpleader, or similar action for such purpose, in a Court of competent jurisdiction, and upon Court approval pay the Escrow Deposit and all income earned or accrued thereon, less any fees and expenses associated therewith to include legal fees associated with the preparation of the filing, into said Court, in which event, Escrow Agent's duties, responsibilities, and liabilities with respect to the Escrow Deposit, the proceeds, and this Escrow Agreement shall terminate.

(h) Buyer and Seller each agree, jointly and severally, to indemnify, defend, hold harmless, pay or reimburse Escrow Agent and its affiliates and their respective successors, assigns, directors, agents and employees (the "Indemnitees") from and against any and all losses, damages, claims, liabilities, penalties, settlements, litigation, investigations, costs, or expenses (including without limitation, the fees and expenses of outside counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively "Losses") arising out of or in connection with Escrow Agents performance as escrow holder, except to the extent that such Losses are determined by a court of competent jurisdiction through a final order to have been cause by the gross negligence, willful misconduct, or fraud of such Indemnatee. The obligations set forth in this Sub-paragraph 3(h) shall survive the resignation, termination, replacement or removal of Escrow Agent as escrow holder or the termination of this Agreement. If any of the Escrow Deposit or funds deposited that may be deposited in connection with this Agreement shall be attached, garnished, levied upon, or otherwise be subject to any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all such orders to entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with



or without jurisdiction, and in the event that Escrow Agent obeys or complies with any such order it shall not be liable to the Seller or the Buyer or to any other person by reason of such compliance notwithstanding such order be subsequently reversed, modified, annulled, set aside or vacated. The Parties acknowledge that Escrow Agent as a third-party beneficiary hereunder is expressly relying on the provisions hereof as a condition to acting as escrow agent for the Parties

(i) Buyer acknowledges that Escrow Agent has from time to time acted as legal counsel for the Seller and certain of its managers and affiliates (collectively "Seller Group") and may continue to act as legal counsel for the Seller Group from time to time, notwithstanding its duties as a stakeholder or escrow holder as contemplated by this Escrow Agreement. Buyer consents to Escrow Agent acting in such capacity as legal counsel for Seller and each waives any claim that such representation represents a conflict of interest on the part of Escrow Agent or requires Escrow Agent to advise Buyer in connection with any matter other than as explicitly provided for and expressly imposed by this Escrow Agreement. Except as so explicitly provided for and expressly imposed and professional duties as an escrow agent to the Buyer, Buyer acknowledges that Escrow Agent owes no other professional duties to Buyer and Buyer understands that Escrow Agent is relying explicitly on the provisions of this Sub-paragraph 2(i) in entering into its responsibilities as herein contemplated.

4. All notices, requests, demands, and other communications hereunder shall be in writing, shall be given simultaneously to all Parties hereunder and shall be deemed to have been given if delivered by hand, mailed (certified mail, postage pre-paid, return receipt requested), recognized overnight courier, or sent via facsimile as follows:

(a) If to Seller:

Mr. Tom Hodgins, Member  
Xana Oregon, LLC  
45 Campbell Rd.  
Walla Walla, WA 99362

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

Mr. Mark Denbo, Esq.  
Smithwick & Belendiuk, PC  
5028 Wisconsin Ave, NW  
Ste. 301  
Washington, DC 20016

(b) If to Buyer:

Jeff Montgomery, Managing Member  
PACNW Broadcasting, LLC  
PO Box 68190  
Seattle, WA 98168

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

Mr. Richard J. Hayes, Jr., Esq.  
Attorney at Law  
27 Water's Edge Drive  
Lincolnton, ME 04849

(c) If to Escrow Agent:

Mr. Jared N. Hawkins, Attorney at Law  
Hawkins Law, PLLC  
2225 Isaacs, Suite A  
Walla Walla, WA 99362

or to any other party or address as the Parties may from time to time designate in writing.

5. This Escrow Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

6. This Escrow Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

7. To the extent not governed by federal law, this Escrow Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Washington without reference to its principles of conflicts of law. All disputes and controversies arising out of or in connection with this Agreement shall be resolved exclusively by the state and federal courts located in the County of Walla Walla in the State of Washington, and each Party hereto agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts.

8. This Escrow Agreement may be amended by mutual consent of the Parties, but only by a written instrument duly signed by the Parties to the Purchase Agreement.

9. This Escrow Agreement shall automatically terminate upon the distribution of the Escrow Deposit in accordance with the terms hereof.

IN WITNESS WHEREOF, the Parties have executed this Escrow Agreement on the day and year first above written.

SELLER  
XANA OREGON, LLC

BY: \_\_\_\_\_  
TOM HODGINS, MANAGING MEMBER

BUYER  
PACNW BROADCASTING, LLC

BY: \_\_\_\_\_  
JEFF MONTGOMERY, Managing Member

ESCROW AGENT  
HAWKINS LAW, PLLC

BY: \_\_\_\_\_  
JARED HAWKINS ESQ.