

## **TIME BROKERAGE AGREEMENT**

This Agreement is made and entered into this 20 day of August, 2009, by and between Big Island Broadcasting, Inc., a Louisiana corporation (hereinafter, "BIB"), and Hochman Hawaii Publishing, Inc., a Hawaii corporation (hereinafter "HHP").

### **WITNESSETH**

**WHEREAS**, BIB is the licensee of an FM Broadcast Station KUHI (FCC Facility ID No. 164100), Haiku, Hawaii (hereinafter, "Station");

**WHEREAS**, HHP operates a broadcast programming company able to provide sales and programming services; and

**WHEREAS**, BIB and HHP desire to enter into a mutually beneficial time brokerage agreement whereby HHP will broker time and will thereby provide programming on the Station.

**NOW, THEREFORE**, in consideration of the promises and of the mutual covenants and agreements contained herein, the parties mutually agree as follows:

1. **Regulatory Requirements.** BIB and HHP understand and agree that the Federal Communications Commission (hereinafter, "FCC") has certain policies governing time brokerage agreements. Each party further understands that BIB is the licensee of a broadcast Station regulated by the FCC, and that certain responsibilities and obligations of licensees must at all times remain the ultimate responsibility and obligation of the licensee. Each party acknowledges that this Agreement shall not infringe upon those certain obligations and responsibilities. BIB may take whatever action it deems necessary as the licensee of the Station in order to comply with FCC rules and regulations.

2. **Programming.** HHP shall have the right to provide programming during all hours of the broadcast day except as provided in Section 2.3 below, and shall have the obligation to

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provide programming for no less than eighteen (18) hours each day, seven (7) days per week. The programming provided by HHP shall consist primarily of music, news, sports, information, entertainment and public service. HHP shall provide broadcast-ready programming via microwave STL or telephone line to the transmitter site of the Station.

**2.1 Right to Reject Programming.** Subject to HHP's rights under Section 2.3 of this Agreement, BIB shall reserve the right to reject any and all programming or commercial matter offered for broadcast by HHP if such programming or commercial matter is unsatisfactory, unsuitable or contrary to the public interest as determined by BIB in its capacity of licensee of the Station. BIB shall not be under any obligation, nor shall it be liable for any breach of this Agreement with HHP for refusing to air any such programming or commercial matter over the facilities of the Station. BIB shall keep a record of each instance in which it rejected the programming offered by HHP.

**2.2 Right to Preempt Programming.** Subject to HHP's rights under Section 2.3 of this Agreement, BIB shall have the right to preempt any programming offered by HHP with another program deemed to be of greater national, regional or local interest or importance; in case of an emergency; or to comply with federal, state or local laws. Except as provided herein, BIB shall not be under any obligation, nor shall it be liable for any breach of this Agreement with HHP, for preempting any programming or commercial matter over the facilities of the Station. BIB shall keep a record of each instance in which it has preempted the programming offered by HHP.

**2.3 HHP Termination Options.** HHP shall have the right, at its option, to terminate this Agreement at any time during the term hereof in the event that BIB preempts or substitutes other programming for that supplied by HHP during five percent (5%) or more of the total hours of operation of the Station during any calendar month or more than two (2) hours in any twenty-four (24) hour period, except in such cases as such preemption or substitution occurs due to emergency conditions or conditions outside the control of BIB.

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**2.4      Public Affairs Programming.**      It shall remain at all times BIB's responsibility to ascertain the needs and problems of the community to which the Station is licensed. Specifically, every calendar quarter, BIB shall place in its public inspection file a list of significant needs and problems of the community of license and advise HHP of such needs and problems, whereupon HHP shall consult with BIB regarding its programming plans and shall consult with BIB with respect to the broadcast of public affairs programs which directly address those needs and problems and shall provide information concerning such programming on an ongoing basis. At the end of each calendar quarter, HHP shall prepare a list of those programs which were aired, together with a narrative description of each program topic, the length of the program, the time and date each program aired and the guests, if any, which appeared on the program and shall provide such list to BIB for placement in the Station's public inspection file. BIB may, in its sole discretion, supplement HHP's programming with public affairs programming of its own to broadcast programs responsive to its community of license. BIB shall produce and be solely responsible for the content of such programs and HHP shall have no control over such programs. BIB, at its option, may air programming between 6 a.m. and 10 a.m. on Sundays on issues of importance to the local community. The determination to broadcast and scheduling of such programming shall be in BIB's sole discretion.

**2.5      Programming Rights.**      BIB shall have no rights to any programming broadcast by HHP. No programming aired by HHP may be rebroadcast without the express written consent of HHP.

**3.      Compliance with FCC Rules and Regulations.**      HHP understands and acknowledges that BIB's primary obligation and responsibility is to provide service to its community of license. Should any portion of this Agreement be deemed by the FCC to violate BIB's primary responsibility and obligation as a FCC licensee, BIB shall notify HHP of the determination and require modification of this Agreement, *provided, however*, that if HHP chooses not to consent to modification of this Agreement, HHP may terminate the Agreement. Modification of this Agreement by BIB, under these specific circumstances, shall not be considered a breach by

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BIB of its responsibilities or obligations to HHP. Should the FCC revise any of its policies regarding joint station operations or time brokerage agreements, BIB shall prepare an appropriate revision to this Agreement and submit the changes to HHP, whose consent thereto shall not be unreasonably withheld. HHP agrees to adhere to the Program Standards set forth in Exhibit Two, attached hereto.

**3.1 BIB Public Inspection File.** BIB shall maintain the Station's public inspection file at the Station's main studio, and shall also be at all times responsible for maintaining the Station's technical logs as well as the Station's political file (*i.e.*, requests for political air-time/disposition of requests for political air-time).

**3.2 Studios.** BIB is responsible for assuring that the Station is in full compliance with the FCC's main studio rules.

**3.3 Correspondence and Other Communications.** Any and all written correspondence, official or from listeners, addressed to BIB and received by HHP shall be delivered to BIB, unopened. Each of BIB and HHP shall promptly advise the other of all communications from any source regarding any aspect of the Station's operation, including but not limited to the Station's programming. BIB shall be responsible for responding to all complaints or inquiries related to Station operations, and HHP shall extend its full cooperation in investigating and otherwise assisting BIB with respect to such responses for those with respect to HHP's activities (including programming).

**3.4 Miscellaneous.** HHP shall take all reasonable steps to make certain that all Station identification announcements are aired within its programming in accordance with FCC rules and regulations. BIB shall be responsible for the filing of all reports required by FCC rules and regulations, and except as otherwise provided herein, shall be the only party which shall communicate with the FCC either directly or through its own FCC counsel. Any EEO reports filed with the FCC by HHP with regard to employees employed by HHP in conjunction with its Station operation shall be forwarded to BIB for inclusion in the Station's local public inspection file.

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**3.5 BIB Managerial Presence.** BIB shall provide its own General Manager and staff employee who shall report to work each day at the Station's main studio in compliance with the FCC's regulations and BIB will have its own management presence at the Station during normal business hours. As a part of the consideration paid by HHP under this Agreement, HHP shall provide BIB office space which shall be reserved for use by BIB for its General Manager at a studio used locally by HHP, located at 300 Ohukai Road, Suite C-318, Kihei, Hawaii 96753. BIB shall at all times have the exclusive right to supervise its own employees.

**4. Compliance with Federal and State Laws.** Should any term of this Agreement violate any FCC rule or regulation or state law, the parties agree to immediately modify the Agreement in order to comply with appropriate regulations.

**5. Sale of Advertising by HHP.** HHP shall be entitled to sell advertising on the Station during time brokered by it under this Agreement and shall also be permitted to sell time in combination with any other radio Station. All revenues derived from HHP's sale of advertising and commercial time after the effective date of this Agreement shall be the property of HHP. All costs associated with the origination of programming, sales and administrative services shall be the responsibility of HHP.

**5.1 Specific Services.** BIB shall be responsible for the salaries, taxes, insurance and related costs of its own employees and its own Station operations. BIB shall have ultimate responsibility for all advertising and program practices regarding the Station. BIB will be responsible for and implement systems to monitor the Station's Equal Opportunity Employment Program (if applicable) with regard to its employees, community access to the facilities of the Station, lowest unit charge and reasonable access and other requirements contained in the FCC's political rules. BIB shall also be responsible for all maintenance engineering for the studios, transmitter and transmission facilities of the Station and the costs thereof.

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**5.2 Duration of Agreement.** The term of this Agreement (the “Term”) shall begin at 12:01 a.m. on August 24, 2009 (the “Effective Date”), and shall end on February 23, 2010, (six months from the Effective Date), unless the Option Agreement is executed during the six (6) month term of this TBA at which time this TBA will terminate.

**5.3 Responsibility for Payments.** As reflected in Section 5.1 above, BIB shall be responsible for its own employees’ salaries, taxes, insurance and related costs. HHP may not bind or obligate BIB to any liability, monetary or otherwise. HHP shall have no authority to hire any employees for BIB. BIB shall maintain separate checking accounts and banking relationships over which HHP will have no control. Under no circumstances shall HHP pay compensation of any type to any employee of BIB, other than by means of reimbursement to BIB as provided herein.

**5.4 HHP Payment for Services and Operations.** HHP shall be responsible only for the following payments: (a) the salaries of its own employees; (b) all taxes, commissions, studio utilities, bonuses, dues, subscriptions, music royalty fees, office supplies, sales materials, advertising, professional fees and legal fees incurred in conjunction with its operations; (c) business and liability insurance obtained by HHP; and (d) all state, local or FCC fines incurred regarding its programming. HHP will not be responsible for any other costs of BIB’s operation of the Station unless specifically set forth in this Agreement. HHP shall furnish or cause to be furnished the personnel and material for the production of the programming provided by HHP pursuant to this Agreement. HHP shall employ and be responsible for salaries, taxes, insurance and related costs for all programming personnel used in the production of its programming (including, but not limited to, its individual sales people, traffic, programming staff and on-air personnel). In conjunction with programming provided by HHP, HHP shall maintain its own telephone service account with the telephone phone company in HHP’s name.

**5.5 BIB Payment for Services and Operations.** BIB shall be responsible for all expenses associated with the operation of the Station, excluding those expenses associated

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with the programming and sales services provided by HHP. BIB shall be responsible for the following costs and expenses which shall include but shall not be limited to: transmitter utility costs, tower lease payments, business and liability insurance at both the transmitter and studio sites, all taxes and permits associated with its own operations, its own FCC and local counsel, repairs and maintenance to transmitter equipment including the studio-transmitter link, repairs to plumbing, heating, air conditioning, grounds maintenance, cleaning, electric systems, satellite systems, sidewalks, parking, and structural repairs at the transmitter site, salaries of the Station Manager and staff employee, health insurance for its employees in accordance with Hawaii law, federal and state employee payroll taxes and charges, its own accounting and local legal services, FCC regulatory fees and fines associated with its operations.

**5.6 Payment to BIB.** On or before the first day of each full calendar month following the Effective Date, HHP shall pay to BIB the TBA Fee as specified in Exhibit One to this Agreement.

**6. Studio Facilities and Transmission Equipment.** The transmitter equipment and any other equipment located at the transmitter site of the Station are BIB's separate property and shall be inventoried by BIB prior to the Effective Date of this Agreement.

**6.1 Use of Studio Facilities and Equipment by BIB.** In addition to office space to be provided to BIB pursuant to Section 3.5, above, BIB shall have the non-exclusive right to use a portion of the HHP studio facilities for the Term of this Agreement. Included in this right to use the studio facilities shall be the right to use all furniture, fixtures, machinery, equipment and personal property on the premises.

**6.2 Maintenance of Studio Equipment and Facilities by BIB.** HHP shall pay for all maintenance to its own studio equipment.

**6.3 Insurance.** HHP shall obtain and pay for its own liability insurance, general business insurance, lost revenue insurance, libel and slander insurance, casualty insurance

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and other insurance reasonably calculated to protect BIB from harm, in a coverage amount of not less than \$1,000,000 casualty and liability, which insurance shall name BIB as an additional insured. This insurance shall remain in full force and effect throughout the term of this Agreement and throughout the term of any renewals of this Agreement. HHP's failure to keep all insurance in full force and effect shall be deemed an event of default. BIB shall also provide its own insurance for the physical facilities of the Station. Each party will deliver to the other party evidence that the insurance requirements in this section have been met.

**6.4 Taxes.** BIB shall be responsible for payment of all real estate taxes, if any, on the property used as the transmitter site. BIB shall be responsible for the payment of all personal property taxes assessed by the city, county, or state associated with the transmitter site.

**6.5 Capital Improvements.** HHP shall not have the right to make any capital improvements or alterations to the transmitter equipment or the transmission facilities of the Station except with the prior written consent of BIB. HHP shall have no obligation to make any capital improvements at Station.

## **7. Indemnification.**

### **A. HHP's Indemnification**

(a) The sole and exclusive remedy which HHP shall have against BIB under this Agreement after the Effective Date shall be the right to proceed for indemnification in the manner and only to the extent provided by this Section. BIB hereby indemnifies HHP and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by HHP for the duration of this Agreement for all claims from, against and in respect of:

(1) all liabilities, obligations, claims against and contracts of BIB of every kind and nature whatsoever, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether



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known or unknown, and whether or not recorded on the books and records of BIB, arising out of or by reason of this or any other transaction or event occurring prior to the Effective Date or during the Term of this Agreement, which have not been assumed by HHP;

(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 BIB 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.

(4) any claims of any nature asserted by the heirs of the late Roger Cavaness and claims of any nature asserted by Cavaness Management, LLC.

(b) If a demand for indemnification arises out of a claim made against HHP by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Third Party Claim"), HHP shall give prompt notice thereof to BIB, stating in reasonable detail the nature of the Third Party Claim, the identity of the Third Party Claimant and the specific representations, warranties or covenants which HHP and/or the third party claimant contends BIB has breached. Such notice shall also indicate whether HHP intends to defend against the Third Party Claim. If HHP shall defend against the Third Party Claim, BIB shall cooperate in all reasonable respects with HHP in such defense, shall make available to HHP all records and other materials reasonably required by HHP in such defense, and shall have the right to participate in such defense. If HHP does not intend to defend against the Third Party Claim, then BIB may assume defense of the Third Party Claim through legal counsel of its choice reasonably satisfactory to HHP, in which event HHP shall cooperate in all reasonable respects with BIB in such defense, and shall make available to BIB and its counsel all records and other materials reasonably required by them in such defense, but BIB shall at all times control such defense. So long as a Third Party Claim is pending and is not

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resolved, HHP shall hold in abeyance its demand for indemnification. If BIB reaches a settlement with the Third Party Claimant which results in any liability to HHP, or if a judgment is rendered against HHP which judgment is not properly appealed or appealable, then HHP shall be entitled to indemnification in an amount sufficient to discharge the Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a Third Party Claim except that BIB shall pay HHP's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to BIB and which shall be found to have constituted a breach of BIB's representations, warranties and covenants hereunder.

(c) If HHP asserts a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, HHP shall notify BIB thereof in writing, stating in reasonable detail the nature of HHP's claim and the specific representations, warranties and covenants which HHP contends BIB has breached. BIB shall have fifteen (15) days after the effective date of such notice to accept or reject HHP's demand for indemnification. If BIB accepts such demand for indemnification, BIB shall pay the amount of indemnification claimed by HHP. If no acceptance is received by HHP within such fifteen (15) day period, BIB shall be deemed to have rejected the demand. In the event BIB rejects HHP's demand for indemnification or fails to accept such demand within such fifteen (15) day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions Chapter 658A [the Uniform Arbitration Act] of the Hawaii Revised Statutes, as amended, in Wailuku, Hawaii. If the arbitrator renders an award in the arbitration proceeding in favor of HHP, HHP shall be entitled to indemnification to the extent provided in such award and shall be entitled to an adjustment to the amounts due to BIB under this Agreement should BIB be unable to pay the amount of the indemnification. If the arbitrator renders an award in favor of BIB, BIB shall have no further liability on HHP's claim.

(d) If there is any disagreement between HHP and BIB concerning the validity of any demand for indemnification asserted under this Section, then such disagreement shall immediately be submitted to arbitration in accordance with the provisions Chapter 658A [the Uniform Arbitration Act] of the Hawaii Revised Statutes, as amended, in Wailuku, Hawaii.

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(e) BIB's liability for all Claims under this Section shall be subject to the following limitations: BIB shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds One Thousand Dollars (\$1,000.00) (the "Minimum Loss"); after the Minimum Loss is exceeded, HHP shall be entitled to be paid the entire amount of the Claims, including the Minimum Loss.

### **B) BIB's Indemnification.**

(a) The sole and exclusive remedy which BIB shall have against HHP under this Agreement after the Effective Date shall be the right to proceed for indemnification in the manner and only to the extent provided by this Section. HHP hereby indemnifies BIB and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by BIB for the duration of this Agreement for all claims from, against and in respect of:

(1) all liabilities, obligations, claims against and contracts of HHP 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 HHP, arising out of or by reason of this or any other transaction or event occurring prior to the Effective Date or during the Term of this Agreement, which have not been assumed by BIB; and

(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 HHP 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.

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

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

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rejected the demand. In the event HHP rejects BIB's demand for indemnification or fails to accept such demand within such fifteen (15) day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions Chapter 658A [the Uniform Arbitration Act] of the Hawaii Revised Statutes, as amended, in Wailuku, Hawaii. If the arbitrator renders an award in the arbitration proceeding in favor of BIB, BIB shall be entitled to indemnification to the extent provided in such award and shall be entitled to an adjustment to the amounts due from HHP under this Agreement should HHP be unable to pay the amount of the indemnification. If the arbitrator renders an award in favor of HHP, HHP shall have no further liability on BIB's claim.

(d) If there is any disagreement between BIB and HHP concerning the validity of any demand for indemnification asserted under this Section, then such disagreement shall immediately be submitted to arbitration in accordance with the provisions Chapter 658A [the Uniform Arbitration Act] of the Hawaii Revised Statutes, as amended, in Wailuku, Hawaii.

(e) HHP's liability for all Claims under this Section shall be subject to the following limitations: HHP shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds One Thousand Dollars (\$1,000.00) (the "Minimum Loss"); after the Minimum Loss is exceeded, BIB shall be entitled to be paid the entire amount of the Claims, including the Minimum Loss.

**8. Other Events of Default.** In addition to other events of default specified in this Agreement, it shall be considered an event of default if HHP fails to: (a) perform any service outlined in this Agreement; (b) render any payment due to BIB on the date for which payment is due under the terms of this Agreement; or (c) provide broadcast service a minimum of eighteen (18) hours per day, seven (7) days per week over the facilities of the Station other than due to factors beyond HHP's reasonable control.

**9. Remedies.**

**9.1 Notice of Default.** In the event of default or breach by HHP of any provision of this Agreement BIB shall give HHP written notice of default specifically identifying the nature of HHP's breach or default. Notice of default shall be given as provided in Section 12 of this Agreement.

**9.2 Curing Default or Forfeiture of Use of Facilities.** HHP shall have 20 business days from the time of notice of default to cure the default. If after 20 business days from receipt of the date of notice of default, all defaults specified in the notice have not been fully cured, BIB may terminate this Agreement and HHP shall immediately forfeit and lose all rights under this Agreement and under the Option Agreement, and BIB shall immediately have exclusive use of and all rights to all Station transmission facilities without the need for any eviction or other legal process against HHP. If default occurred because of nonpayment of money due, then the payment required to cure default shall be by cashiers or bank check and not by personal or business check. BIB's tolerance, forbearance or waiver of any breach or default on one or more occasions or for any length of time shall not be, or construed as, a waiver of any rights by BIB. Any partial payment accepted by BIB after default shall not constitute a curing of default or a waiver of any rights. HHP acknowledges that all provisions in this Section 9.2 are essential to BIB, that without it BIB would not enter this agreement, and HHP does hereby freely and voluntarily waive any and all defenses or objections, whether in law or equity, to the provisions in this paragraph.

**9.3 Forfeiture of Use of Facilities.** In the event HHP breaches or defaults and the breach or default is not cured in a timely fashion as set forth in this Section, BIB shall be free to, but not obligated to, operate the Station in any format, name or manner and receive revenues from its operation without application or credit of such revenues to HHP's obligations herein and without accounting to HHP.

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**10. Payables and Receivables.** As reflected above, BIB shall at all times retain control over BIB's station finances, and shall maintain responsibility to pay for all Station operation expenses. BIB shall be obligated to keep current all payments for services and supplies.

**11. Indebtedness to Cavaness Management LLC.** BIB discloses that it is indebted to Cavaness Management, LLC, ("Cavaness") a Texas Limited Liability Company, and that indebtedness is secured by a stock pledge agreement whereby Cavaness holds the issued and outstanding shares of stock of BIB owned of record by Joel Sellers. Cavaness has fully reviewed the terms and conditions of this Agreement and, as evidenced by its signature on this document, approves of this Agreement and all of the schedules and exhibits associated with it and affirmatively states that these agreements do not violate any agreements of any nature between BIB and Cavaness.

**12. Notices.** All notices required or permitted to be given hereunder shall be in writing, sent by United States Certified Mail and addressed as follows:

**IF TO HHP:** George Hochman, President  
Hochman Hawaii Five, Inc.  
4339 Kalaheo Drive  
Kalaheo, HI 96741

**WITH A COPY TO: (WHICH SHALL NOT CONSTITUTE NOTICE)**

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

**IF TO BIB:** Ms. Joel Sellers, President  
Big Island Broadcasting, Inc.  
8215 Birch St.  
New Orleans, LA 70118

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**WITH A COPY TO: (WHICH SHALL NOT CONSTITUTE NOTICE)**

John F. Shreves, Esq.  
Simon, Peragine, Smith & Redfearn, LLP  
1100 Poydras Street  
30<sup>th</sup> Floor  
New Orleans, Louisiana 70163-3000

Any such Notice shall be effective on such date as it is delivered as provided above.

**13. Entire Agreement.** The foregoing constitutes 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.

**14. Agreement Binding.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns but shall not be assigned without the express written consent of the parties. An assignment shall not relieve the parties of their obligations to guarantee the prompt performance of any and all of the obligations hereunder. This Agreement shall be construed in accordance with the rules of the FCC and the State of Hawaii. This Agreement is entered in whole or in part in the State of Hawaii.

**15. Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding Agreement when the parties shall have each executed one counterpart.



**16. Compliance With 47 C.F.R. § 73.3555(a).**

A. HHP hereby verifies that execution and performance of this Agreement complies with the FCC's restrictions on local radio station ownership set out in Section 73.3555(a) of the FCC's rules.

B. BIB certifies that during the term of this Agreement, it maintains and will continue to maintain ultimate control over the Station's facilities, including specifically, control over the Station's finances, personnel and programming.

**17. Corporate Authority and Individual Authority of the Parties.** BIB is a corporation, duly organized in the State of Louisiana. The Board of Directors and the stockholders of BIB have authorized its President to enter into this Agreement. No other corporate action is necessary in order to make the signature of its President binding as to BIB with regard to this TBA. This Agreement is contingent upon BIB providing HHP with a copy of the resolution or equivalent corporate authorization enabling its President to enter into this Agreement as well a Certificate of Good Standing from the appropriate office of the State of Louisiana and for the State of Hawaii.

HHP is a corporation, duly organized in the State of Hawaii and qualified to do business in the State of Hawaii. The Board of Directors of HHP has authorized George Hochman, as President, to enter into this Agreement. No other corporate action is necessary in order to make the signature of George Hochman binding as to HHP with regard to this TBA. This Agreement is contingent upon HHP providing BIB with a copy of the resolution or equivalent corporate authorization enabling its President to enter into this Agreement upon closing as well a Certificate of Good Standing from the appropriate office of the State of Hawaii.

**18. No Joint Venture.** Nothing in this Agreement shall be construed to make HHP and BIB partners or joint venturers of the other. Neither party hereto shall have the right to bind the other to transact any business in the other's name or on its behalf, in any form or manner or to make any promises or representations on behalf of the other.

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19. **Severability.** If any court of competent jurisdiction should determine that any provision herein is invalid and unenforceable, then all remaining provisions shall remain valid and enforceable.

20. **Costs of Enforcement.** In the event of default, the defaulting party shall pay the other party's reasonable costs and attorneys' fees expended to enforce this Agreement.

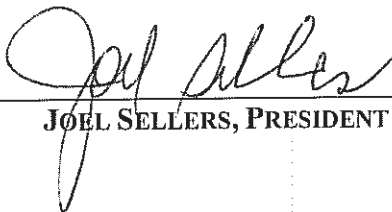
21. **Waiver of Conflict.** The parties each agree and accept that Richard J. Hayes, Jr. shall be sole FCC counsel for both parties in this transaction and each has been advised that local counsel should be retained and consulted regarding this transaction. Furthermore, both parties agree that if a conflict requiring FCC legal counsel arises between the parties, then Richard J. Hayes, Jr. shall not represent either party in the conflict.

22. **Right To Execute Option.** During the term of this agreement and any extension(s) of this agreement (the "Term"), BIB grants to HH5 (an entity related to HHP) the right to execute the Option Agreement previously negotiated with BIB and attached hereto as Exhibit 3. During the term of this TBA, BIB agrees not sell the FCC authorizations of the Station to any other person or entity.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**BIG ISLAND BROADCASTING, INC.**

By:   
JOEL SELLERS, PRESIDENT

**CAVANESS MANAGEMENT, L.L.C.**

\_\_\_\_\_  
**LIBBY SANTOS, MANAGER: ONLY WITH REGARD TO THE  
TERMS AND CONDITIONS OF PARAGRAPH 11**

**HOCHMAN HAWAII PUBLISHING, INC.**

By: \_\_\_\_\_  
GEORGE HOCHMAN, PRESIDENT

**HOCHMAN HAWAII FIVE, INC.**

By: \_\_\_\_\_  
GEORGE HOCHMAN, PRESIDENT

**TIME BROKERAGE AGREEMENT**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**BIG ISLAND BROADCASTING, INC.**

By: \_\_\_\_\_  
JOEL SELLERS, PRESIDENT

**CAVANESS MANAGEMENT, L.L.C.**

  
\_\_\_\_\_  
**LIBBY SANTOS, MANAGER: ONLY WITH REGARD TO THE  
TERMS AND CONDITIONS OF PARAGRAPH 11**

**HOCHMAN HAWAII PUBLISHING, INC.**

By: \_\_\_\_\_  
GEORGE HOCHMAN, PRESIDENT

**HOCHMAN HAWAII FIVE, INC.**

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LIBBY SANTOS, MANAGER: ONLY WITH REGARD TO THE  
TERMS AND CONDITIONS OF PARAGRAPH 11

**HOCHMAN HAWAII PUBLISHING, INC.**

By: \_\_\_\_\_  
GEORGE HOCHMAN, PRESIDENT

**HOCHMAN HAWAII FIVE, INC.**

By: \_\_\_\_\_  
GEORGE HOCHMAN, PRESIDENT

**Exhibit One**

**TBA FEE**

HHP will pay to BIB a monthly TBA fee of \$2,400.00. This TBA fee shall be paid to BIB on the 15<sup>th</sup> day of each month beginning with the first payment on September 15, 2009 which shall be a partial month payment for the period from August 24 and ending on September 14. On October 15, and on the 15<sup>th</sup> of each subsequent month during the term, the full payment of \$2,400.00 will be due.

**Exhibit Two**

**PROGRAMMING STANDARDS**

HHP agrees to cooperate with BIB in the broadcasting of programs in a manner consistent with the standards of BIB, as set forth below:

1. **Political Programming and Procedures.** At least ninety (90) days before the start of any primary or general election campaign, HHP will clear with BIB's General Manager the rate that HHP will charge for time to be sold to candidates for public office and/or their supporters to make certain that the rate charged conforms to all applicable laws and the Station's policies. Throughout a campaign, HHP will comply with all applicable laws and rules concerning political candidacy broadcasts and will promptly notify BIB's General Manager of any disputes concerning either the treatment of or rate charged a candidate or supporter.
2. **Required Announcements.** HHP shall broadcast, on the Station, an announcement in a form satisfactory to BIB at the beginning of each hour to identify the Station, and any other announcement that may be required by the Rules or the Station's policy.
3. **Commercial Recordkeeping.** HHP shall maintain such records of the receipt of, and provide such disclosure to BIB of any consideration, whether in money, goods, services, or otherwise, which is paid or promised to be paid, either directly or indirectly, by any person or company for the presentation of any programming over the Station as are required by Sections 317 and 507 of the Act and by the Rules.
4. **No Illegal Announcements.** No announcements or promotion prohibited by federal or state law or regulation of any lottery, game or contest shall be made over the Station. Any game, contest or promotion relating to or to be presented over the Station must be fully stated and explained in advance, and such explanation be presented to BIB, which reserves the right, in its reasonable discretion to reject any game, contest or promotion.
5. **Indecency, Profanity, Hoaxes.** No programming violative of applicable laws and rules concerning indecency, profanity or hoaxes will be broadcast over the Station.
6. **Credit Terms Advertising.** Pursuant to the rules and regulations of the Federal Trade Commission, any advertising of credit terms shall be made over the Station in accordance with all applicable federal and state laws.

Exhibit Three  
OPTION AGREEMENT



## **OPTION AGREEMENT**

This **OPTION AGREEMENT** ("Agreement") is dated as of this \_\_\_\_ day of August \_\_\_\_\_ 2009, by and between **Big Island Broadcasting, Inc.**, a Louisiana corporation ("Seller"), and **Hochman Hawaii-Five, Inc.**, a Hawaii corporation ("Buyer").

### **RECITALS**

**WHEREAS**, Seller is the licensee of radio station KUHI, Haiku, Hawaii, FCC Facility ID No. 164100 (the "Station"), pursuant to authorizations issued by the Federal Communications Commission ("FCC");

**WHEREAS**, Seller desires to grant, and Buyer desires to receive, an option for Buyer to purchase the FCC authorizations for and all of the other assets used in the operation of the Station, upon the terms and conditions set forth herein;

**WHEREAS**, Buyer and Seller, concurrently with the execution of this document, have executed a Time Brokerage Agreement ("TBA").

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purchase Option.** For a period ending on the thirty-sixth month from the date hereof (the "Option Period"), Buyer shall have the option (the "Purchase Option"), exercisable at any time during the Option Period in Buyer's sole discretion, to purchase the Station Assets (as such are defined in the "Asset Purchase Agreement," attached hereto as Exhibit A) from Seller, and, upon exercise of such Purchase Option, Seller shall sell the Station Assets to Buyer, and Buyer shall purchase the Station Assets from Seller, on the terms and subject to the terms and conditions set forth in the Asset Purchase Agreement.

2. **Option Price.** In consideration for the Purchase Option, Buyer shall pay, pursuant to the Escrow Agreement, within one business day after the date hereof by wire transfer of immediately available funds to the Escrow Agent identified in the Escrow Agreement the parties executed concurrently with the execution of this document, Twenty Five Thousand Dollars (\$25,000.00) (the "Option Price"). Seller acknowledges and agrees: (1) that in the event Buyer does not exercise the Purchase Option, retention of any remaining portion of the Option Price by Seller shall be Seller's sole and exclusive compensation for Buyer's election not to exercise the Purchase Option, and that Seller shall not be entitled to any other remedy of any kind, at law or in equity, for such election by Buyer; and (2) in the event the FCC denies the transaction, Buyer shall be entitled to return of the Option Price. In the event that Buyer exercises the Purchase Option, the Option Price shall not be applied towards the Purchase Price of the Station. Buyer and Seller, upon notification that the Option Price has been received by

the Escrow Agent shall instruct the Escrow Agent to apply the Option Price to the outstanding, unpaid balance (if any) owed to Pacific Radio Group, Inc., lessor of the tower, and, if funds in the Escrow Account are sufficient, to reimburse Buyer for any engineering costs associated with repair of the transmission facilities in January, 2009. Should there be any remaining funds in the Escrow Account after these payments have been made, the balance of the funds in the Escrow Account shall be paid over to Seller. If the funds in the Escrow Account are insufficient to fully pay for the outstanding tower site rent and the January 2009 engineering costs, Buyer shall be entitled to offset its TBA payment to Seller to satisfy these obligations of Seller. These payments shall be a condition precedent to executing this Agreement, the Asset Purchase Agreement and the Time Brokerage Agreement.

3. **Exercise of Purchase Option.**

(a) In the event that Buyer elects to exercise the Purchase Option, Buyer shall have the right to purchase the Station under the terms and conditions specified in the Asset Purchase Agreement attached to this Agreement as Exhibit A. Buyer shall deliver to Seller, in accordance with the requirements of Section 8 hereof, on or prior to the last day of the Option Period, a written notice (the "Exercise Notice") of such exercise, together with two originals of the Asset Purchase Agreement, each duly executed by Buyer.

(b) Within five (5) business days after the delivery of the Exercise Notice by Buyer, Seller shall duly execute the two originals of the Asset Purchase Agreement delivered by Buyer and shall deliver one fully executed original of the Asset Purchase Agreement to Buyer in accordance with the requirements of Section 8 hereof.

4. **Access to Station.** Seller shall give Buyer and Buyer's engineers and other representatives, reasonable access during normal business hours to Seller's properties, records and employees relating to the Station, and shall furnish Buyer with all information related to the Station that Buyer reasonably requests.

5. **Confidentiality**

(a) During the Option Period, and for a period of one year thereafter, Buyer and Seller shall each treat any Confidential Information (as defined below) disclosed by the other in strict confidence (other than disclosure to the extent required by law) and shall only use such information for the purpose of completing the transactions contemplated by this Agreement and the Asset Purchase Agreement. For purposes of this provision, "Confidential Information" shall mean all oral or written technical, financial, business or other information of whatever kind created by or on behalf of or in the possession of the disclosing party which is confidential, proprietary or not generally available to the public, including, but not limited to, this Agreement, the Asset Purchase Agreement, and the transactions contemplated herein and therein; provided, however, that the obligations contained in this Section 5 shall not apply to (i) information that is or was in the possession of the receiving party at the time of its first disclosure by the disclosing party, (ii) is or becomes publicly known, other than through the negligence or

other wrongful act of the receiving party, (iii) is received from a third party having the lawful right to disclose such information, (iv) is independently developed by the receiving party; or (v) the obligations imposed by any discovery, subpoena, civil investigative demand or court process (provided that the receiving party shall first provide the disclosing party or its counsel with prior written notice of such requirement as promptly as practicable so that the disclosing party may seek a protective order or other appropriate remedy) or as otherwise required by law, legal process or by the request of any governmental authority or other regulatory body or self-regulatory organization having a claim of jurisdiction over the receiving party.

(b) Except as required by law, neither party shall make any press release or other public announcement concerning this Agreement, the Asset Purchase Agreement and the transactions contemplated herein and therein without the consent of the other party hereto as to the form, content and timing of such release or announcement.

## **6. Representations and Warranties.**

Seller hereby represents and warrants to Buyer that:

(i) The execution and delivery by Seller of this Agreement and the performance of the transactions contemplated hereby (x) has been duly authorized by all necessary corporate action and (y) does not contravene the terms of Seller's certificate of incorporation, bylaws or other organizational documents, or any amendment thereof.

(ii) The execution, delivery and performance by Seller of this Agreement does not, and after giving effect to the transactions contemplated hereby, will not violate, conflict with or result in any breach or contravention of or the creation of any lien under any contractual obligation of Seller or any requirement of law applicable to Seller.

(iii) This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity relating to enforceability.

Buyer hereby represents and warrants to Seller that the execution and delivery by Buyer of this Agreement and the performance of the transactions contemplated hereby (x) has been duly authorized by all necessary corporate action and (y) does not contravene the terms of Buyer's certificate of incorporation or bylaws, or any amendment thereof.

(iv) Seller discloses that it is indebted to Cavaness Management, L.L.C., ("Cavaness") a Texas Limited Liability Company, and that indebtedness is secured by a stock pledge agreement whereby Cavaness holds the stock of Seller. Cavaness has fully reviewed the terms and conditions of this Agreement and the concurrently executed Time Brokerage Agreement and all of the schedules and exhibits associated with each of those documents, including the Asset Purchase Agreement, and, as evidenced by its signature on this document, approves of this

Agreement, the Time Brokerage Agreement and all of the schedules and exhibits associated with each of those documents including the Asset Purchase Agreement, and affirmatively states that these agreements do not violate any agreements of any nature between Seller and Cavaness.

7. **Interim Operation.** Between the date of this Agreement and the exercise of the Purchase Option, except with the prior written consent of Buyer, which consent shall not be unreasonably withheld:

(a) Seller shall not sell, assign, lease or otherwise transfer or dispose of any of the Station Assets, except where replaced by a like asset;

(b) Seller shall not modify the Station's technical facilities in any manner which would reduce the power of the Station or the area or population served by the Station, or enter into any Agreement for such modification of the Station's technical facilities;

(c) Seller shall not modify, amend, cancel or terminate any tower lease without the express written consent of Buyer;

(d) Seller shall promptly notify Buyer of any default by, or claim of default against, any party under the tower lease, and any event or condition which, with notice or lapse of time or both, would constitute an event of default under such;

(e) Seller shall maintain insurance policies on the Station Assets as is customary in the broadcast industry; and

(f) Prior to its acquisition, Seller shall maintain the Station Assets in good operating condition and in compliance with FCC regulations.

Seller shall not take any action which is materially inconsistent with its obligations under this Agreement or that would hinder or delay the exercise of the Purchase Option of the contemplated consummation of the transactions contemplated by this Agreement.

If Seller receives notice thereof or otherwise becomes aware of same, Seller shall notify Buyer of any litigation, arbitration or administrative proceeding pending or threatened against Seller which challenges the transactions contemplated hereby, including any challenges to the FCC Application, and shall use its reasonable efforts to take such steps as may be necessary to remove any such impediment to the transactions contemplated by this Agreement.

8. **Notification.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be given in the manner set forth in the Asset Purchase Agreement.

9. **Entire Agreement.** This Option Agreement, together with Exhibit A attached hereto and made a part hereof and the Time Brokerage Agreement and the Asset Purchase Agreement, constitute the entire agreement between the parties hereto, is intended as the complete and exclusive statement of the terms of the agreement between the parties hereto, and supersedes all previous agreements, understandings, commitments or representations concerning its subject matter, written or oral, between the parties hereto.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Hawaii, without giving effect to any choice of law or conflict of law provisions or rule that would cause the application of the laws of any other jurisdiction other than the State of Hawaii.

11. **Specific Performance by Seller.** Seller hereby acknowledges that irreparable damage would occur, and the remedies at law for Buyer would be inadequate, if any term or provision hereof were not performed or observed by Seller strictly in accordance herewith, and Seller hereby unconditionally and irrevocably waives any defense that may be available to it that Buyer's remedies at law are adequate or that Buyer's injuries are not irreparable. Seller hereby agrees that Buyer may, without posting any bond or other security and in addition to any remedy available to Buyer at law, obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, or any other equitable remedy which may then be available to Buyer.

12. **Survival.** All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement. Any investigations by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

13. **Assignment.** This Agreement shall not be assigned or transferred in whole or in part by any party without the prior written consent of the other party.

14. **Waiver.** No failure or delay by any party to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of such right, power or privilege preclude any further exercise thereof or of any other right, power or privilege which such party may have hereunder.

15. **Amendments.** This Agreement shall not be amended, changed or modified in any manner except by an instrument in writing signed by both parties hereto.

16. **Severability.** If any provision hereof or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

17. **Counterparts.** This Agreement may be executed in any number of counterparts (including by facsimile), each of which, when so executed and delivered,

shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

20. **Waiver of Conflict.** The parties each agree and accept that Richard J. Hayes, Jr. shall be sole FCC counsel for both parties in this transaction and each has been advised that local counsel should be retained and consulted regarding this transaction. Furthermore, both parties agree that if a conflict requiring FCC legal counsel arises between the parties, then Richard J. Hayes, Jr. shall not represent either party in the conflict.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the date first written above.

**BIG ISLAND BROADCASTING, INC.**

**By:** \_\_\_\_\_  
**JOEL SELLERS, PRESIDENT**

**CAVANESE MANAGEMENT, L.L.C.**

\_\_\_\_\_  
**LIBBY SANTOS, MANAGER: ONLY WITH REGARD TO THE  
TERMS AND CONDITIONS OF SECTION 6(IV)**

**HOCHMAN HAWAII FIVE, INC.**

**By:** \_\_\_\_\_  
**GEORGE HOCHMAN, PRESIDENT**

**EXHIBIT A**



## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Agreement"), by and between Big Island Broadcasting, Inc., a Louisiana corporation (hereinafter be referred to as "Seller"), and Hochman Hawaii Five, Inc., a Hawaii corporation ("Buyer").

### Recitals

**WHEREAS**, Seller holds a license issued by the Federal Communications Commission ("FCC") for an FM broadcast Station on Channel 293C, Haiku, Hawaii, FCC Facility ID No. 164100 (the "Station"); and

**WHEREAS**, Seller and Buyer entered into an Option Agreement dated March \_\_, 2009, pursuant to which Buyer obtained the right during the Option Period (as defined therein) to acquire the Station's licenses, permits and assets (the "Option"); and

**WHEREAS**, Buyer has exercised the Option, and Seller desires to sell and assign to Buyer and Buyer desires to acquire and assume all of the assets used or useful in connection with the operation of the Station, whether existing on the date hereof or acquired hereafter, on the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the parties agree as follows:

### 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, Seller will sell, assign, transfer and deliver to Buyer the Station Assets (collectively referred to as "The Assets"), free and clear of any debts, liens, or encumbrances of any kind or nature, as defined, below:

1.1       **Licenses.** All construction permits, licenses and authorizations issued by any governmental or regulatory agency including without limitation, the Federal Communications Commission (the "FCC") for the operation of Station (the "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 Property Seller's right and interest in and to the leased real property to be used as the tower and transmitter site of the Station and any amendments thereto made between the date of execution of this Agreement and the Closing Date that Buyer expressly approves in writing to assume, including but not limited to any easements, rights of ingress and egress, and rights of way associated therewith, and the buildings, towers, and fixtures located thereon (the "Real Property"). Copies of said leases are attached hereto in Schedule 1.2;

**Comment:** Insert Heading

1.3 Tangible Personal Property. All equipment and supplies, inventory, spare parts, and other tangible personal property of every kind and description to be owned by Seller and used or useful in the conduct of the business and operation of the Station, together with any replacements thereof and additions made thereto (the "Personal Property"). A list of all such tangible property is attached hereto in Schedule 1.3;

**Comment:** Insert Heading

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 Facilities, filings with the FCC and copies of all written Contracts to be assigned hereunder;

**Comment:** Insert Heading

1.5 **Call Letters.** All right, title and interest of the Seller in and to the use of the call letters for the Station (the "Call Letters");

1.6 **Intangible Assets.** All goodwill, copyrights, trademarks 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 (the "Intangible Assets");

1.7 **Excluded Assets.** The Assets to be transferred hereunder shall not, however, include any of Seller's cash, 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), 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, 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 joint and several 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.

## **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 for the Station Assets shall be Four Hundred Fifty Thousand Dollars (\$450,000.00), paid to Seller pursuant to the terms of a Promissory Note, the form of which is attached hereto in Schedule 2.1. The obligations of Buyer under the Promissory Note shall be secured in accordance with the Pledge Agreement and Security Agreement attached hereto in Schedule 2.1 and executed by Buyer at Closing.

As additional consideration, Buyer shall deliver to the Seller certificates of common voting stock representing twenty-five percent (25%) of the equity of Buyer's corporation. The stock delivered to Seller shall include preemptive rights and shall be restricted only to provide Buyer with a right of first refusal should Seller wish to sell its stock in Buyer's corporation.

**2.2 Allocation of Purchase Price.** Buyer and Seller will allocate the Purchase Price and other consideration received by Seller from Buyer 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.

**2.3 Unjust Enrichment Provisions.** It is acknowledged by Buyer that Seller's predecessor obtained the construction permit for the Station with a bidding credit of 35%. Consequently, in the event and as a result of the sale of the Station, Seller shall be required to pay to the FCC an amount under the FCC's "unjust enrichment" regulations (47 C.F.R. Section 1.2111 or 73.5009(c)).,

**2.4 FCC Litigation.** On or about March 31, 2008, Big D Consulting, Inc. filed with the FCC a Petition for Reconsideration of the FCC staff's action granting the license application of Big Island Broadcasting, Inc. It shall be a condition of closing that the Petition for Reconsideration be dismissed prior to consummation of this transaction and that no litigation of any kind be pending at the time of Closing. Any legal or engineering fees or expenses associated with this litigation shall be the sole responsibility of Big Island Broadcasting, Inc. Any settlement payments made to Big Island Broadcasting, Inc., with respect to the Station, shall be applied toward the purchase price of the Station effectively reducing the purchase price by the amount of such settlement

payment. Seller shall not enter into any settlement without the advice and consent of Buyer.

3     **No Assumption of Liabilities.** Buyer shall not assume and shall not be obligated to pay any liabilities or obligations of Seller. 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.

4     **Seller's Representations and Warranties.** The following representations and warranties shall survive for three years 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, a Louisiana corporation, 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 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.

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 licenses and permits, including the FCC Station Authorizations, issued in connection with the Station, including their expiration dates. Seller has delivered to Buyer true and complete copies of such licenses and permits. The Station Authorizations and other licenses, permits and authorizations 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 regular and unconditional FCC license(s) and license(s) issued by the Commission for the operation of Station and all pertinent auxiliary stations, if any, which license(s) will not be subject to any material adverse conditions, litigation or reporting conditions. Seller has all permits, licenses, franchises and other authorizations necessary to, and has materially 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 and all such permits, licenses, franchises and authorizations are valid and in full force and effect. Seller has not engaged in any activity or failed to perform any required act which would cause revocation or suspension of any such permits, licenses, franchises or authorizations, and no complaint, action or proceeding looking to or contemplating the revocation or

suspension of any thereof is pending or, to the knowledge of Seller, threatened, at the time of Closing. Further, on the Closing Date, the FCC Licenses and Permits will be in good standing, without adverse condition, the Station will have full operating authority under its licenses and permits, 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 Station, other than as disclosed herein. Buyer shall pay all FCC filing fees associated with this transaction.

4.4 **Contracts.** Seller shall deliver to Buyer true and complete copies of the Tower Site Lease, all written contracts agreed to be assumed by Buyer and true and complete memoranda of all oral contracts agreed to be assumed by Buyer, including any amendments and other modifications to such contracts ("Assumed Contracts). The Tower Site Lease and 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. As of the closing date and throughout the term of the Option Agreement, the Time Brokerage Agreement and the Asset Purchase Agreement, Seller shall not be in default under the Tower Site Lease or any of the Assumed Contracts and, to the best of Seller's knowledge, the other parties to such Tower Site Lease and Assumed Contracts are not in default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto. Except as disclosed on Schedule 1.2, at Closing, Seller shall have all requisite power and authority to assign its rights under the Tower Site Lease and Assumed Contracts to Buyer in accordance with this Agreement on terms and conditions no less favorable than those in effect on the date hereof, and such assignment will not affect the validity, enforceability or continuity of any such Tower Site Lease or Assumed Contracts.

**Comment:** BIB is in default right now.  
Will it be in good standing at Closing?

4.5 **Taxes.** Seller has duly, timely and in the required manner filed all federal, state, local and 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 Station 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.

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

Station 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.** Seller is in compliance with all laws, regulations and governmental orders applicable to the construction and 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, Station Assets, or the Station Authorizations, 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, Station Assets or the Station Authorizations 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, Station Assets, or the Station Authorizations, nor is Seller aware of any basis for any such investigation or audit.

4.8 **Legal Proceedings, Etc.** Except for the litigation referenced in Section 2.3, 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 **Intentionally Left Blank**

4.10 **No Conflict.** 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 officers, directors or shareholders, is a party or by which Seller or any of Seller's Assets may be bound; or

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

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.

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 no creditors of Seller, including barter creditors, if any, shall have any claim on the Assets for payment of such liabilities, with the exception of the debt owed to Cavaness management by Seller

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 **Broker.** Seller has incurred and is liable for a broker's commission to Richard J. Hayes, Jr. in the amount of \$6,000.00, relating to the transactions contemplated under this Agreement, which will be paid by Buyer at Closing. Seller agrees to indemnify and hold Buyer harmless from any other claims for brokerage fees, finder's fees or commissions asserted by any person acting on Seller's behalf in connection with this transaction.

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.

(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 ("CERCLA") as a result of acts or omissions on or in any manner affecting the Land. Seller has not received written notification from any federal or local government under any similar provisions of federal or local law.

4.15 **Indebtedness to Cavaness Management LLC**

Seller discloses that it is indebted to Cavaness Management, LLC, ("Cavaness") a Texas Limited Liability Company, and that indebtedness is secured by a stock pledge agreement whereby Cavaness holds the stock of Seller. Cavaness has fully reviewed the terms and conditions of this agreement and the Time Brokerage Agreement and the Option Agreement and all of the schedules and exhibits associated with each of those documents, and, as evidenced by its signature on this document, approves of the Option Agreement, the Time Brokerage Agreement and this Agreement, and



affirmatively states that these agreements do not violate any agreements of any nature between Seller and Cavaness.

**5 Buyer's Representations and Warranties.** The following representations and warranties shall survive for one (1) 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, the Communications Act of 1934, as amended, or the rules, regulations, and policies of the FCC, 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 Act of 1934, as amended, or the rules, regulations and policies of the FCC, 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 due ordinary 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 Consents.

**5.2 Formation, Standing and Power.** Buyer is duly formed, validly existing and in good standing under the laws of the State of Hawaii. 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.** 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.

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.

**5.5 Legal Proceedings, Etc.** Except as noted in Section 2.3, there is no legal, equitable, administrative or arbitration action, suit, proceeding or known investigation 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 Broker.** Buyer has incurred and is liable for a broker's commission to Richard J. Hayes, Jr. in the amount of \$18,000.00. relating to the transactions contemplated under this Agreement, which will be paid by Buyer at Closing. Buyer agrees to indemnify and hold Seller harmless from any claims for brokerage fees, finder's fees or commissions asserted by any person acting on Buyer's behalf in connection with this transaction

**5.8 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 Date for all claims other than claims by any heirs of Roger Cavaness or any claims by Cavaness

Management, LLC for which the indemnification period shall be six (6) years, from, against 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 assumed by Buyer;

(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);

(4) 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

(5) any claims of any nature asserted by the heirs of the late Roger Cavaness and claims of any nature asserted by Cavaness Management, LLC.

(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 "Third Party Claim"), Buyer shall give prompt notice thereof to Seller, stating in reasonable detail the nature of the Third Party Claim, the identity of the 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 Third Party Claim. If Buyer shall defend against the 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 Third Party Claim, then Seller may assume defense of the 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 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 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 Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a 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 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 effective 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. In the event Seller rejects Buyer's demand for indemnification or fail to accept such demand within such 15-day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions of Section 6.1(d). If the arbitrator(s) render an award in the arbitration proceeding in favor of Buyer, Buyer shall be entitled to indemnification to the extent provided in such award and shall be entitled to an adjustment to the principal amount due to Seller in the Promissory Note should Seller be unable to pay the amount of the indemnification. If the arbitrator(s) render an award in favor of Seller, Seller shall have no further liability on Buyer's claim.

(d) If there is any disagreement between Buyer and Seller concerning the validity of any demand for indemnification asserted under Section 6.1, then such disagreement shall, as provided by Section 6.1(c) or otherwise on demand of either party, be referred to arbitration in Wailuku, Hawaii. Buyer and Seller shall attempt to agree on the appointment of a single arbitrator. If they are unable to agree, a panel of three arbitrators shall be appointed: one arbitrator shall be appointed by Buyer, one shall be appointed by Sellers, and one shall be appointed by the two so appointed. The determination in writing of such arbitrator(s), signed by at least two of them (if there be more than one), shall be final and binding on the parties. Such determination shall be made as soon as practicable after the reference of the claim to arbitration. The arbitrators shall be governed by the Commercial Arbitration Rules of the American Arbitration Association then in effect, and shall have full power to make such regulations and to give such orders and directions in all respects as they shall deem expedient, as well as in respect to the claims and differences referred to them, and also with respect to the mode and times of executing and performing any of the acts or things which may be awarded or directed to be done. The arbitrator(s) shall also allocate among the parties the fees and expenses of the arbitrators and the actual costs and expenses (including legal fees) incurred by the parties in connection with the arbitration in an equitable manner consistent with the decision of the arbitrator(s) regarding the resolution of the claims and

differences referred to them, which allocation shall form part of the arbitrator(s)' written determination.

(e) 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 "Minimum Loss"); after the Minimum Loss is exceeded, Buyer shall be entitled to be paid the entire amount of the Claims, including the Minimum Loss.

**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 Stations after the filing of the same with the FCC.

**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. 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, Buyer if not then in default 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. 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 set forth on Schedule 1.1 prior to the Closing Date. Nothing in this Agreement shall prohibit or restrain Seller or any of their related or affiliated entities from discussing, soliciting or entertaining any inquiries or proposals related to the sale of any station not listed on Schedule 1.1.

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

### **7.1 Indemnification.**

(a) Buyer shall be responsible for and hereby indemnifies Seller and holds Seller and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Sellers, as provided by this Section 7.1, within one (1) years after the Closing Date from, against and in respect of:

(1) 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;

(2) 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

(3) 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 subsequent to the Closing 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 "Third Party Claim" with respect to any circumstances specified in Paragraph 7.1 (a), Seller shall give prompt notice thereof to Buyer, stating in reasonable detail the nature of the Third Party Claim and the specific representations, warranties or covenants which Seller and/or the Third Party Claimant contends Buyer has breached. Such notice shall also indicate whether Seller intends to defend against the Third Party Claim. If Seller shall defend against the 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 Third Party Claim, then Buyer may assume defense of the 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. If Buyer reaches a settlement with the 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 Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a 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 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 contend Buyer has breached. Buyer shall have fifteen (15) days after the effective date of such notice to accept or reject Seller's demand for indemnification. If Buyer accepts such demand for indemnification, it shall pay the amount of indemnification claimed by Seller. If no acceptance is received by Seller within such 15-day period, Buyer shall be deemed to have rejected the demand. In the event Buyer rejects Seller's demand for indemnification or fails to accept such demand within such 15-day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions of Section 7.1(d). If the arbitrator(s) render an award in the arbitration proceeding in favor of Seller, Seller shall be entitled to indemnification to the extent provided in such award. If the arbitrator(s) render an award in favor of Buyer, Buyer shall have no further liability on Seller's claim.

(d) If there is any disagreement between Seller and Buyer concerning the validity of any demand for indemnification asserted under Section 7.1, then such disagreement shall, as provided by Section 7.1(c) or otherwise on demand of either party, be referred to arbitration in Wailuku, Hawaii. Buyer and Seller shall attempt to agree on the appointment of a single arbitrator. If they are unable to agree, a panel of three arbitrators shall be appointed: one arbitrator shall be appointed by Buyer, one shall be appointed by Seller, and one shall be appointed by the two so appointed. The determination in writing of such arbitrator(s), signed by at least two of them (if there be more than one), shall be final and binding on the parties. Such determination shall be made as soon as practicable after the reference of the claim to arbitration. The arbitrators shall be governed by the Commercial Arbitration Rules of the American Arbitration Association then in effect, and shall have full power to make such regulations and to give such orders and directions in all respects as they shall deem expedient, as well as in respect to the claims and differences referred to them, and also with respect to the mode and times of executing and performing any of the acts or things which may be awarded or directed to be done. The arbitrators shall also allocate among the parties the fees and expenses of the arbitrators and the actual costs and expenses (including legal fees) incurred by the parties in connection with the arbitration in an equitable manner consistent with the decision of the arbitrator(s) regarding the resolution of the claims and differences referred to them, which allocation shall form part of the arbitrator(s)' written determination.

(e) 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 "Minimum Loss"); after the Minimum Loss is exceeded, Sellers shall be entitled to be paid the entire amount of the Claims, including the 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 ten (10) business days from the date hereof, file with the FCC an application requesting its written consent to the assignment of the construction permit of the Station from Seller to Buyer. Buyer and Seller shall proceed with due diligence and promptly take all steps necessary to the expeditious prosecution of such application to a favorable conclusion, using their best efforts throughout.

**Comment:** Is there an actual permit right now in BIB name?

8.2 **Expenses.** Buyer shall pay all expenses in connection with the preparation of the applicable sections of the FCC application and in connection with the prosecution of such application. All FCC filing fees shall be paid by Buyer. Seller shall be solely responsible for any Unjust Enrichment Payments due to the FCC as required by FCC rules regarding the sales of construction permits acquired through the Commission's auction process.

**Comment:** Section 2.3 states that the Buyer is responsible for this.

8.3 **Designation for Hearing.** If, for any reason, with respect to any application for assignment of the 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.

8.4 **Time of FCC Consent.** If approval of the assignment of the Licenses has not become final (all protests and appeals having been decided or dismissed, or barred by the expiration of time and the period for review by the FCC on its own motion of a grant by the FCC staff on delegated authority having expired without the initiation of such review or else such review having been undertaken and an affirmance of the grant of consent having become final) within twelve (12) months from the date of filing the applications for assignment with the FCC, either party, if not then in default, may terminate this Agreement by giving written notice to the other. Upon such termination, neither party shall have any further right or liability hereunder. Buyer may elect, however, at its sole risk to consummate the transactions contemplated by this Agreement under an FCC approval which has not become final as herein provided.

8.5 **Control of Station.** This Agreement shall not be consummated until the FCC has given its written consent to the assignment of the FCC Station Authorizations to the Buyer.

## 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, 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 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 the Closing Date, signed by an officer 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 an officer 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, including due authorization and approval thereof by their sole member, 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, in Buyer's reasonable judgment, 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 given the consent contemplated by Section 8 which consent has become final and non-appealable;

(g) Intentionally Left Blank.

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

(1) Warranty Bill of Sale transferring to Buyer title to the Station Assets and an assignment of the Station license

(2) Assignment and Assumption Agreements assigning to Buyer the Licenses, Assumed Contracts, Call Letters, Tower Site Lease, Intangible Assets and Business Records; and



(3) Certificate of the Secretary of the State of Louisiana attesting to the good standing of Seller as of a date reasonably proximate to the Closing Date.

(h) Real estate taxes, etc.: 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 or advertisements shall have been prorated between Buyer and Sellers to the Closing Date.

(j) Possession: Seller shall have delivered to Buyer actual possession of the 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 given the consent contemplated by Section 8;

(f) Further closing documents: Buyer shall have delivered to Sellers the following documents and instruments:

(1) Certificate from the Hawaii Department of Commerce and Consumer Affairs attesting to the good standing of Buyer as of a date reasonably proximate to the Closing Date; and

(2) Assignment and Assumption Agreements by which Buyer assumes the Licenses, Assigned Contracts, Call Letters, Tower Site Lease, Intangible Assets and Business Records.

**Comment:** Need to see a draft

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

10.1 **Closing Date.** The Closing of the transaction provided for in this Agreement shall be held not later than fifteen (15) business days following the date upon which the order of the FCC approving the assignment of the Licenses for the Station from Seller to Buyer has become final (i.e., no action, request for stay, petition for rehearing or reconsideration, or appeal is pending and the time for filing such request, petition, or appeal has expired and the period for review by the FCC on its own motion of a grant by the FCC staff on delegated authority having expired without the initiation of such review or else such review having been undertaken and an affirmance of the grant of consent having become final), (the "Closing Date"). Such Closing shall take place at the law offices of Richard J. Hayes, Jr., or by mail, at 10:00 a.m. 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, upon notice to Buyer, if on the Closing Date, without any breach by Seller of its obligations hereunder, Buyer has not complied with one or more of the conditions set forth in Section 9.2 (and such compliance is not waived by Seller);

(d) by Buyer, upon notice to Sellers, if on the Closing Date, without any breach by Buyer of its obligations hereunder, Seller has not complied with

one or more of the conditions set forth in Section 9.1 (and such compliance is not waived by Buyer); or

(e) in the event the FCC denies the transaction, Buyer shall be entitled to return of the Option Payment.

**Comment:** This is a problem. What if the Option Payment has all been spent on bringing the lease current and reimbursing HH5 for the construction costs? Can't agree to pay the above and return the Option Payment.

In the event of any termination as provided by this Section 10.2 (a) or (b), this Agreement shall thereupon become void and of no effect, without any further liability on the part of any party and the Option Payment and all accrued interest shall be returned to the Buyer. In the event that there is a termination pursuant to this 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 retention of the Option Payment referenced in the attached Option Agreement. 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. Buyer may seek monetary damages arising from such material breach by Seller in addition to specific performance.

## **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 Section 8 and such disclosure as may be required by law, each party shall keep the provisions of this Agreement confidential 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.

12.4 **Broker's Fee.** Each party will be solely responsible for any and all brokerage fees asserted against it by a person or entity claiming entitlement to such fees as a result of 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.

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:**

Joel Sellers, President  
Big Island Broadcasting, Inc.  
8215 Birch St.  
New Orleans, LA 70118

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

John F. Shreves, Esq.  
Simon, Peragine, Smith & Redfearn, LLP  
1100 Poydras Street  
30<sup>th</sup> Floor  
New Orleans, Louisiana 70163-3000

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

Richard J. Hayes, Jr.  
Attorney at Law  
Post Office Box 200  
Lincolntonville, Maine 04846

**If to Buyer, to:**

George Hochman, President  
Hochman Hawaii Five, Inc.  
4339 Kalaheo Drive  
Kalaheo, Hawaii 96741

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

Richard J. Hayes, Jr.  
Attorney at Law  
Post Office Box 200  
Lincolntonville, Maine 04846

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

Brian Jenkins, Esq.  
P.O. Box 640  
Wailuku, Hawaii 96793

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 Hawaii. Any dispute by the parties shall be resolved by arbitration to be conducted in Wailuku, Hawaii by a sole arbitrator under the rules of the American Arbitration Association.

**13.7 Effect of Agreement.** This Agreement, together with its schedules and exhibits together with the Option Agreement, 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; 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 Waiver of Conflict.** The parties each agree and accept that Richard J. Hayes, Jr. shall be sole FCC counsel for both parties in this transaction and each has been advised that local counsel should be retained and consulted regarding this transaction. Furthermore, both parties agree that if a conflict requiring FCC legal counsel arises between the parties, then Richard J. Hayes, Jr. shall not represent either party in the conflict.

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

**BIG ISLAND BROADCASTING, INC.**

By: \_\_\_\_\_  
**JOEL SELLERS, PRESIDENT**

**CAVANESE MANAGEMENT, L.L.C.**

\_\_\_\_\_  
**LIBBY SANTOS, MANAGER: ONLY WITH REGARD TO THE  
TERMS AND CONDITIONS OF SECTION 4.15**

**HOCHMAN HAWAII FIVE, INC.**

By: \_\_\_\_\_  
**GEORGE HOCHMAN, PRESIDENT**

**Schedule 1.1**  
**Licenses and Authorizations**



**Schedule 1.2**  
**Leased Real Property**

**Schedule 1.3**  
**Tangible Personal Property**

**Schedule 1.6**  
**Intangible Property**

**Schedule 2.1**

**Promissory Note, Security Agreement, Pledge Agreement**