

## **ASSET PURCHASE AGREEMENT**

This Agreement, for the sale and purchase of substantially all the assets used or usable in the operation of FM Translator Station W288CS, Rochester, NY (FCC Facility ID 78674) (hereinafter, the "Station"), is between the RUSSELL S. KIMBLE AND PATRICIA J. ANDERSON PARTNERSHIP ("Seller"), a New York Partnership which is now the owner, operator and licensee of the Station, and BlueLight Communications LLC, a New York limited liability company ("Licensee") and Stratus Communications LLC, a New York limited liability company ("Stratus") (collectively "Buyer") .

In consideration of the mutual promises and covenants made in this Agreement, and in reliance upon the representations and warranties contained herein, the parties, intending to be legally bound, agree as follows:

### **ARTICLE 1**

#### **ASSETS TO BE CONVEYED**

At the Closing, Buyer shall purchase from Seller and Seller shall assign, convey, transfer and deliver to Buyer, by good and sufficient instruments, any and all of the tangible and intangible assets used or usable in or required for the operation of the Station (the "Purchased Assets"), such assets to include but not be limited to those assets described in the remainder of this Article 1, except seller's cash on-hand and in banks, cash equivalents, and securities unrelated to the station (collectively, the "Excluded Assets").

**1.1 Licenses.** Seller shall assign to Buyer the broadcast and other licenses, permits and authorizations used in, required or intended for the operation of the Station, and all rights

in pending applications (collectively, the "Licenses"). A list of the Licenses is included in Schedule A to this Agreement.

**1.2 Personal Property.** Seller shall convey to Buyer any and all of the tangible personal property used or usable in the operation of the Station, including without limitation all assets listed in Schedule B to this Agreement (the "Personal Property"). The Personal Property shall include all replacements and additions made in the ordinary course of business between the date hereof and the Closing Date in accordance with past practices.

**1.3 Agreements.**

(a) Seller shall assign and transfer to Buyer, any and all contracts, leases, agreements and other documents or rights which relate to the assets or the operation of the Station and are listed in Schedule C to this Agreement (collectively, the "Contracts") to the extent such agreements can be assigned. Seller will enter into the Consulting Agreement listed in Schedule C-1. Seller shall obtain consent from Provider to enter into the Transmission and Management Service Agreement with Buyer for placement of the Station's transmission equipment on the Xerox Building in downtown Rochester listed in Schedule C-2. Seller and Buyer shall enter into the Block Time Sale and Purchase Agreement as listed in Schedule C-4; and, prior to the Closing Date, Seller shall use its best efforts to obtain the consent of any third parties necessary for the assignment to Buyer of any Contract. Buyer shall assume and agree to pay and perform all obligations of Seller under the Contracts, to the extent such obligations arise or accrue after the Closing Date. Notwithstanding the foregoing, Buyer will not be obligated to assume any Contract that Seller does not have the right to assign to Buyer or for which Seller has not obtained any necessary third-party consents. It shall be a

condition precedent to Buyer's closing hereunder that the Contracts listed on Schedule C-2 (the "Essential Agreement") be executed by Provider at or prior to the Closing.

(b) Buyer shall not assume or be liable for any contract, liability or obligation of the Seller of any kind or nature, whether known or unknown, contingent, absolute or otherwise, other than as expressly provided herein.

(c) Seller shall convey and deliver all other property and property rights held for the operation of the Station except the Excluded Assets.

## **ARTICLE 2**

### **PURCHASE PRICE FOR ASSETS**

The Purchase Price (Purchase Price) to be paid by Buyer to Seller shall be SIX HUNDRED FIFTY THOUSAND DOLLARS (\$650,000.00) to be paid by Buyer to Seller in the following manner:

**2.1 Escrow Deposit.** Buyer has deposited (or caused to be deposited) with the Broker, Kozacko Media Services, as Escrow Agent (pursuant to an escrow agreement of even date herewith (the "Escrow Agreement") the sum of Ten Thousand Dollars (\$10,000.00). Upon the signing of the Asset Purchase Agreement and the filing of FCC Form 345 for the transfer of license, Buyer will deposit an additional \$40,000 in the escrow account with Escrow Agent. Such monies deposited shall be referred to as "Escrow Deposit". Once this Asset Purchase Agreement has been signed, subject to the prior written consent of the Buyer, Seller may use up to \$15,000 of the escrow deposit to implement the facilities authorized in Construction Permit BPFT- 20170410ACU and for other improvements to the station. The principal amount of the Escrow Deposit shall be paid to the Seller as a portion of the purchase price at closing, and the accrued interest thereon shall be returned to the

Buyer. In the event the parties fail to close this transaction for any reason other than the Buyer's material breach of this formal asset purchase agreement, then the Escrow Deposit and the accrued interest shall be returned to the Buyer. If Buyer has consented to use of a portion of the escrow deposit to make equipment and lease deposits and to implement Construction Permit BPFT - 20170410ACU, that portion of the escrow funds will be returned to the escrow account by Seller to be returned to Buyer. In the event the parties fail to close this transaction due solely to the Buyer's material breach of this formal asset purchase agreement, then the amount held in escrow shall be paid to the Seller as liquidated damages. Broker shall be entitled to one-third of the amount for its services which shall be paid by the Seller from such proceeds.

**2.2 Cash Payment at Closing.** Buyer shall deliver to Seller at Closing by wire transfer or other immediately available Federal funds, under instructions to be given by Seller to Buyer at least one day before the Closing, the sum of Fifty Thousand Dollars (\$50,000.00) in addition to executing joint instructions for delivery of the Escrow Deposit (the "Cash Portion"), plus or minus the prorations and adjustments described hereinbelow. The Cash Portion thereby equals an amount of One Hundred Thousand Dollars paid by Buyer less the sums advanced from the Escrow Deposit (up to \$15,000.00) pursuant to para.2.1 hereinabove.

**2.3 Deferred Payment.** The balance of FIVE HUNDRED FIFTY THOUSAND DOLLARS (\$550,000.00) will be evidenced by a first lien Promissory Note. The Note shall be at 6% APR and amortized over 10 years, but with a due-in-full clause (balloon payment) at the end of 60 months with no penalty for pre-payment. Payments under the Note will be \$1,000.00 for the first 3 months of operation and \$3,053.00 for months 4, 5 & 6. Payments

of \$6,106.00 will begin in month seven (7) and continue until the 60<sup>th</sup> month at which time the full balance (\$208,217.00) will be paid as a balloon payment. The Note shall be personally guaranteed by the principals of the Buyer. Buyer shall form a separate limited liability company to hold the assets purchased, and shall pledge the membership interests of both that limited liability company and the limited liability company holding the license to Seller as additional security for the Promissory Note. Buyer shall also provide a perfected security interest in the proceeds of the sale of the Buyer's FCC license (but not the license itself), should it be sold in the future. Any and all security interests shall be released upon payment in full.

### **ARTICLE 3**

#### **FCC CONSENT**

The consummation of this Agreement is subject to the prior receipt of consent of the Federal Communications Commission ("FCC"). As expeditiously as possible, Buyer and Seller will join in the preparation of an application for consent to assignment of the Station's FCC Licenses as contemplated herein (the "Application") and will, in any event, file the Application within five (5) business days following the execution hereof. The parties will take or cooperate in taking all reasonable steps that are necessary and proper to the expeditious and diligent prosecution of the Application to a favorable conclusion.

### **ARTICLE 4**

#### **TERMINATION**

(a) Buyer may terminate this Agreement upon written notice to Seller at any time prior to the closing in the event (i) the Seller is in breach of any representation, warranty or covenant contained in this Agreement in any material respect, (ii) if any of the conditions

set forth hereinbelow shall have become impossible to fulfill for reasons beyond control of the Buyer and shall have not been waived.

(b) Seller may terminate this Agreement upon written notice to Buyer at any time prior to the Closing in the event (i) the Buyer is in breach of any representation, warranty or covenant contained in this Agreement in any material respect or (ii) if any of the conditions set forth in this Agreement shall have become impossible to fulfill for reasons beyond control of the Seller and shall not have been waived.

(c) If not sooner terminated in accordance with subparagraphs (a) or (b) of this article 4, this Agreement shall terminate on November 1, 2017 (the "Outside Closing Date") unless otherwise agreed by the parties hereto.

(d) Upon termination of this Agreement pursuant to subparagraph (a) (i), (a) (ii), (b) (ii) or Paragraph (c) of this article 4, except otherwise expressly provided herein, neither party shall have any further right or liability hereunder and the Deposit shall be returned to Buyer together with all interest accrued thereon. Upon termination of this Agreement pursuant to subparagraph (a) (i) of this Article 4, the Deposit shall be returned to Buyer together with all interest accrued thereon.

## **ARTICLE 5**

### **PRORATIONS AND ADJUSTMENTS**

The income and expenses attributable to the operation of the Station up to 12:01 a.m. on the Closing Date shall be for the account of the Seller, and thereafter for the account of the Buyer. Expenses including, but not limited to, such items as power and utility charges, real and personal property taxes, FCC regulatory fees and similar prepaid and deferred items

shall be prorated between Buyer and Seller, the proration to be made, insofar as feasible, on the Closing Date, with a final settlement within ninety (90) days after the Closing Date.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

**6.1 Licenses and Authorizations** Seller is, and on the Closing Date will be, the holder of the Licenses relating to the Station, all of which are in full force and effect (and none of which shall be altered or modified between the date hereof and the Closing Date) ; and, except as disclosed in Schedule A hereof and except as may be expressly consented to in writing by Buyer, Seller has and will have no applications outstanding for any operating authority, or for the construction of any facility or for the modification of any authorization or application therefor. Schedule A annexed hereto sets forth a complete listing of all FCC Licenses and other authorizations currently held by or issued to Seller in connection with the operation of the Station. The Licenses constitute all licenses, permits and authorizations from the FCC and other regulatory bodies which are required for the operation of the Station and the conduct of its business as conducted on the date of the Closing Date. There is not now, and on the Closing Date there will not be, pending, or to the knowledge of Seller threatened, any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew in the ordinary course any of the Licenses, or any investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability for Forfeiture, Order of Forfeiture, or Complaint against the Station or Seller. In the event of any such action, or the filing or issuance of any such order, notice or complaint, or knowledge of the threat thereof, Seller shall notify Buyer of same within (5) business days after Seller receives notice thereof, and shall take all

reasonable measures to contest in good faith or seek removal or rescission of such action, order, notice or complaint, and shall pay any sanctions imposed. If not resolved by Closing Date, Buyer may terminate and monies held in escrow shall be returned. There is not now in existence any violation on any federal, state or local law or regulation in respect of the operation of the Station the effect of which, individually or in aggregate, could be materially adverse to the Station or the Station's Assets. Seller knows of no reason why the FCC should not approve the Application required by Article 3 hereof.

**6.2 Title to and Condition of Personal Property.** Seller has good and marketable title to all of the Personal Property, free and clear of all liens, mortgages, pledges, or encumbrances, except as indicated on Schedule B. All of the Seller's Personal Property used or usable in the operation of the Station as of the date hereof is listed in Schedule B except for items which may be leased which are included on Schedule C. Except as indicated on Schedule B, all transmitting equipment used or usable by Seller in the operation of the Station is now in proper operating condition and substantially good repair, complies with all FCC requirements and generally accepted good engineering practices and standards, is suitable for the purposes used and intended, and the same shall be true with respect to the transmitting equipment on the Closing Date. At the Closing, the Personal Property shall be conveyed and/or transferred to Buyer free and clear of all liens, mortgages, pledges, or encumbrances.

**6.3 Contracts.** Schedule C lists all written and oral contracts, leases and agreements relating to the operation or assets of the Station to which Seller is a party as of the date hereof other than Air Time Agreements. Seller is not in default under any Contract. Seller has provided Buyer with a copy of each written contract and a description of each oral contract



listed on Schedule C. As of the date hereof, Seller has made all payments and is otherwise in compliance with the terms and conditions in the Contracts or Air Time Agreements. As of the date hereof, the Contracts are, and on the Closing Date will be, in full force and effect and enforceable by Seller in accordance with their terms, or pursuant to renewals or extensions thereof on substantially the same terms.

**6.4 Litigation.** Except as disclosed in Schedule 6.5 hereof, there is no judgment outstanding and no litigation, suit, action, claim investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability, complaint, or proceeding pending before any forum, court or government agency (including the FCC), or to the knowledge of Seller threatened, against or relating to the Station, its business operations, financial condition or customer relations, the Purchased Assets, the right of Seller to dispose of the Purchased Assets or to enter into and carry out this Agreement and Seller does not know of any basis for any such action or proceeding.

**6.5 Compliance with Laws.** The operation of the Station is now in compliance with all applicable laws, rules and regulations of all federal, state and local authorities or agencies so as to permit the Station to operate as at present and/or as it is fully licensed to do. The Station has been, and shall continue to be, operated in full compliance with all of its FCC Licenses, the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. All applications, reports and other disclosures and filings required by the FCC with respect to the Station have been, and will be as of the Closing Date, duly and timely filed. All such applications, reports and other disclosures and filings are and will be as of the Closing Date hereunder complete and accurate in all material respects. Seller possesses all of the permits, authorizations, or consents necessary to operate the Station and

own the Purchased Assets and lease the site in which is located Seller's transmitting antenna tower in accordance with law, and they are all, and on the Closing Date will be, transferable to Buyer, such that upon the Closing, Buyer will possess any and all permits, authorizations and consents necessary to enable the Buyer to operate the Station and own the Purchased Assets and transmit from the site in which is located Seller's transmitting antenna tower.

**6.6 Absence of Restrictions.** The execution, delivery and consummation of this Agreement by Seller does not and on the Closing Date will not conflict with, or result in breach of, the terms, conditions, or provisions of, or constitute a default under, or constitute an event that permits the imposition of a lien upon or the creation of a security interest in the Purchased Assets pursuant to, any agreement, instrument, law or regulation to which Seller is now or on the Closing Date will be subject, except to the extent that consent to the assignment of certain agreements to Buyer may be required as herein contemplated.

**6.7 Reports** All reports, schedules, and/or returns of any administrative agency of the Federal or any state or local governments heretofore required to be filed by Seller in connection with the Station have been filed and all such reports, schedules, and returns required to be filed before the Closing Date will have been filed before such date.

**6.8 Organization and Standing.** Seller is and on the Closing Date will be a partnership duly organized, validly existing and in good standing under the laws of the State of New York, with all requisite power and authority to enter into and perform the terms of this Agreement, subject only to the issuance of the consent of the FCC with respect thereto and has taken all partnership actions necessary to enter into this Agreement.

**6.9 Disclosure.** No representation or warranty in this Agreement or in any schedule to this Agreement, and no statement made by the Seller contained elsewhere in this

Agreement or in any schedule, exhibit, certificate, instrument or agreement delivered or to be delivered by the Seller to the Buyer pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading. Nothing in any Schedule to this Agreement shall be deemed adequate to disclose an exception to a representation or warranty made herein unless such Schedule identifies the exception with particularity and describes the relevant facts in sufficient detail to put the Buyer on notice as to the implications of such exception.

## ARTICLE 7

### **REPRESENTATIONS and WARRANTIES OF BUYER**

Buyer represents, warrants and covenants to Seller as follows:

**7.1 Organization and Standing.** On the Closing Date Buyer will be a limited liability companies duly organized, validly existing and in good standing under the laws of the State of New York with all requisite power and authority to enter into and perform the terms of this Agreement, subject only to the issuance of the consent of the FCC with respect thereto.

**7.2 Authorization.** Buyer has taken all necessary action to approve the execution and delivery of this Agreement, and to approve the performance of this Agreement and the consummation of the transactions contemplated herein. This Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms.

**7.3 Absence of Restrictions.** The execution, delivery and consummation of this Agreement by Buyer shall not, on the Closing Date, conflict with, or result in breach of, the

terms, conditions, or provisions of, or constitute a default under its Certificate of Formation or Operating Agreement or any other agreement, instrument, law or regulation to which it now is subject or will be subject on the Closing Date.

**7.4 Qualifications.** To the best of Buyers knowledge:(a) Buyer is legally, technically and financially qualified, and on the Closing Date will be legally, technically and financially qualified, to become a licensee of the FCC; and (b) Buyer knows of no reason why the FCC should not approve the application required by Article 3 hereof. Between the date hereof and the Closing Date, Buyer will take no action which would knowingly adversely affect its qualifications to be the licensee of the Station or which would delay FCC approval of the application required by article 3 hereof.

**7.5 Third Party Consents.** Buyer shall cooperate with Seller and will execute such documents as may reasonably be required in order to assign any Contract to Buyer pursuant to the terms of this Agreement.

## **ARTICLE 8**

### **COVENANTS OF SELLER**

**8.1 Negative.** Between the date hereof and the Closing Date, Seller will not, without prior written consent of Buyer:

(a) Sell, assign, lease, encumber, mortgage or otherwise transfer or dispose of any asset or property of the Station, except in the normal and usual course of business:

(b) Cancel, modify or in any way impair any Essential Contract or, except in the ordinary course of the Station's business, any other Contract;

(c) Violate any rules, regulations or policies of the FCC or any provisions of the Communications Act of 1934, as amended, or any provisions of any of the FCC Licenses,

or cause or permit any of the FCC Licenses to lapse, to be modified in any adverse respect or to become impaired in any manner;

**8.2 Affirmative.** Between the date hereof and the Closing Date, Seller will:

(a) Seller will give to Buyer and its authorized representatives reasonable access normal business hours to all Records, properties, books, records (including, without limitation, bookkeeping, financial and accounting records), contracts and documents and furnish or cause to be furnished to Buyer or its authorized representatives all information with respect to the affairs and business of the Station as Buyer may reasonably request (it being understood that the rights of Buyer under this subparagraph shall not be exercised in such a manner as to interfere unreasonably with the operations of the Station);

(b) Prepare and maintain the books, records and financial statements relating to the Station consistently with past periods;

(c) Comply with all laws and regulations to which it or the Station is subject;

(d) Notify Buyer within seven (7) days of Seller's first notice of any litigation pending or threatened against the Station and within forty-eight (48) hours of any damage to or destruction of any assets or property to be sold hereunder;

(e) Use its best efforts in the preparation, filing and prosecution of the Application;

(f) Notify Buyer upon receipt of any administrative or other order relating to any violation of the FCC's rules and regulations or any other federal, state or local regulatory or administrative body, including rules relating to the employment, labor or equal employment opportunity. Seller shall correct any such violations as relate to the operation of the Station prior to the Closing Date and shall be responsible for the removal of such, including the

payment of any fines or back pay that may be assessed for any such violation committed by Seller;

(i) Continue to cause the Station be in full compliance with the terms of its FCC Licenses, in the usual and ordinary course of business, and in conformity with all applicable laws, ordinances, regulations, rules and orders, and file with the FCC all applications, reports and other filings and documents required to be filed with the FCC in connection with the ownership and operation of the Station;

## **ARTICLE 9**

### **COVENANTS OF BUYER**

Between the date hereof and the Closing Date Buyer will:

- (a) Cooperate with Seller in its efforts to procure the consent of any third parties necessary for the assignment to Buyer of any Contract;
- (b) Use its best efforts in the preparation, filing and prosecution of an Application seeking FCC consent to assignment of the Station's Licenses to Buyer;
- (c) Notify Seller within seven (7) days of the receipt of any administrative or other order relating to any violation by Buyer of the FCC's rules and regulations or any other federal, state, or local regulatory or administrative body, including rules and relating to the employment of labor or equal employment opportunity.

## **ARTICLE 10**

### **CONDITIONS OF CLOSING BY BUYER**

The obligations of Buyer hereunder are, at its option, subject to compliance with, on or prior to the Closing Date, each of the following conditions:

**10.1 FCC Consent.** The FCC shall have granted its consent to the transaction contemplated hereunder by granting the Application without imposing any conditions on grant which are materially adverse to Buyer or the Station.

**10.2 Representations and Warranties.** Seller's representations and warranties shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made at and as of such time.

**10.3 Compliance With Terms.** Seller shall have performed and complied with terms, covenants and conditions required by this Agreement to be performed and complied with by it on or before the Closing Date.

**10.4 Closing Documents.** Seller shall have delivered to Buyer all of the Closing materials described in Article 12.1.

**10.5 FCC Licenses.** At the Closing, the FCC Licenses shall be assigned and transferred to Buyer, shall be valid and existing authorizations in every respect for the purposes of operating the Station, issued by the FCC under the Communications Act of 1934, as amended, for the full license term ending June 1, 2022, and shall contain no material adverse modifications of the terms of such Licenses from the terms as in effect as of the date of the Licenses and authorizations as set forth on Schedule A hereof. Seller shall not have violated any rules, regulations or policies of the FCC on any provisions of the Communications Act of 1934, as amended, or any of the provisions of the FCC Licenses, if, as a result of thereof (i) the Station shall have suffered or thereafter may suffer, any material adverse effect, or (ii) there shall have been any material adverse impact on any of the Licenses.

**10.6 Filing of FCC Form 350.** Seller shall have filed FCC Form 350, Application for an FM Translator License, to cover Construction Permit BPFT - 20170410ACU, in the Federal Communication Commission's CDBS.

## **ARTICLE 11**

### **CONDITIONS OF CLOSING OF SELLER**

The obligations of Seller hereunder are, at its option, subject to compliance with, on or prior to the Closing Date, each of the following conditions:

**11.1 FCC Consent.** The FCC shall have granted its consent to the transaction completed hereunder by granting the Application without imposing any conditions on grant which are materially adverse to Buyer or the Station.

**11.2 Representations and Warranties.** Buyer's representations and warranties shall be true and correct on and as of the Closing Date as though such representations and warranties were made at and as of such time.

**11.3 Compliance with Terms.** Buyer shall have performed and complied with the terms, covenants and conditions required by this Agreement to be performed and complied with by it on or before Closing Date.

**11.4 Closing Documents.** Buyer shall have delivered to Seller all of the Closing materials described in Article 12.2 hereof and the purchase price as provided in Article 2 hereof.

**11.5 Third-Party Consents.** Buyer shall have delivered to Seller any required third party consents to the assignment of the Essential Contract.

## **ARTICLE 12**



## **CLOSING DOCUMENTS**

**12.1 To Be Delivered By Seller.** On the Closing Date Seller shall execute and/or deliver or cause to be delivered to Buyer:

(a) A good sufficient bill of sale, or other instruments of assignment, transfer and conveyance for all of the Personal Property and intangible personal property to be transferred to Buyer hereunder,

(b) The Assignment of the FCC Licenses.

(c) The files, records and logs referred to herein.

(d) Certified resolution of Partners and such other partnership authorizations as may be required under applicable law, authorizing the transactions provided for this Agreement.

(e) A Certificate of Seller's Partner certifying to the fulfillment of the conditions set forth in Article 10 hereof.

(f) Copies of all third party consents or approvals which may be required under any provision hereof.

(g) Sellers shall further execute and deliver to Buyer such other instruments, documents and certificates as reasonably may be requested by Buyer to consummate the transactions contemplated by the Agreement.

**12.2 To Be Delivered By Buyer.** On the Closing Date Buyer shall execute and/or deliver or cause to be delivered to Seller:

(a) Certified resolution of Buyer's Members and such other authorizations as may be required under applicable law, authorizing the transactions provided for this Agreement.

(b) Payment of the purchase price including, if applicable, Article 2 hereof.

(c) An agreement, in form reasonably satisfactory to Seller, agreeing to assume and be bound by the Contracts to be assigned under this Agreement.

(d) A Certificate of Buyer's Member or other duly authorized officer certifying to the fulfillment of the conditions set forth in Article 11 hereof.

### **ARTICLE 13**

#### **CLOSING DATE AND PLACE**

The Closing shall occur, on a date (the "Closing Date") designated by the Buyer, but within ten (10) days after the Commission's consent to assignment of the FCC Licenses has been granted and Public Notice of such grant has been issued. The Closing shall be held at such place as the parties shall mutually agree or, failing such agreement, at the office of Buyer's attorney.

### **ARTICLE 14**

#### **TAXES AND EXPENSES**

All transfer taxes, if any, payable or asserted to be payable by reason of the Purchased Assets shall be paid by Seller. Each party shall bear the expenses incurred by it in connection with the preparation, execution and consummation of this Agreement and the prosecution of the FCC application contemplated by this Agreement. All FCC fees shall be paid equally by the parties.

### **ARTICLE 15**

#### **RISK OF LOSS**

The risk of any loss, damage or destruction to any of the Purchased Assets from fire or other casualty or cause shall be borne by the Seller at all times prior to the Closing Date. Upon the occurrence of any loss or damage to any of the Station's assets to be transferred

hereunder as a result of fire, casualty or other causes prior to Closing, Seller shall notify Buyer of same in writing as soon as practicable starting with particularity the extent of such loss or damage incurred, the cause thereof if known and the extent to which restoration, replacement and repair of the Purchased Assets lost or destroyed will be reimbursed by Seller. Subject to the provisions hereof, Buyer shall have the option in the event the loss or damage exceeds Fifty Thousand Dollars (\$50,000) and the property cannot be substantially repaired or restored before the Closing Date, exercisable within ten (10) days after receipt of such notice from Seller to:

(i) Terminate this Agreement, in which case the Deposit, together with accrued interest thereon, shall be returned to Buyer,

(ii) Postpone the Closing until such time as the property has completely been repaired, replaced or restored, unless the same cannot be reasonably effected within five (5) months of notification, or

(iii) Elect to consummate the Closing and accept the property in its "then" condition, in which event Seller shall assign all rights under any insurance claims covering the loss and pay over (as part of the Purchased Assets) any proceeds under any such insurance policy theretofore received by Seller with respect thereto. In the event Buyer elects to postpone the Closing Date as provided in subparagraph (ii) above, the parties hereto will cooperate and extend the time during which this Agreement must be closed as specified in the consent of the FCC referred to in Article 3 hereof.

If any event occurs that prevents the broadcast transmissions of the Station with full licensed power and antenna height as described in the FCC Licenses and in the manner in which the Station has heretofore been operating, and such facilities are not restored so that

operation is resumed with full licensed power and antenna height as described in the Licenses within fifteen (15) days of such event, or, in the case of more than one event, the aggregate number of days preceding such restorations from all such events exceeds twenty (20) days, or if the Station is off the air more than four (4) times for a period, in each case, exceeding ten (10) hours, Seller shall give prompt written notice to Buyer, and Buyer shall have the right, by giving written notice to Seller of its election to do so, to terminate this agreement forthwith without any further obligation hereunder and the amount held in escrow shall be returned to Buyer.

## **ARTICLE 16**

### **INDEMNIFICATION**

**16.1    Rights of Buyer.**    Seller shall indemnify and hold harmless Buyer, its successors and assigns, from and against:

(a) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees arising from or related to the operation of the Station prior to the Closing not resulting from a material breach, omission, or misrepresentation by Buyer, any contract, liability or obligation of Seller not expressly assumed by Buyer, including, without limitation, any claim, liability or obligation with respect to any employee of the Seller in connection with his or her employment or the termination of such employment on or prior to the Closing Date or the failure of the Buyer to continue such employment;

(b) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees incurred by Buyer as a result of any misrepresentation, breach of warranty or

covenant, or nonfulfillment of any agreement on the part of Seller under this Agreement, or from any misrepresentation in any omission from any certificate or other instrument required to be furnished to Buyer pursuant to this Agreement or in any connection with any of the transactions contemplated herein; and

(c) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees incurred by Buyer as a result of Seller's failure or refusal to discharge, satisfy, compromise or defend any claim included within the foregoing provisions of this Article 16.1 and Article 21.

**16.2 Rights of Seller.** Buyer shall indemnify and hold harmless Seller, its successors and assigns, from and against:

**A)** Any and all claims, liabilities, and obligations arising from or related to the operation of the Station from and after the Closing not resulting from a material breach, omission, or misrepresentation by Seller;

**B)** Any and all damage or deficiency resulting from any misrepresentations, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Buyer under this Agreement, or from any certificate or other instrument required to be furnished to Seller pursuant to this Agreement or in connection with any of the transactions contemplated herein; and

**(C)** Any and all actions, suits, proceedings, damages, assessments, judgments, costs, liabilities and expenses, including reasonable attorneys' fees incurred by Seller as a result of Buyer's failure or refusal to discharge, satisfy, compromise or defend any claim included within the foregoing provisions of this Article 16.2.

**16.3 Claims.** Any party seeking indemnification hereunder (the "Indemnified Party") shall promptly notify the party hereto obligated to provide indemnification hereunder (the "Indemnifying Party") of the amount and circumstances surrounding such claim for indemnification (a "Claim"), provided that failure of the Indemnified Party to give such notice shall not relieve any Indemnifying Party of its obligations under this Agreement except to the extent, if at all, that such Indemnifying Party shall have been prejudiced thereby. Neither party shall be liable to the other for Claims arising under Article 16 unless notice thereof shall have been given by the party seeking indemnification within thirteen (13) months after the Closing Date, except that (i) with respect to any indemnity sought by Buyer against Seller arising from a claim made by a third party against Buyer for an alleged debt, right, claim or other obligation which the third party allegedly had or has against Seller, the Buyer's notice may be given within thirty-seven (37) months after the Closing Date and (ii) with respect to any Claim relating to any income, franchise, sales or other tax, notice may be given at any time on or before thirty (30) days after the expiration of any period during which any such tax may be assessed. Upon receipt of a notice from an Indemnified Party of any action, suit, proceeding or demand by a person not a party to this Agreement (a "Third Party Claim") as to which an Indemnified Party is seeking indemnification hereunder, The Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim, if and only if each of the following conditions is satisfied, the Indemnifying Party may assume the defense of such Third Party Claim, and in the case of such an assumption the Indemnifying Party shall have the authority to negotiate, compromise and settle such Third Party Claim:

(i) The indemnifying Party Confirms in writing that it is obligated hereunder to indemnify the Indemnified Party with respect to such Third-Party Claim; and

(ii) The Indemnified Party does not give the Indemnifying Party written notice that it is determined, in the exercise of its reasonable discretion, that matters of corporate or management policy or a conflict of interest make separate representation by the Indemnified Party's own counsel advisable.

The Indemnified Party shall retain the right to employ its own counsel and to participate in the defense of any Third-Party Claim, the defense of which has been assumed by the Indemnifying Party pursuant hereto, but the Indemnified Party shall bear and shall be solely responsible for its own costs and expenses in connection with such participation.

**16.4 Threshold of Indemnification.** No Indemnifying Party shall be required to indemnify an Indemnifying Party hereunder with respect to any Claim for less than Five Hundred Dollars (\$500) , unless the aggregate of all Claims against such Indemnifying Party (including Claims of \$500 or less) shall exceed Ten Thousand Dollars (\$10,000), in which event the Indemnifying Party shall be required to pay all Claims, including Claims for less than Five Hundred Dollars (\$500).

**16.5 Payment of Claims.** The amount of any liquidated Claim shall be paid by the Indemnifying Party forthwith on demand. If any or all of the Indemnifying Party fail to pay any such Claim forthwith on demand, the Indemnified Party fail may (i) proceed directly against the Indemnifying Party to recover the amount of such Claim or (ii) set-off the amount of such Claim against amounts owed by the Indemnified Party to the Indemnifying Party.

## **ARTICLE 17**

### **CONTROL OF STATION**

Between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise, or direct, or attempt to control, supervise, or direct the operations of the Station; such operations, including control and supervision of all Station programming, personnel and finances, shall be the sole responsibility of Seller.

## **ARTICLE 18**

### **SURVIVAL OF REPRESENTATIONS**

Subject to the provisions of Article 16 hereof, the representations, warranties, covenants and agreements of Buyer and Seller contained herein shall be binding upon the successors and assigns of Buyer and Seller and shall survive the Closing for a period of one year from the date thereof, except that (i) with respect to those Claims as to which a thirty-seven (37) month notice period is applicable (as provided in Article 16), such representations, warranties, covenants and agreements of Seller shall survive the Closing for a period of three (3) years from the Closing Date and (ii) with respect to any Claim relating to any income, franchise, sales or other tax, such representations, warranties, covenants and agreements of Seller shall survive the Closing until thirty (30) days after the expiration of any period during which any such tax may be assessed.

## **ARTICLE 19**

### **SPECIFIC PERFORMANCE and LIQUIDATED DAMAGES**

Seller recognizes that in the event it should refuse to sell the Station in accordance with the provisions of this Agreement, money damages will not be adequate. In such event, if Buyer is not itself in default, then Buyer shall have the right to specifically enforce this Agreement as the sole and exclusive remedy for Seller's default. If the purchase and sale is terminated because of a willful material breach by Buyer, including, but not limited to the



failure of Buyer to deliver the Purchase Price to Seller at the Closing, and provided that the Seller is not in default, or Buyer's material breach is not a result of Seller's act of omission, the entire Deposit shall be paid to Seller as liquidated damages as the sole and exclusive remedy for Buyer's default.

## **ARTICLE 20**

### **ALLOCATION OF PURCHASE PRICE**

The purchase price shall be allocated as follows:

Personal Property

Intangibles

[To Be Agreed Upon Prior to Closing]

## **ARTICLE 21**

### **BENEFIT AND ASSIGNMENT**

This agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns. Nevertheless, neither party shall assign its rights or obligations under this Agreement without the written consent of the other.

## **ARTICLE 22**

### **NOTICES**

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed by any form of mail or courier service requiring a signed receipt from the addressee or his agent, postage prepaid, addressed to the following:

If to the Seller, to:

Russell S. Kimble  
1395 NEW SEABURY

Victor, NY 14564

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

James L. Oyster  
108 Oyster Lane  
Castleton, VA 22716-9720

If to the Buyer, to:

BlueLight Communications LLC  
Stratus Communications LLC  
50 Hill Street, #529  
Southampton, NY 11698

With copies (which shall not constitute notice) to:

Jonathan Pollack, Esq.  
235 Park Terrace South  
9<sup>th</sup> Floor  
New York, NY 10003  
and  
Allan G. Moskowitz, Esq.  
10845 Tuckahoe Way  
North Potomac, MD 20878

## **ARTICLE 23**

### **ENTIRE AGREEMENT**

This Agreement and the Escrow Agreement contain the entire understanding of the parties with respect to the subject matter hereof. This Agreement shall not be modified except by a written instrument signed by the party to be charged.

## **ARTICLE 24**

### **HEADINGS**

The headings of the paragraphs of this Agreement are inserted as a matter of convenience and for references purposes only, and in no way, define, limit or describe the scope of this Agreement or the intent of any paragraph hereof. The use of any gender herein

shall include the other genders and the use of the singular shall, where appropriate, include the plural.

## **ARTICLE 25**

### **COUNTERPARTS**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **ARTICLE 26**

### **LAW GOVERNING**

This Agreement shall be constructed and governed in accordance with the laws of New York State.

## **ARTICLE 27**

### **COVENANT OF FURTHER ASSURANCES**

After the Closing, Seller and Buyer shall, upon the request of the other, take such other action, and execute and deliver to the other such additional instruments, as may be reasonably necessary to assure, complete, and evidence the full and effective implementation and consummation of the transaction contemplated by this Agreement.

## **ARTICLE 28**

### **BROKER**

Buyer and Seller each represent to the other that the sole broker, finder, or consultant involved in the negotiations leading to the execution of this Agreement is Kozacko Media Services. Seller agrees to pay the commission/consulting fee on the entire amount of the purchase price to Kozacko Media Services, as proceeds of the purchase price are received

by Seller, for all services related to the sale of the Station and other Assets. Broker may use the Escrow Funds for this purpose as set forth herein only. Seller and Buyer shall hold each other harmless from any claim for a fee by any other broker or finder who claims to have dealt with that party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of July 20, 2017.

SELLER

By Russell S. Kimble  
Russell S. Kimble  
Managing Partner

BUYER

By \_\_\_\_\_  
Lester Pace, Member

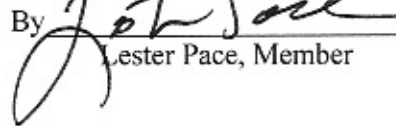
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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of July \_\_, 2017.

SELLER

By \_\_\_\_\_  
Russell S. Kimble  
Managing Partner

BUYER

By  \_\_\_\_\_  
Lester Pace, Member