

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into this 30<sup>th</sup> day of June, 2014, by and between Hoosier AM/FM, LLC, a Delaware limited liability company (the "Buyer"), and Finger Lakes Radio Group, Inc., Geneva Broadcasting, Inc., Lake Country Broadcasting, Inc., Auburn Broadcasting, Inc., and ROI Broadcasting, Inc. (jointly and severally, the "FLRG Corporations") and Gayle E. Mills, not individually but as the appointed and serving Chapter 7 Bankruptcy Trustee in the case of George Kimble and Patricia Kimble, Case Number 4:09-bk-33058-EWH, District of Arizona (the "Trustee"). The FLRG Corporations and the Trustee are referred to herein jointly and severally as "Sellers".

### Recitals

The FLRG Corporations are the licensees and operators of the radio stations set forth on Schedule 1.1 (the "Stations"); and

Trustee is the appointed and serving Chapter 7 Trustee for George Kimble and Patricia Kimble, husband and wife, Bankruptcy Case Number 4:09-bk-33058-EWH ("Bankruptcy Case") currently pending in Tucson, Arizona, before the United States Bankruptcy Court for the District of Arizona ("Bankruptcy Court"). The Trustee was authorized to sell the Assets (as defined below) by the Bankruptcy Court's Order, dated June 19, 2013, Authorizing and Approving Settlement and Compromise of Claims against Shareholder/Claimant Alan Bishop as to Allow a Sale of Assets by the Bankruptcy Trustee.

Subject to an Order of the Bankruptcy Court in the Bankruptcy Case authorizing and approving the sale, and the subsequent consent of the Federal Communications Commission ("FCC") to a transfer of the licenses to Buyer, Buyer desires to acquire the Stations, and all or substantially all of the assets, leases, contracts, agreements, and licenses used or useful in the operation of the Stations, with certain exceptions as provided herein, and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code, and Sellers desire to transfer such assets to Buyer.

### Agreement

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

1      **Sale and Transfer.** Subject to the terms and conditions of this Agreement and the Order of the Bankruptcy Court Authorizing and Approving a Sale (the "Sale Order"), Sellers shall sell, assign, transfer and deliver to Buyer free and clear of liens, claims and encumbrances, the following assets (all of which are hereinafter collectively called the "Assets"):

1.1 **Licenses.** All licenses, permits and authorizations issued by any governmental or regulatory agency which are transferable or assignable, used or useful in the operation of, or in connection with the operation of, the Stations, including without limitation those listed on Schedule 1.1 (the "Licenses");

1.2 **Real Property.** All real estate owned or leased by the FLRG Corporations, including without limitation that real estate described on Schedule 1.2 (the "Real Property").

1.3 **Tangible Assets.** All tangible assets of Sellers used or useful in the operation of the Stations, including without limitation those listed on Schedule 1.3 (the "Tangible Assets");

1.4 **Assigned Contracts.** The leases, contracts and agreements listed on Schedule 1.4, and all oral or written contracts or agreements to air advertising for cash or trade, to the extent such leases, contracts or agreements pertain to the Stations (collectively, the "Assigned Contracts");

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

1.6 **Intangible Assets.** All goodwill, copyrights, trademarks, domain names, websites, and digital properties, or other similar rights, if any, which the Sellers may have acquired or used in the operation of the Stations, including without limitation those set forth on Schedule 1.6 (the "Intangible Assets"); and

1.7 **Business Records.** All business records of the Stations relating to their operation, but not including tax records and original journals and ledgers (the "Business Records").

For the avoidance of doubt, and notwithstanding anything to the contrary herein (other than the immediately following sentence), the Assets shall include all remaining assets of ROI Broadcasting, Inc. as of the date hereof, including without limitation those assets set forth on Schedule 1.8. The Assets to be transferred hereunder shall not, however, include any of Sellers' accounts receivable, cash, bank accounts, investments, deposits, books and records pertaining to corporate organization, contracts of insurance (including the cash surrender value thereof, and all insurance proceeds or claims made by Sellers relating to property or equipment repaired, replaced or restored by Sellers prior to the Closing Date), employee pension and other benefit plans or collective bargaining agreements, duplicate copies of such records as are necessary to enable Sellers to file their tax returns and reports, as well as any other records or materials relating to Sellers generally and not involving the Stations specifically, all of which shall remain the property of Sellers.

## 2 **Purchase Price and Payment.**

**2.1 Purchase Price.** In consideration of the sale, transfer and assignment of the Assets by the Sellers, the Buyer shall pay the Sellers Three Million Dollars (\$3,000,000.00) (the "Purchase Price"). The Purchase Price shall be paid by Buyer as set forth in this Section 2.1, and first by paying a Forfeitable Earnest Money Deposit (i) within ten (10) days of this Agreement being signed by both parties, a first forfeitable installment of Fifty Thousand Dollars (\$50,000.00) to the Escrow Agent hereinafter named by the parties for this sale and purchase (the "First Forfeitable Earnest Money Deposit Installment"), and (ii) within eight (8) days of the entry on the Bankruptcy Court docket of the Sale Order, a second forfeitable installment of Fifty Thousand Dollars (\$50,000.00) to the Escrow Agent (the "Second Forfeitable Earnest Money Deposit Installment"). The Escrow Agent shall hold the Forfeitable Earnest Money Deposit for the benefit of the parties as described herein. The Escrow Agent shall provide notice to Sellers and Buyer of the receipt of each installment of the Forfeitable Earnest Money Deposit. The Forfeitable Earnest Money Deposit shall not be kept in an interest bearing account. If the Buyer wants the Forfeitable Earnest Money Deposit held by the Escrow Agent in an interest bearing account then the Buyer shall provide the Escrow Agent with all information needed for such an account to be established and pre-pay all costs associated with the establishment and closing of the interest bearing account. If the First Forfeitable Earnest Money Deposit Installment is not paid timely, then this Agreement shall be void ab initio and the Buyer shall have no interest whatsoever in the property pursuant to or arising out of this Agreement or otherwise. If the Second Forfeitable Earnest Money Deposit Installment is not paid timely, then the Buyer shall have no further interest pursuant to this Agreement or the Sale Order, and the First Forfeitable Earnest Money Deposit Installment shall be forfeited by the Buyer and shall be paid, together with any interest thereon, to the Sellers by the Bankruptcy Court in accordance with Section 2.2 below. The Forfeitable Earnest Money Deposit and any interest earned thereon shall, at a timely Closing, be applied as a credit against the Purchase Price with the balance to be paid at Closing by Buyer in cash or certified funds paid directly to the Escrow Agent or by wire transfer to an account designed by the Escrow Agent, subject to Section 6.4 below.

**2.2 Forfeiture of the Earnest Money Deposit.** The Forfeitable Earnest Money Deposit then held by the Escrow Agent is subject to be forfeited to Sellers as liquidated damages and Sellers' sole and exclusive remedy in the event the Buyer defaults in material breach of this Agreement. In such event, the Forfeitable Earnest Money Deposit paid and any subsequent deposits paid pursuant to this Agreement and any interest that may have been earned thereon shall not be refunded to the Buyer but shall be forfeited to Sellers, not as a penalty, but as and for liquidated damages for Sellers having removed the subject property from the market and for other damages that have been incurred by Sellers as a result of any material default by the Buyer including but not limited to a failure to close timely. The parties recognize, acknowledge and agree that given the fluctuation of values, the availability of financing and the need for a bankruptcy estate to close, it is not practical to attempt to ascertain with any degree of certainty the actual damages suffered by the Sellers if the Buyer materially defaults and/or fails to close timely, but both parties agree that the deposits to be forfeited are a reasonable estimate of the damages sustained by the Sellers. Any monies forfeited shall be forfeited even if after the Buyer defaults the Sellers subsequently close on a back-up or subsequent offer to purchase the property

that is the subject of this agreement at a price less or more than the present Purchase Price. No part of any forfeited deposit shall be paid to or shared with any broker.

**2.3 Escrow Agent.** The Escrow Agent for the sale and purchase shall be Stewart Title & Trust of Tucson, Inc. ("Escrow Agent"), 3939 East Broadway Boulevard, Tucson, AZ 85711, Michelle Jolly, Escrow Officer, telephone number (520) 327-7373, facsimile number (520) 322-3546, e-mail [mjolly@stewartaz.com](mailto:mjolly@stewartaz.com). This Agreement shall serve as escrow instructions but the parties agree to sign any additional escrow instructions requested by the Escrow Agent or believed by the parties to be necessary so long as such instructions do conflict with the substance of this agreement and any Order of the Bankruptcy Court authorizing and approving the sale. If necessary to obtain title insurance or to have deeds prepared to close the sale the Escrow Agent can employ those entities or professionals necessary to close the sale.

The parties shall share equally the fee of the Escrow Agent and the reimbursement of costs incurred by the Escrow Agent. The Sellers can use the Purchase Price to pay their share of the fees and costs of the Escrow Agent.

**3 No Assumption of Liabilities.** Buyer shall not assume and shall not be obligated to pay any of the liabilities or obligations of Sellers, except liabilities and obligations arising or accruing on or after the Closing Date with respect to the Assigned Contracts. Any liability not expressly assumed shall be deemed an "Excluded Liability". Upon assumption by Buyer of the Assigned Contracts, Buyer shall be entitled to all of Sellers' rights and benefits thereunder and shall relieve Sellers of its obligations to perform the same.

**4 Sellers' Representations and Warranties.** The following representations and warranties shall survive for six (6) months from the Closing Date. The Sellers represent and warrant to Buyer as of the date hereof and as of the Closing Date, as follows:

**4.1 Formation, Standing and Power.** The FLRG Corporations are all duly formed, validly existing and in good standing under the laws of the State of New York and duly registered as a foreign entity in each jurisdiction where its operations make such registration necessary. Subject to applicable bankruptcy law, to their knowledge Sellers have all necessary power and authority to own, use and transfer its properties and Assets and to transact its business as now being conducted. There are no other jurisdictions in which the character or use of Sellers' Assets or the nature of its business makes necessary the licensing or qualification of Sellers to do business.

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



4.3 **Licenses.** The FLRG Corporations are, and on the Closing Date will be, the holders of the Stations' Licenses, all of which are in full force and effect.

4.4 **Condition of Assets.** On the Closing Date, each item comprising the Assets to the knowledge of Sellers shall be operating in conformity with the Licenses and all applicable rules of the FCC.

4.5 **Title.** Sellers have, and shall transfer to Buyer at the Closing, title to the Real Property described on Schedule 1.2 and to each item comprising the Assets other than the Real Property, subject only to the Permitted Encumbrances as set forth on Schedule 4.5 and pursuant to Sections 6.5 and 6.6 hereof, and those encumbrances which shall be removed immediately after Closing through payment of the Sellers' underlying obligations from the Purchase Price.

4.6 **Contracts, Leases, Agreements, Etc.** The Licenses, Assigned Contracts, Call Letters and Intangible Assets to be transferred or assigned to Buyer are now and will, on the Closing Date, be in full force and effect, unless terminated prior to Closing on their own terms or with the consent of the Buyer. Each such Assigned Contract may be transferred in accordance with its terms, or approval for transfer will have been received by the Closing Date as set forth in the Order of the Bankruptcy Court authorizing and approving the sale. Any contracts entered into by Sellers prior to Closing will be included in the sale but Sellers will not enter into any contracts that are for a period of time in excess of one (1) year and are not within the normal and customary scope and practice of contracts entered into by the FLRG Corporations.

4.7 **Employees and Agreement Relating to Employment.** The names of all employees of the Stations are as set forth on Schedule 4.7. Except as set forth on Schedule 4.7, there is (i) no written employment contract with any employee of the Stations, (ii) no obligation, contingent or otherwise, under any employment arrangement, (iii) no collective bargaining agreement, (iv) no employee pension, retirement, profit sharing, bonus or similar plan, and (v) no union has been certified or sought recognition as a bargaining agent for any employee of the Stations. As of the date hereof, Sellers have provided to Buyer a schedule of each employee of the Stations, and the rates of compensation and fringe benefits received by each such employee. After Closing, Sellers intend to terminate all employees of the FLRG Corporations.

4.8 **Legal Proceedings, Etc.** Other than the Bankruptcy Case, no litigation, court or administrative proceeding is pending or, so far as is known to the Sellers, threatened against Sellers relating to the Stations or any Asset 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 Sellers do not know, or have reasonable grounds to know, of any basis for any such possible action.

4.9 **Compliance with Licenses, Laws, Regulations and Orders.** To the best of their knowledge, Sellers are in compliance with all material terms and conditions of all Licenses, laws, regulations and orders applicable to their business and operations including,

without limitation, compliance with the Communications Act of 1934, as amended (the "Federal Communications Act") and all regulations issued by the FCC, and to the best of their knowledge, Sellers are not in violation of any provision of any License, or any federal, state or local law or administrative ruling or regulations relating to any aspect of its business.

**4.10 No Conflict.** Neither the execution and delivery of this Agreement by Sellers, nor compliance by Sellers 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 Sellers' organizing documents;

(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 Sellers are a party or by which the Assets may be bound; or

(c) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Sellers, or any of the Assets.

Except for the approval of the Bankruptcy Court and 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 Sellers, compliance by Sellers with any of the provisions hereof or the consummation of the transactions contemplated hereby.

**4.11 Operation of Stations.** The Stations, at Closing, will be operated in substantial compliance with all laws, regulations and orders, including without limitation, compliance with the Federal Communications Act and all regulations issued by the FCC thereunder, and the terms and conditions of the Licenses, and Sellers know of no breach or facts which might amount to a breach of any such law, regulation or order.

**4.12 Insurance.** The insurance policies owned by Sellers or of which Sellers are named beneficiaries are now and through the Closing Date will be fully in effect in accordance with their terms, with no default in the payment of premiums on any such policy and no ground for cancellation or avoidance of any portion thereof or for reduction of the coverage provided thereby. After Closing Sellers intend to terminate all of their policies of insurance.

**4.13 Liabilities.** As of the Closing Date, all of Sellers' liabilities, except for those liabilities arising on or after the Closing Date relating to the Assigned Contracts, shall have been fully paid or discharged by order of the Bankruptcy Court, and no creditors of Sellers shall have any claim on the Assets for payment of such liabilities. Buyer is not to be a successor to Sellers in the operation of the businesses operated by Sellers.

4.14 **No Misleading Statements.** The representations and warranties of Sellers 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.

4.15 **Broker.** Sellers have not engaged a broker with respect to this transaction. Sellers shall not be obligated to pay a broker or anyone a finder's fee or similar charge with respect to this transaction. Sellers shall have no liability whatsoever for any fee due and owing any broker employed by Buyer.

4.16 **Environmental Matters.**

(a) To the best of their knowledge, Sellers have complied in all material respects with all laws, rules, and regulations of all federal, state, and local governments (and all agencies thereof) concerning the environment, public health and safety, and employee health and safety, and no charge, complaint, action, suit, proceeding, hearing, investigation, claim, demand, or notice has been filed or commenced against Sellers in connection with its ownership or operation of the Stations alleging any failure to comply with any such law, rule, or regulation.

(b) To the best of Sellers' knowledge, the Real Property is free of reportable amounts of hazardous waste, asbestos and asbestos-related products, and PCB's. Buyer is solely responsible for conducting and paying for any environmental studies deemed necessary or appropriate by Buyer.

All assets being sold and assigned by Sellers to Buyer are sold and assigned "AS IS", "WHERE IS" and "WITH ANY AND ALL FAULTS", except as is otherwise expressly set forth herein or in the Sale Order.

5 **Buyer's Representations and Warranties.** The following representations and warranties shall survive for six (6) months from the Closing Date. The Buyer represents and warrants to Sellers, as of the date hereof and as of the Closing Date, as follows:

5.1 **Formation, Standing and Power.** Buyer is duly formed, validly existing and in good standing under the laws of the State of Delaware, and at Closing shall be qualified to do business in the State of New York. 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, or its assignee, 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 Buyer's Certificate of Formation or Operating Agreement;
- (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.** 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, or in any Schedule hereto, 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.** Robert Mahlman is working with Buyer in a brokerage capacity. Buyer will be responsible for any and all compensation due Robert Mahlman.

5.8 **Qualification.** Buyer has no information or reason to believe that the FCC would not approve of a transfer of the subject licenses to Buyer and principals of the Buyer have never been associated with an entity where the FCC denied or held up a transfer of license.

## 6 **Sellers' Covenants.**

### 6.1 **Indemnification.**

- (a) The sole and exclusive remedy which Buyer shall have against Sellers 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. Sellers hereby indemnifies Buyer and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Buyer, as provided by this Section 6.1, within four (4) months after the Closing Date from, against and in respect of:

(1) all liabilities, obligations, claims against and contracts of Sellers 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 Sellers, arising out of or by reason of this or any other transaction or event occurring prior or subsequent to the Closing, which have not been assumed by Buyer; 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 Sellers made in this Agreement; and

(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.

(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 Sellers, 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 contends Sellers have 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, Sellers 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 Sellers 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 Sellers in such defense, and shall make available to Sellers and its counsel all records and other materials reasonably required by them in such defense, but Sellers 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 Sellers reach 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 Sellers shall pay Buyer's actual costs and expenses (including legal fees) incurred in

connection with defending a claim which is determined adversely to Sellers and which shall be found to have constituted a breach of Sellers' representations, warranties and covenants hereunder. Despite the foregoing, the Sellers shall have the right, upon receipt of Notice from the Buyer or third party, to pay or settle the claim asserted or to give notice of Sellers' intent to defend against the claim.

(c) If Buyer asserts a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, Buyer shall notify Sellers thereof, stating in reasonable detail the nature of Buyer's claim and the specific representations, warranties and covenants which Buyer contends Sellers have breached. Sellers shall have fifteen (15) days after the effective date of such notice to accept or reject Buyer's demand for indemnification. If Sellers accept such demand for indemnification, it shall pay the amount of indemnification claimed by Buyer. If no acceptance is received by Buyer within such 15-day period, Sellers shall be deemed to have rejected the demand. In the event Sellers reject Buyer's demand for indemnification or fails to accept such demand within such 15-day period, the parties shall immediately submit the controversy to the Bankruptcy Court for adjudication. The parties consent to that jurisdiction and to entry of final Orders by the Bankruptcy Court. The prevailing party in any such litigation shall be entitled to an award of reasonable attorneys fees and costs by the Bankruptcy Court.

(d) Sellers' liability for all Claims under this Section 6 shall be subject to the following limitations: (i) Sellers shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds Twenty Five Thousand Dollars (\$25,000.00) (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, subject to the limitations on recovery and recourse set forth in this Section 6; and (ii) Sellers' aggregate liability for all Claims under this Section 6 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

**6.2 Conduct of Stations' Business.** Prior to Closing, without the written consent of Buyer, Sellers shall not enter into any transaction other than those in the ordinary course of the business of the Stations; during the period until Closing the Sellers shall operate the Stations in the normal and usual manner; no employment contract shall be entered into by Sellers relating to the Stations, unless the same is terminable at will and without penalty; Sellers shall not increase the compensation paid any employee of the Stations or hire additional personnel for the Stations, except as required in the ordinary course of business. Sellers will maintain in force the insurance in effect on the date hereof; Sellers will not make any material change in the price or terms of advertising without the consent of Buyer.

**6.3 Risk of Loss.** Sellers 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 Sellers to repair, replace or restore any such loss prior to the Closing, or with Buyer's consent the proceeds may be assigned to Buyer at Closing for Buyer to make those repairs it deems necessary or appropriate; provided, however, that, if the proceeds of such insurance are not sufficient to

repair, replace or restore the loss, and Sellers do not provide additional funds for such purpose upon request by Buyer, Buyer if not then in default may terminate this Agreement. In the event such loss or damage prevents the broadcast transmission of the Stations in the normal and usual manner, Sellers shall give prompt written notice thereof to Buyer. If Sellers cannot restore the facilities so that transmission can be resumed in the normal and usual manner within two (2) days, Buyer, if not then in default, shall have the right after such 2-day period to terminate this Agreement by giving written notice to Sellers. In the event of any such termination pursuant to this Section 6.3 neither party shall have any further right or liability hereunder.

**6.4 Liens and Encumbrances.** To the knowledge of the Sellers the only lien or encumbrance against the Assets to be sold are ongoing real estate taxes and assessments that will be pro-rated through the day of Closing and a consensual lien of the Lyons National Bank (Lyons) of approximately Eight Hundred Thousand Dollars (\$800,000.00). The parties agree that this claim of the Lyons shall be paid in full by the Sellers as part of the Closing and that the Sellers can use the Purchase Price being paid to pay this claim and all other charges, fees, or costs that Sellers are required to pay to Close the sale. The payment to Lyons shall be made by the Escrow Agent as part of the Closing with a release of lien being a condition of the payment. The Motion to Approve Sale to be filed by the Trustee with the Bankruptcy Court shall specifically address this payment and release of lien.

**6.5 Condition of Title for the Real Estate Being Sold.** Good and marketable fee simple, insurable title in the Real Property shall be conveyed by Sellers to Buyer at the Closing by a duly executed Deed, suitable for recording, subject only to the Permitted Exceptions, which shall include no claim of lien, otherwise the Buyer can cancel the sale and in this event all Earnest Money Deposit shall be returned to Buyer. As used herein, "marketable title" shall mean marketable fee simple title to the Real Property as determined in accordance with the laws of the State of New York. As used herein, "insurable title" shall mean fee simple title that is currently insurable at regular rates by the Title Insurance Company selected by the Escrow Agent and Buyer, under its standard owner's title insurance policy, currently in use in New York, without any exception or exclusion from coverage other than the Permitted Exceptions. Sellers shall be responsible for paying, at Closing, the premiums for a Standard Title Insurance Policy insuring the Real Property at the values agreed upon by the parties in the Schedule for the Allocation of the Purchase price to the assets being sold. Sellers can use the Purchase Price to be paid to discharge or pay at Closing any obligation Sellers are required to pay and as are authorized to be paid as part of the Closing by the Bankruptcy Court administering the Sellers' Bankruptcy Estate. Sellers can cancel this Agreement, without penalty, if a lien or claim is shown to exist against the Real Property or other Assets that Sellers are not aware of when the Agreement was signed by Sellers. Sellers are not aware of any lien except for Real Estate Taxes and that held by the Lyons National Bank.

**6.6 Objections to Title.** A title commitment shall be requested by Buyer upon the opening of escrow together with legible copies of all documents that appear of record. Buyer shall, within ten (10) days of receipt of title insurance commitment, give written notice to Sellers of any matters of record that are unacceptable to Buyer because they impair the use or

marketability of the Real Property. Those matters to which an objection is not made become a Permitted Exception to Title. Within ten (10) business days of Sellers' receipt of Buyer's notice of disapproved title exceptions, the Sellers shall, in writing, either agree to convey title to the Real property to Buyer subject only to exceptions acceptable to the Buyer or indicate which disapproved title exceptions will not be corrected by Sellers prior to Closing. Upon receipt of Sellers' notice, Buyer shall, by written notice to Sellers within five (5) days of receipt of Sellers' notice, either (i) waive the objections to Title that Sellers will not cure and agree to take title to the Real Property subject to the exceptions in which event such exceptions will also become Permitted Exceptions, or (ii) cancel this Agreement with the Earnest Money Deposit being returned to Buyer in which event Buyer will have no further interest in the Property other than the potential reimbursement, as is described herein, of certain costs that may have been incurred by the Buyer.

**6.7 Closing Documents.** In addition to the Deed, Sellers shall deliver to the Escrow Agent at Closing the following together with any other documents as may be reasonably required by the Escrow Agent to Close the transaction in accordance with the terms and conditions of this Agreement: (i) a Certificate of Non-foreign Status in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended and the regulations thereunder; (ii) such Form 1099's or other forms required by the Internal Revenue Code as amended; (iii) evidence, satisfactory to the Escrow Agent of Sellers' authority to execute and deliver the Deed and other Closing documents. The Escrow Agent shall give sufficient advance notice to the Sellers of what the Escrow Agent requires so the Sellers can obtain the necessary documentation for a timely Closing. Buyer shall deliver to the Escrow Agent at Closing evidence satisfactory to the Escrow Agent of the Buyer's authority to purchase the Property and Close plus any other documents as may be reasonably required to Close this transaction in accordance with the terms and conditions as set forth in this Agreement.

**6.8 Transfer of Assets of WFLK-FM, Geneva, NY.** The parties hereto acknowledge and agree that it is the intent of the parties hereto that the assets of radio station WFLK-FM, licensed to Geneva, New York, shall be transferred to Buyer at Closing or as promptly thereafter as is reasonably possible as part of the transactions contemplated herein. As of the date hereof, the Sellers have the right, pursuant to an Asset Purchase Agreement dated November 10, 2010 (as amended by a Contract Extension Agreement dated June 4, 2014 (the "Contract Extension"))(such Asset Purchase Agreement, as amended, the "WFLK APA"), to purchase certain assets set forth in the WFLK APA (including tangible personal property, transmitters, antennas, radio towers, real estate and FCC licenses) used in connection with the operations of WFLK-FM (such assets, the "WFLK Assets"), in exchange for the payment of Four Hundred and Fifty Thousand Dollars (\$450,000.00)(the "WFLK Purchase Price"). The parties hereto acknowledge and agree that the WFLK Purchase Price shall be paid to the owner of WFLK-FM by the Sellers (from the Purchase Price paid by Buyer), and that Sellers shall take at their sole cost and expense all actions reasonably necessary, whether prior to, at, or following Closing, to effectuate the transfer of the WFLK Assets (such transfer, the "WFLK Transfer") to Buyer at Closing or, to the extent that is not reasonably feasible using best commercially reasonable efforts, as promptly as reasonably possible following Closing; such actions to be



taken by Sellers shall include, without limitation, making all filings and taking all actions reasonably necessary to cause the FCC to approve the transfer of the WFLK Assets to Buyer as contemplated herein. It is the intent of the parties hereto that the WFLK Assets shall be transferred directly from their current owners to Buyer upon the WFLK Transfer, and that simultaneous with the WFLK Transfer, Sellers shall assign all of their rights (but not their obligations) under the WFLK APA to Buyer. The WFLK Purchase Price shall be paid by Sellers (from the Purchase Price to be paid by Buyer) to the owners of the WFLK Assets at Closing, to the extent the WFLK Transfer occurs at Closing; to the extent the WFLK Transfer occurs following Closing, then (i) the WFLK Purchase Price shall be placed in escrow by Sellers with the Escrow Agent or a third party escrow agent pursuant to an escrow agreement reasonably acceptable to both Buyer and Sellers pending the WFLK Transfer, and shall then be paid to the owner(s) of the WFLK Assets simultaneous with the WFLK Transfer, and (ii) Sellers shall assign to Buyer all of Sellers' rights under that certain Time Brokerage Agreement (the "TBA") between RSK Communications, Inc. (as assignee of M. B. Communications, Inc.) and one or more of the Sellers dated November 10, 2010 and relating to WFLK. To the extent that the TBA is assigned to Buyer in accordance with subpart (ii) of the immediately preceding sentence, then Buyer and Sellers shall be jointly and severally liable to RSK Communications, Inc. for the monthly fee payable under the TBA, which Sellers represent and warrant is \$2,599 per month, but Buyer's liability shall be limited to such monthly fees accruing after the date of assignment to Buyer and prior to the termination of Buyer's rights under the TBA in accordance with the following sentence. To the extent that the WFLK Transfer cannot be, or is not, consummated within six (6) months following Closing, and such failure is not due to any breach of this Agreement by Buyer, then promptly upon written notice by Buyer to Sellers and the escrow agent, the WFLK Purchase Price shall be returned to Buyer as a reduction of the Purchase Price hereunder, and Buyer shall have no further obligations with regard to the WFLK Assets, or to Sellers in connection therewith, and all rights of Buyer under the TBA shall be terminated. The Sellers hereby represent and warrant to Buyer that, to the best of their knowledge, (i) the WFLK APA, the Contract Extension and the TBA are valid and binding contractual obligations of the current owners of the WFLK Assets, enforceable in accordance with their terms; (ii) the WFLK APA and all rights thereunder are transferrable to Buyer at Closing or thereafter without the consent of any third party, including without limitation the current owner of WFLK-FM, and so is the TBA; and (iii) no other amounts, other than the WFLK Purchase Price, are due and payable to acquire the WFLK Assets. The Motion to Approve Sale to be filed by the Trustee with the Bankruptcy Court shall specifically address the provisions of this Section 6.8 regarding the assets of WFLK, including without limitation the payment by Sellers of the WFLK Purchase Price upon the WFLK Transfer, the transfer to Buyer of the WFLK Assets at or following Closing, the assignment to Buyer of the TBA if the WFLK Transfer does not occur at Closing, and the return of the WFLK Purchase Price to Buyer should the WFLK Transfer not be consummated within six (6) months following Closing.

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

### **7.1 Indemnification.**

(a) Buyer shall be responsible for and hereby indemnifies Sellers and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Sellers, as provided by this Section 7.1, within four (4) months after the Closing Date from, against and in respect of:

(1) The operation of the Stations 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 a demand for indemnification arises out of a claim made against Sellers by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Third Party Claim"), Sellers 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 Sellers contend Buyer has breached. Such notice shall also indicate whether Seller intends to defend against the Third Party Claim. If Sellers shall defend against the Third Party Claim, Buyer shall cooperate in all reasonable respects with Sellers in such defense, shall make available to Sellers all records and other materials reasonably required by Sellers in such defense, and shall have the right to participate in such defense. If Sellers do 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 Sellers, in which event Sellers shall cooperate in all reasonable respects with Buyer in such defense and shall make available to Buyer and its counsel all records and other materials reasonably required by them in such defense, but Buyer shall at all times control such defense. So long as a Third Party Claim is pending and is not resolved, Sellers shall hold in abeyance its demand for indemnification. If Buyer reaches a settlement with the Third Party Claimant which results in any liability to Sellers, or if a judgment is rendered against Sellers which judgment is not properly appealed or appealable, then Sellers 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) Sellers' 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. Despite the foregoing, the Buyer shall have

the right, upon receipt of Notice from Sellers or a third party, to pay or settle the claim asserted or to give notice of Buyer's intent to defend against the claim.

(c) If Sellers assert a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, Sellers shall notify Buyer thereof, stating in reasonable detail the nature of Sellers' claim and the specific representations, warranties and covenants which Sellers contend Buyer has breached. Buyer shall have fifteen (15) days after the effective date of such notice to accept or reject Sellers' demand for indemnification. If Buyer accepts such demand for indemnification, it shall pay the amount of indemnification claimed by Sellers. If no acceptance is received by Sellers within such 15-day period, Buyer shall be deemed to have rejected the demand. In the event Buyer rejects Sellers' demand for indemnification or fails to accept such demand within such 15-day period, the parties shall immediately submit the controversy to the Bankruptcy Court for adjudication. The parties consent to that jurisdiction and to entry of final Orders by the Bankruptcy Court. The prevailing party in any such litigation shall be entitled to an award of reasonable attorneys fees and costs by the Bankruptcy Court.

(d) Buyer's liability for all Claims under this Section 7 shall be subject to the following limitations: (i) Buyer shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds Twenty Five Thousand Dollars (\$25,000.00) (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; and (ii) Buyer's aggregate liability for all Claims under this Section 7 shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00).

**7.2 Environmental Surveys and Assessments.** Buyer shall have until sixty (60) days from the date of the Sale Order to conduct such environmental surveys and assessments on the Assets as Buyer wishes, provided that (i) Buyer obtains Sellers' prior approval for any such environmental survey or environmental assessment, such approval not to be unreasonably withheld, (ii) such environmental surveys and assessments are conducted at reasonable times without interfering with Sellers' operation of the Stations, and (iii) Buyer provides Sellers with a copy of any and all environmental surveys, reports or assessments rendered. Buyer shall conduct any and all environmental surveys and assessments on or before sixty (60) days from the date of the Sale Order, failing which it shall not be permitted to conduct such activities. Buyer shall give Sellers, on or before sixty-five (65) days from the date of the Sale Order, notice of any environmental conditions that Buyer considers unsatisfactory and that must be remedied in order for Buyer to close, along with a statement of the specific provisions of this Agreement Buyer contends are breached by such conditions. If such notice is not timely provided, this condition to Closing shall be deemed waived by Buyer. If timely notice is given, Sellers shall have fifteen (15) days to remedy the conditions or make arrangements with Buyer that are satisfactory to Sellers and Buyer with regard to the problems being remedied. If that does not occur within the fifteen (15) days, then this Agreement shall be null and void and the Forfeitable Earnest Money Deposit returned to Buyer.

## 8 Approvals.

### 8.1 Application for FCC Approval

(a) **Filing and Prosecution of Application.** Buyer and Sellers shall, within ten (10) days from the date of the Bankruptcy Court order approving this Agreement, join in an application to be filed with the FCC requesting its written consent to the assignment of the Licenses of the Stations from Sellers to Buyer. Buyer and Sellers 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.

(b) **Expenses.** Each party shall bear its own expenses in connection with the preparation of the applicable sections of the FCC application and in connection with the prosecution of such application. Sellers and Buyer will divide and pay equally any filing fee or grant fee imposed by the FCC or any fees or expenses incurred with respect to a joint application.

(c) **Designation for Hearing.** If, for any reason, with respect to any application for assignment of the Licenses, 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 thirty (30) days of such notification, to terminate this Agreement, in which event neither party shall have any rights or liabilities hereunder.

(d) **Time of FCC Consent.** If approval of the transfer of the Licenses has not become final (all protests and appeals having been decided or dismissed, or barred by the expiration of time) within twelve (12) months from the date of filing the applications for transfer 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. The parties may mutually agree, however, to consummate the transactions contemplated by this Agreement under an FCC approval which has not become final as herein provided.

(e) **Control of Stations.** The transactions set forth in this Agreement shall not close until the FCC has given its written consent to the transfer of the Licenses of the Stations to the Buyer. Until the Closing, Buyer shall not, directly or indirectly, control, supervise, direct or attempt to control, supervise or direct the operation of the Stations, but such operation shall be the sole responsibility of Sellers.

### 8.2 Bankruptcy Court Approval.

(a) **Conditional Offer and/or Acceptance by Sellers.** Bankruptcy Court approval of the sale and this Agreement is required before Sellers shall have any legal obligations arising out of or related to this Agreement. This Agreement will be



presented to the Bankruptcy Court by the Trustee for approval at a hearing noticed in accordance with the Bankruptcy Code and Rules of the Bankruptcy Court. Ordinarily, notice of the hearing on the Sale Motion requires not less than twenty-three (23) days prior notice, provided, however, that Sellers shall use best efforts to obtain a hearing date no later than forty-five (45) days following the execution of this Agreement, but in no case shall such hearing date be more than sixty (60) days following the execution of this Agreement. The Sale Motion will be filed within ten (10) days of the date of the payment of the first installment of the Forfeitable Earnest Money Deposit (in the amount of \$50,000.00). In presenting this Agreement to the Bankruptcy Court for approval, the Trustee and/or the Bankruptcy Court at the hearing for approval of the Agreement will call for higher and better bids for the Assets. Higher and better bids, if made, will be considered and if the Bankruptcy Court approves of a sale to a third party, Buyer shall have no further interest in the Assets, except the Deposit shall be returned to Buyer and Buyer shall have a claim for the Stalking Horse Fee, if approved by the Bankruptcy Court. At the hearing for approval of the sale, Buyer can make a higher offer to buy the Assets should a third person or persons make a bid that is of more benefit to Sellers than what is set forth in this Agreement. Sellers may advertise the sale in a reasonable attempt to attract higher and better offers for the Assets.

(b) **Stalking-Horse Bidder Fee.** In consideration for Buyer serving as the stalking-horse bidder for the Assets, for Buyer's payment of additional consideration, and this Agreement being subject to termination in the event that Sellers receive a higher and better bid, and regardless of whether or not Buyer makes any matching or competing offer for the Assets, Sellers shall pay to Buyer a stalking-horse bidder fee in an amount found to be reasonable by the Bankruptcy Court, not to exceed Fifty Thousand Dollars (\$50,000) (the "Stalking-Horse Bidder Fee"). Upon approval of the Stalking-Horse Bidder Fee by the Bankruptcy Court, such fee shall be paid as part of the closing of the sale authorized and approved by the Bankruptcy Court.

Sellers acknowledge and agree that: (i) the approval of the Stalking-Horse Bidder Fee is an integral part of the transactions contemplated by this Agreement; (ii) in the absence of the Sellers' potential obligation to pay the Stalking-Horse Bidder Fee, Buyer asserted that it would not have entered into this Agreement; and (iii) the Stalking-Horse Bidder Fee is asserted by the Buyer reasonable in relation to Buyer's associated costs and efforts and to the magnitude of the contemplated transaction and Buyer's lost opportunities resulting from the time spent pursuing the contemplated transaction. Sellers' agreement to pay the Stalking-Horse Bidder Fee is subject to and conditioned upon authorization and approval by the Bankruptcy Court.

(c) **The Sale Motion.** On or within ten (10) business days following the payment of the first installment of the Forfeitable Earnest Money Deposit (in the amount of \$50,000.00), the Trustee shall file a sale motion with the Bankruptcy Court (the "Sale Motion") reasonably acceptable to Buyer. Thereafter, the Trustee shall use reasonable efforts to cause the Bankruptcy Court to enter an order or orders

corresponding to the Sale Motion, and in any event, seeking the following relief from the Bankruptcy Court:

(1) Approving the Stalking-Horse Bidder Fee (provided, however, that the failure of the Bankruptcy Court to authorize or approve a Stalking Horse Bidder Fee shall not relieve the Buyer of its obligations under this Agreement);

(2) Scheduling the Sale Hearing (as defined in the Sale Motion) to take place not later than 35 days following the filing of the Sale Motion (unless the Bankruptcy Court's schedule does not permit scheduling the hearing by such date);

(3) Approval of the proposed asset purchase agreement between Sellers and the purchaser thereunder, including the sale of the Assets to such purchaser;

(4) Authorization of the sale of the Assets to the purchaser, free and clear of all encumbrances and other interests to the full extent permitted by the United States Bankruptcy Code ("Bankruptcy Code");

(5) Authorization of the assumption and assignment of the Assigned Contracts, subject to the terms hereof (or of the agreement of any other purchaser, as applicable); and

(6) Authorization of Sellers to cause the Closing to occur as soon as practicable after the entry of the Sale Order (as defined in the Sale Motion) and FCC approval.

(d) **Sale Order.** The Sale Order shall be in form and substance acceptable to Buyer and shall include, without limitation, the following findings of fact, conclusions of law and ordering provisions:

(1) find that the Notice of Sale (as defined in the Sale Motion), and the parties who were served with copies of such Notice, were in compliance with Sections 102 and 363(b) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014 and any other applicable provision of the Bankruptcy Code, the Bankruptcy Rules, or any local Bankruptcy Rule governing the sale of assets free and clear of encumbrances and other interests;

(2) find that all requirements imposed by Section 363(f) of the Bankruptcy Code for the sale of the Assets free and clear of encumbrances and other applicable interests have been satisfied;

(3) find that Buyer is a purchaser of the Assets in “good faith” pursuant to Section 363(m) of the Bankruptcy Code, and the Sale is entitled to the protections of Section 363(m);

(4) find that Buyer and Sellers did not engage in any conduct which would allow this Agreement to be set aside under Section 363(n) of the Bankruptcy Code;

(5) find that under Section 105 of the Bankruptcy Code, any creditors of the Sellers are enjoined from taking any actions against Buyer or the Assets;

(6) find that the consideration provided by Buyer under this Agreement constitutes reasonably equivalent value and fair consideration for the Assets;

(7) that this Agreement and the consummation of the Sale upon the terms and subject to the conditions of this Agreement are approved;

(8) order that, as of the Closing Date, the transactions contemplated by this Agreement effect a legal, valid, enforceable and effective sale and transfer of the Assets to Buyer and/or, as applicable, its designees and shall vest Buyer and/or, as applicable, its designees with title to such assets free and clear of all encumbrances;

(9) authorize the Sellers to assume and assign to Buyer and/or, as applicable, one or more designees each of the Assigned Contracts, and (ii) find that, subject to the terms of the Sale Order, as of the Closing Date, the Assigned Contracts will have been duly assigned to Buyer in accordance with Section 365 of the Bankruptcy Code;

(10) find that Buyer is assuming none of the Excluded Liabilities;

(11) order that the Assigned Contracts will be transferred to, and remain in full force and effect for the benefit of Buyer, notwithstanding any provision in any such contract or any requirement of applicable law (including those described in Sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, conditions, restricts or limits in any way such assignment or transfer;

(12) find that Buyer has satisfied all requirements under Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance of the Assigned Contracts;

(13) approve any other agreement to the extent provided by this Agreement;

(14) Except as expressly set forth in the Sale Order, enjoin and forever bar the non-debtor party or parties to each Assigned Contract from asserting against Buyer: (i) any default, action, liability or other cause of action existing as of the date of the Sale Hearing whether asserted or not, and (ii) any objection to the assumption and assignment of such non-debtor party's Assigned Contract (except to the extent any such objection was sustained by the Order of the Bankruptcy Court);

(15) find that, to the extent permitted by applicable law, Buyer is not a successor to Sellers or the bankruptcy estate by reason of any theory of law or equity, and Buyer shall not assume or in any way be responsible for any liability of Sellers and/or the bankruptcy estate, except as otherwise expressly provided in this Agreement;

(16) provide that Sellers are authorized and directed subject to receipt of FCC approval to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement.

(17) enjoin assertion of any Excluded Liabilities against any of Buyer or any assignees, transferees or successors thereof or against any of the Assets; and

(18) order that, notwithstanding the provisions of Federal Rules of Bankruptcy Procedures 6004(h) and 6006(d), the Sale Order is not stayed and is effective immediately upon entry.

**8.3 Competing Bids.** Sellers shall promptly notify Buyer of any proposal or offer from a third party to acquire, directly or indirectly, all or any substantial portion of the Assets received by Sellers in writing after the date hereof and Sellers shall communicate to Buyer the material terms of any such bid.

## **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 Sellers contained in this Agreement shall be true and correct in all 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 the Trustee and an officer of Sellers;



(b) Pre-Closing obligations: Sellers shall have performed all obligations required to be performed by Sellers 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 Sellers;

(c) Due authorization: Sellers' 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 Sellers, and Buyer shall have received a duly certified copy of all company actions effecting the same;

(d) Sellers' 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 Sellers, and Buyer shall have received a true copy of each thereof;

(e) No bar: the Bankruptcy Court shall have issued an order approving the sale of the Stations to Buyer in accordance with this Agreement, and 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) Consent and approvals: the FCC shall have given its consent and the Bankruptcy Court shall have issued the Sale Order, as contemplated by Section 8;

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

(1) Limited Warranty Deed conveying to Buyer title to the Real Property;

(2) Warranty Bill of Sale transferring to Buyer title to the Tangible Assets;

(3) Assignment and Assumption Agreement assigning to Buyer the Licenses, Assigned Contracts, Call Letters, Intangible Assets and Business Records; and

(4) Copies of closing documents for the WFLK Transfer in a form reasonably satisfactory to Buyer, executed by Sellers and held in escrow pending the WFLK Transfer.

(h) Rent, Contract and Utility Charges, etc.: except as otherwise expressly provided herein, all taxes, rents, utility charges, assessments, utilities, insurance and contract charges shall have been prorated between Buyer and Sellers to the Closing Date outside of escrow;

(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: Sellers shall have delivered to Buyer actual possession of the Assets;

(k) No Material Adverse Change: There shall have been no material adverse change in the business or prospects of the Stations between the date hereof and Closing.

**9.2 Conditions to Sellers' Obligations.** The obligations of Sellers 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 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 Sellers 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 Sellers, and Sellers 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 Sellers shall have received a duly certified copy of all required consents effecting the same;

(d) No bar: the Bankruptcy Court shall have issued an order approving the sale of the Stations to Buyer in accordance with this Agreement, and 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 Sellers' reasonable judgment, restrain or prohibit, make illegal, or subject Sellers to material damage as a result of, the consummation of the transactions contemplated hereby;

(e) Consent and approvals: the FCC shall have given its consent and the Bankruptcy Court shall have issued the Sale Order, as contemplated by Section 8;

(f) Further closing documents: Buyer shall have delivered to Sellers the Assignment and Assumption Agreement by which Buyer assumes the Licenses, Assigned Contracts, Call Letters, Intangible Assets and Business Records.

(g) 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 Sellers to the Closing Date.

(h) Payment of Purchase Price: Buyer shall have paid the Purchase Price in full.

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 twenty (20) days following the date upon which the order of the FCC approving the assignment of the Licenses for the Stations from Sellers 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) (the "Closing Date"). Such Closing shall take place at the offices of the Escrow Agent by electronic exchange of documents at 10:00 a.m. on the Closing Date, or such other time as mutually agreed. Notwithstanding the foregoing, Buyer shall have the right to require closing at any time following FCC approval which has not yet become final. Sellers will Close as soon as Buyer wants within this twenty (20) day period. If the Buyer and Sellers cannot agree on a date or time for the Closing then the Closing Date shall be on the twentieth day starting at 10:00 a.m., M.S.T., or the first day after the twentieth day that the Escrow Company is open for business if that does not exist on the twentieth day. Closing can be done through the mail, in counterparts, and with the Escrow agent being able, but not required, to relay on facsimile and/or electronic signatures to Close but original signatures shall be provided to the Escrow Agent. Sellers, at their sole and absolute discretion and option can extend the Closing date thirty (30) days unless the Buyer does not want an extension of the time the Buyer has to Close.

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

- (a) by the mutual written consent of Sellers and Buyer;
- (b) by Buyer, upon notice to Sellers, if (A) on the Closing Date, without any breach by Buyer of its obligations hereunder, Sellers have not complied with one or more of the conditions set forth in Section 9.1 (and such compliance is not waived by Buyer); or

(B) Sellers shall have breached any of its representations, warranties or obligations hereunder (which breach shall not have been cured in all material respects or waived by Buyer prior to the earlier of the Closing Date or within thirty (30) days after Buyer has given notice to Sellers of such breach);

(c) by Sellers, upon notice to Buyer, if (A) on the Closing Date, without any breach by Sellers of its obligations hereunder, Buyer has not complied with one or more of the conditions set forth in Section 9.1 (and such compliance is not waived by Sellers); or (B) Buyer shall have breached any of its representations, warranties or obligations hereunder (which breach shall not have been cured in all material respects or waived by Sellers prior to the earlier of the Closing Date or within thirty (30) days after Sellers have given notice to Buyer of such breach); or

(d) as provided by Sections 6.3, 8.1(c) or 8.1(d) of this Agreement.

In the event of any termination as provided by this Section 10.2, this Agreement shall thereupon become void and of no effect, without any further liability on the part of any party.

## **11 Remedies.**

**11.1 Remedies of Buyer.** In the event that Sellers shall fail to perform fully and timely any of their material obligations hereunder or to consummate the transaction contemplated herein for any reason, except for Buyer's material default hereunder, Buyer's sole and exclusive remedy shall be the right to apply to the Bankruptcy Court to enforce specific performance of the conveyance of the interest the Sellers hold in the assets without the expenditure of money by the Sellers, except to use the Purchase Price being paid to pay delinquent real property taxes, or the lien claim of the Lyons National Bank, or to terminate this Agreement and receive the return of the Earnest Money Deposit paid. If after Closing, a problem or claim arises with title to Real Property, Buyer's sole remedy shall be limited to recovery on and against the title insurance policy to be issued.

**11.2 Remedies of Sellers.** If Buyer shall fail to consummate this Agreement for any reason, except Sellers' default or the termination of the Agreement pursuant to a right to terminate give herein, Sellers' sole and exclusive remedy shall be to retain any and all earnest money deposits paid.

## **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 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 Schedule 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 Sellers and Buyer in all respects.

**12.4 Accounts Receivable.** For a period of one hundred twenty (120) days after the Closing Date Buyer will collect in the normal course of business for the account of Sellers the accounts receivable of the Stations outstanding as of the Closing Date. Sellers will furnish Buyer with a complete list of such accounts receivable at, or as soon as reasonably possible after, the Closing. Buyer will not, without the prior written consent of Sellers, compromise or settle for less than full value any of Sellers' accounts receivable. Any monies received by Buyer from any person who was indebted to Sellers as of the Closing Date shall be applied first against said indebtedness, except when and to the extent the account debtor otherwise specifies in writing; provided, however, that Buyer shall not attempt to influence an account debtor's normal payment practices with respect to such receivables. The obligation of Buyer hereunder will be to collect such accounts receivable in the ordinary and normal course of business and does not extend to the institution of litigation, employment of counsel or a collection agency, or any other extraordinary means of collection. Once a month during the 120-day period, Buyer will remit to Sellers all monies collected on the accounts receivable. Thereafter, Buyer will have no further responsibilities with respect to any uncollected accounts receivable except to remit promptly to Sellers any amounts subsequently received by Buyer on account of Sellers' receivables, and Sellers will be free to collect all of Sellers' receivables in any manner it deems appropriate. During the 120-day period and thereafter, Sellers shall remain solely responsible for any commissions payable to salespersons for the sales that generated the accounts receivable outstanding as of the Closing Date.

### **13 General Provisions.**

**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. Sellers hereby consent to the assignment by Buyer of this Agreement to a new entity to be formed to act as the purchaser, but such assignment shall not relieve Buyer of its obligations hereunder.

**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 set forth below. In addition, each communication shall be sent the same day by an email to the email addresses set forth below.

If to Sellers:                      Finger Lakes Radio Group  
3568 Lenox Road  
Geneva, NY 14456  
Attn: Alan Bishop  
Email: [abishop@flradiogroup.com](mailto:abishop@flradiogroup.com)  
Fax: (315) 781-7700

and a copy to:                      Gayle E. Mills, Trustee  
PO Box 36317  
Tucson, AZ 85740-6317  
Email: [gaylemills@earthlink.com](mailto:gaylemills@earthlink.com)

and a copy to:                      Michael M. Neal, P.C.  
7320 N. La Cholla Blvd., Ste. 154/Box 152  
Tucson, AZ 85741  
Email: [mmnealpc@gmail.com](mailto:mmnealpc@gmail.com)  
Fax: (520) 623-5255

If to Buyer:                   Hoosier AM/FM, LLC  
550 Cochituate Road, Ste. 25  
Framingham, MA 01701  
Attn: Bruce G. Danziger  
Email: [Voxmedia@aol.com](mailto:Voxmedia@aol.com)

and a copy to:               Sheehan Phinney Bass + Green PA  
1000 Elm Street  
Manchester, NH 03101  
Attn: Joseph A. DiBrigida, Jr., Esq.  
Email: [jdibrigida@sheehan.com](mailto:jdibrigida@sheehan.com)

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 Arizona.

**13.7 Effect of Agreement.** This 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.

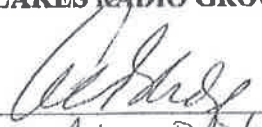
**13.8 Headings; Counterparts.** The Article and Section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]


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

**SELLERS:**


**FLRG CORPORATIONS:  
FINGER LAKES RADIO GROUP, INC.**

By:   
Name: Alan Bisley  
Title: President


**GENEVA BROADCASTING, INC.**

By:   
Name: Alan Bisley  
Title: President


**LAKE COUNTRY BROADCASTING, INC.**

By:   
Name: Alan Bisley  
Title: President

**AUBURN BROADCASTING, INC.**

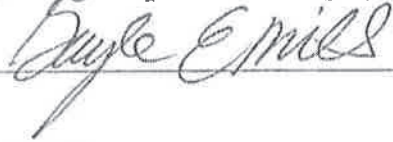
By:   
Name: Alan Bisley  
Title: President

**ROI BROADCASTING, INC.**

By:   
Name: Alan Bisley  
Title: President



**GAYLE E. MILLS, As the Appointed and  
Serving Chapter 7 Bankruptcy Trustee**

  
\_\_\_\_\_

**BUYER:**

Hoosier AM/FM, LLC

By: \_\_\_\_\_  
Bruce G. Danziger, Manager

**GAYLE E. MILLS, As the Appointed and  
Serving Chapter 7 Bankruptcy Trustee**

---

**BUYER:**

Hoosier AM/FM, LLC

By: 

Bruce G. Danziger, Manager