

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of December 28, 2018 between KMB Broadcasting, Inc., a Michigan corporation (“Seller”), and Aurora Media, LLC, a Michigan limited liability company (“Buyer”).

Recitals

A. Seller owns and operates the following radio broadcast stations (each a “Station” and collectively the “Stations”) pursuant to certain authorizations issued by the Federal Communications Commission (“FCC”):

WYKX(FM), Escanaba, Michigan, Facility No. 35116
WDBC(AM), Escanaba, Michigan, Facility No. 35115
W233CT (Construction Permit), Facility No. 203228

B. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Station Assets (defined below).

C. Seller and Buyer have executed a Time Brokerage Agreement, dated as of even date herewith (“TBA”), pursuant to which Buyer shall provide programming to the Stations that is responsive to the needs and interests of the Stations’ communities of license, subject in all respects to the Communications Act of 1934, as amended, and the rules and published policies of the FCC promulgated thereunder (collectively, “Communications Laws”).

Agreement

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein (the receipt and sufficiency of which are hereby acknowledged), the parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1: PURCHASE OF ASSETS

1.1 Station Assets. On the terms and subject to the conditions hereof, at Closing (defined below), except as set forth in **Sections 1.2 and 1.3**, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title and interest of Seller in and to all assets and properties of Seller, real and personal, tangible and intangible, that are used or held for use in the operation of the Stations (“Station Assets”), including without limitation the following:

(a) all licenses, permits and other authorizations issued to Seller by the FCC with respect to the Stations (“FCC Licenses”), including those described on *Schedule 1.1(a)*, including any renewals or modifications thereof between the date hereof and Closing;

(b) all of Seller’s equipment, transmitters, antennas, cables, towers, vehicles, furniture, fixtures, spare parts and other tangible personal property of every kind and description that are used or held for use in the operation of the Stations, including without limitation those listed on *Schedule 1.1(b)* (“Tangible Personal Property”);

(c) all of Seller's real property used or held for use in the operation of the Stations (including any appurtenant easements and improvements located thereon), including without limitation those listed on *Schedule 1.1(c)* ("Real Property");

(d) all agreements for the sale of advertising time on the Stations entered into in the ordinary course of business, and all other contracts, agreements and leases entered into in the ordinary course of the Stations' business, including without limitation those listed on *Schedule 1.1(d)*, together with all contracts, agreements and leases made between the date hereof and Closing in accordance with Article 4 ("Station Contracts");

(e) all of Seller's rights in and to the Stations' call letters and Seller's rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, programs and programming material, jingles, slogans, logos, and other intangible property which are used or held for use in the operation of the Stations, including without limitation those listed on *Schedule 1.1(e)* ("Intangible Property");

(f) Seller's rights in and to all the files, documents, records, and books of account (or copies thereof) relating to the operation of the Stations, including the Stations' public files, programming information and studies, engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs, but excluding records relating to Excluded Assets (defined below); and

(g) Subject to Section 1.11, Seller's accounts receivable existing as of the Effective Time (defined below ("A/R")).

The Station Assets shall be delivered by Seller to Buyer as is, where is, without any representation or warranty by the Seller except as expressly set forth in this Agreement, and Buyer acknowledges that it has not relied on or been induced to enter into this Agreement by any representation or warranty other than those expressly set forth in this Agreement.

1.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, the Station Assets shall not include Seller's cash, cash equivalents, insurance policies, or employee benefit plans (collectively, "Excluded Assets").

1.3 Assumption of Obligations. On the Closing Date (defined below), Buyer shall assume the obligations of Seller arising during, or attributable to, any period of time on or after the Closing Date under the Station Contracts, the obligations described in **Section 5.6** and any other liabilities of Seller to the extent Buyer receives a credit therefor under **Section 1.7** (collectively, "Assumed Obligations"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Seller ("Retained Obligations").

1.4 Purchase Price. In consideration for the sale of the Station Assets to Buyer, at Closing Buyer shall pay Seller the sum of Four Hundred Thousand Dollars (\$400,000), subject to adjustment pursuant to **Section 1.7** ("Purchase Price") as follows:

(a) Two Hundred Forty Thousand Dollars (\$240,000) by wire transfer in immediately available funds (“Cash Amount”) pursuant to wire transfer instructions provided by Seller;

(b) release of the Deposit (defined below) to Seller in immediately available funds, pursuant to wire transfer instructions provided by Seller; and

(c) delivery of a Secured Promissory Note from Buyer to Seller in substantially the form attached hereto as Exhibit A (“Secured Promissory Note”) in the principal amount of One Hundred Thousand Dollars (\$100,000).

1.5 Deposit. On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount equal to Sixty Thousand Dollars (\$60,000) (“Deposit”) with Patrick Communications (“Escrow Agent”) pursuant to the Escrow Agreement (“Escrow Agreement”) of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller and applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to **Section 10.1(c)**, the Deposit and any interest accrued thereon shall be disbursed to Seller. If this Agreement is terminated for any other reason, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure Period under **Section 10.1** does not apply entitling Seller to immediately terminate this Agreement.

1.6 Prorations and Adjustments. Subject to the TBA:

(a) All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Stations shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“GAAP”) as of 12:01 a.m. on the day of Closing (“Effective Time”). Such prorations shall include without limitation all ad valorem, real estate and other property taxes (except transfer taxes as provided by **Section 11.1**), music and other license fees, utility expenses, rent and other amounts under the Station Contracts and similar prepaid and deferred items.

(b) Seller shall receive a credit for all of the Stations’ deposits and prepaid expenses. Sales commissions related to the sale of advertisements broadcast on the Stations prior to Closing shall be the responsibility of Seller, and sales commissions related to the sale of advertisements broadcast on the Stations after Closing shall be the responsibility of Buyer. Prorations and adjustments shall be made no later than ninety (90) calendar days after Closing. There shall be no proration or adjustment for any imbalance in the value of rights and obligations under trade, barter or similar agreements for the sale of time for goods or services.

1.7 Allocation. Buyer and Seller will allocate the Purchase Price in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended, in accordance with *Schedule 1.7* hereto. Buyer and Seller shall file their federal income tax returns and other tax returns reflecting the allocation made pursuant to this Section.

1.8 Closing. The consummation of the sale and purchase of the Station Assets provided for in this Agreement (“Closing”) shall take place on or before the tenth (10th) business day after the date the FCC Consent pursuant to the FCC’s initial order or on such later day after such consent as Buyer and Seller may mutually agree, subject to **Section 5.7** and the satisfaction or waiver of the conditions set forth in Articles 6 or 7 below. The date on which the Closing is to occur is referred to herein as the “Closing Date.”

1.9 FCC Consent.

(a) Within five (5) business days of the date of this Agreement, Buyer and Seller shall file an application with the FCC (“FCC Application”) requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “FCC Consent.” Each party further agrees expeditiously to prepare amendments to the FCC Application whenever such amendments are required by the FCC or its rules. Each party shall submit its portion of the FCC Application to the FCC electronically, consistent with the FCC’s procedures. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible, (but no party shall have any obligation to satisfy complainants or the FCC by taking any steps that would have a material adverse effect on the results of operations of a party or any affiliated entity, unless a failure to take such action would constitute or perpetuate a breach of such party’s representations, warranties or covenants herein). Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the FCC Application, however, the fee to be paid to the FCC in conjunction with the filing of the FCC Application will be shared equally by Buyer and Seller.

(b) Neither Buyer nor Seller shall take any intentional action that would, or intentionally fail to take such action the failure of which to take would, reasonably be expected to have the effect of materially delaying the issuance of the FCC Consent. Each party agrees to comply with any condition imposed on it by the FCC; provided, however, that no party shall be required hereunder to comply with any condition that would have a material adverse effect on the results of operations of such party or any affiliated entity, unless the absence of such compliance would constitute or perpetuate a breach of such party’s representations, warranties or covenants herein. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, such party shall not be required to take any action that would have a material adverse effect on the results of operations of such party or any affiliated entity.

1.10 No Liens. The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances (“Liens”) except for Assumed Obligations (defined below), liens for taxes not yet due and payable, liens that will be released at or prior to Closing, and, with respect to the Real Property, such other easements, rights of way, building and use restrictions and other exceptions that do not in any material respect detract from the value of the property subject thereto or impair the use thereof in the ordinary course of the business of the Stations (collectively,

“Permitted Liens”).

1.11 A/R. Buyer shall use commercially reasonable efforts, consistent with its usual collection practices (but without obligation to institute proceedings or use any other extraordinary means of collection) to collect the A/R. On the Payment Date (as defined in the Secured Promissory Note), Buyer shall remit to Seller seventy percent (70%) of the A/R that it has collected. This section shall survive any termination or expiration of this Agreement.

ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES

Seller makes the following representations and warranties to Buyer:

2.1 Organization. Seller is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which the Station Assets are located. Seller has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, “Seller Ancillary Agreements”) and to consummate the transactions contemplated hereby.

2.2 Authorization. The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 No Conflicts. Except as set forth on *Schedule 2.3* and except for the FCC Consent and consents to assign certain of the Station Contracts, the execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby does not conflict with any organizational documents of Seller, any contract or agreement to which Seller is a party or by which it is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

2.4 FCC Licenses. Except as set forth on *Schedule 1.1(a)*, Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the licenses, permits and authorizations required for the present operation of the Stations. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. The FCC Licenses are all of the licenses, permits or other authorizations issued by the FCC necessary to operate the Stations in the manner as such operations currently are conducted and there are no conditions upon the FCC Licenses except those conditions stated thereon or generally applicable to broadcast stations comparable to the Stations. There is not pending, or, to Seller’s knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel,

rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability). The Stations are operating in compliance in all material respects with the FCC Licenses and the Communications Laws. To Seller's knowledge: (a) no facts, events or circumstances exist or have occurred with respect to Seller or the Station that would reasonably be likely to cause the FCC not to renew the FCC Licenses in the ordinary course and without undue delay, adverse condition or modification; (b) there are no facts that would, under the Communications Laws, disqualify Seller as an assignor of the FCC Licenses or that that would reasonably be expected to delay the FCC's processing of the FCC Application because of Seller's qualifications; and (c) no waiver of or exemption from any existing Communication Law on the part of Seller is necessary for the FCC Consent to be obtained. Seller is not delinquent on any fees owed to the FCC and its status under the FCC's "red light" system is "green."

2.5 Tangible Personal Property. *Schedule 1.1(b)* hereto contains a true and complete list of the material Tangible Personal Property. Seller (i) is the owner of all of the Tangible Personal Property it purports to own, (ii) to Seller's knowledge, has a valid leasehold interest in the Tangible Personal Property it purports to lease, and (iii) has a valid license right (whether as a licensor or licensee) in the Tangible Personal Property it purports to license, in all cases free and clear of any Liens, except for Permitted Liens.

2.6 Real Property. *Schedule 1.1(c)* contains a description of all Real Property to be transferred to Buyer at the Closing. Seller has fee simple title to each item of Real Property. Except as set forth on *Schedule 1.1(c)*, there are no easements, rights of way, building and use restrictions, exceptions, encroachments, reservations, limitations that, individually or in the aggregate, in any material respect, impair the current use thereof of the Stations.

2.7 Environmental. To Seller's knowledge, without investigation or inquiry no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the Real Property, including any real property associated with leases that are Station Contracts ("Leased Property"), other than in compliance with federal, state or local law.

2.8 Contracts. *Schedule 1.1(d)* hereto contains a true and complete list of all Station Contracts. The Station Contracts requiring the consent of a third party to assignment are identified on *Schedule 1.1(d)*. Seller is not in violation or breach of, nor has Seller received in writing any claim or threat that it has breached any of the terms and conditions of, any Station Contract. Each Station Contract is in effect and is binding upon Seller (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally).

2.9 Employee and Labor Relations. To Seller's knowledge, Seller is not a party to any contract with any labor organization, nor has Seller agreed to recognize any union or other collective bargaining unit, nor has any union or other collective bargaining unit been certified as representing any of Seller's employees. Seller has not violated any applicable federal or state law or regulation relating to labor or labor practices.

2.10 Litigation. To Seller's knowledge, except as disclosed on *Schedule 2.10*: (a) Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree with respect to or affecting the Stations or the Station Assets; (b) there is no third party claim, litigation,

proceeding or investigation pending or, to Seller's knowledge, threatened against Seller with respect to any Station in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes; (c) there is no third party claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller with respect to any Station, which is reasonably likely to have a material adverse effect upon the business, assets or condition, financial or otherwise, of any Station or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

2.11 No Other Agreements to Sell the Stations; No Undisclosed Liabilities. Seller has no legal obligation, absolute or contingent, to any other person or firm to sell, assign, or transfer the Station Assets (whether through a merger, reorganization or sale of stock or otherwise) or to enter into any agreement with respect thereto.

2.12 Brokers. Other than Patrick Communications, the broker fee for which Seller shall be solely responsible to pay at the Closing, there is no broker, finder or other person or entity (collectively, "Broker") who would have any valid claim through Seller against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, Seller. Seller agrees to indemnify Buyer for all costs incurred by Buyer arising from the claim of any Broker retained by Seller related to the transactions contemplated by this Agreement.

2.13 Intangible Property. Seller has sufficient right, title and interest in and to all trademarks, service marks, trade names, copyrights, domain names and all other intangible property included in the Station Assets. *Schedule 1.1(e)* contains a description of all material Intangible Property used exclusively in the operation of the Stations.

2.14 Taxes. (a) Seller has paid all taxes required to be paid with respect to the Stations; (b) there are no pending or, to the best knowledge of Seller, threatened, investigations or claims against Seller for or relating to any liability in respect of taxes and, to the best knowledge of Seller, no facts or circumstances exist which indicate that any such investigations or claims in respect of taxes may be brought or are under discussion with any governmental authorities; and (c) all taxes required to be withheld by Seller on or before the date hereof have been withheld and paid when due to the appropriate agency or authority.

2.15 Bankruptcy. No insolvency proceedings in the nature of bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, by or against Seller or the Assets, are pending or threatened, and Seller has not made any assignment for the benefit of creditors or taken any action in contemplation or in furtherance of the institution of such insolvency proceedings.

2.16 Insurance. Seller maintains insurance policies with respect to the Stations and the Station Assets in commercially reasonable amounts.

2.17 Instruments of Conveyance; Good Title. Seller has good and marketable title to the Station Assets, and except as otherwise set forth herein, no consent on the part of any other party is necessary for the sale and transfer thereof to Buyer. The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Station Assets to Buyer, will transfer all of

Seller's right, title and interest in and to the Station Assets to Buyer, free and clear of Liens, except for Permitted Liens.

ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES

Buyer hereby makes the following representations and warranties to Seller:

3.1 Organization. Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which the Station Assets are located. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, "Buyer Ancillary Agreements") and to consummate the transactions contemplated hereby.

3.2 Authorization. The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is, and each Buyer Ancillary Agreement when made by Buyer and the other parties thereto will be, a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflicts. Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

3.4 Qualification. To Buyer's knowledge: (a) Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Stations under the Communications Laws; (b) there are no facts that would, under existing law and the Communications Laws, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Stations; (c) no waiver of or exemption from any FCC rule or policy is necessary for the FCC Consent to be obtained; and (d) there are no matters which might reasonably be expected to result in the FCC's denial or delay of approval of the FCC Application.

ARTICLE 4: SELLER COVENANTS

4.1 Seller's Covenants. Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

(a) subject to the TBA, operate the Stations in the ordinary course of business and in all material respects in accordance with the Communications Laws and with all other applicable laws, regulations, rules and orders;

(b) not materially adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses;

(c) take all steps reasonably necessary to prepare, file and prosecute an application at the FCC for a license to cover the outstanding construction permit associated with WDBC(AM) (File No. BP-20160909ABN) (“License to Cover Application”);

(d) subject to the TBA, not, other than in the ordinary course of business, sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(e) not make any change in the Stations’ buildings, leasehold improvements or fixtures except in the ordinary course of business;

(f) not consent to the execution, placement, creation or amendment of easements, restrictions, rights-of-way or other matters adversely affecting title to the Real Property;

(g) maintain the Tangible Personal Property, Real Property and the Intangible Property in the ordinary course of business;

(h) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Stations;

(i) subject to the TBA, not enter into new contracts or agreements that will be binding upon Buyer after Closing or amend any existing Station Contracts without Buyer’s prior consent;

(j) not take any action that would make the consummation of this transaction contrary to the Communications Laws or require a waiver of the Communications Laws;

(k) not authorize or permit any officer, director or employee of Seller, or any investment banker, attorney, accountant or other advisor or representative retained by Seller to, solicit, initiate, encourage (including by way of furnishing information), endorse or enter into any agreement with respect to, or take any other action to facilitate, any inquiries or the making of any proposal that constitutes, or may reasonably be expected to lead to, any proposal to purchase, directly or indirectly, any of the Stations; and

(l) maintain in full force and effect policies of liability and casualty insurance of the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Stations.

ARTICLE 5: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

5.1 Confidentiality. Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including without limitation all financial information provided by Seller to Buyer) shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transaction contemplated by this Agreement.

5.2 Announcements. Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement.

5.3 Control. Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Stations prior to Closing. Subject to the TBA, and consistent with the Communications Laws, control, supervision and direction of the operation of the Stations prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

5.4 Risk of Loss.

(a) Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) If prior to the Effective Time any material item of Tangible Personal Property is damaged or destroyed, then:

(i) Seller shall use commercially reasonable efforts to repair or replace such item in all material respects in the ordinary course of business; and

(ii) if such repair or replacement is not completed prior to Closing, then the parties shall proceed to Closing (with Seller's representations and warranties deemed modified to take into account any such condition) and Seller shall take all responsibility, including all financial responsibility, associated with the prompt repair or replacement of such item in all material respects after Closing, including the prompt assignment to Buyer of any insurance proceeds that Seller receives (and Buyer will provide Seller access and any other reasonable assistance requested by Seller with respect to such obligation), except that if such damage or destruction materially disrupts (or is reasonably expected to materially disrupt) the operations of any Station, then Buyer may postpone Closing until the date five (5) business days after operations are restored in all material respects, subject to **Section 10.1**.

(c) If prior to Closing a Station is off the air or operating at a power level that results in a material reduction in coverage (a "Broadcast Interruption"), then Seller shall use commercially reasonable efforts to return such Station to the air and restore prior coverage as promptly as possible in the ordinary course of business. Notwithstanding anything herein to the contrary, if prior to Closing there is a Broadcast Interruption in excess of twenty-four (24) hours, then Buyer may postpone Closing until the date five (5) business days after the Station returns to the air and prior coverage is restored in all material respects, subject to **Section 10.1**.

5.5 Consents.

(a) The parties shall use commercially reasonable efforts to obtain (i) any third party consents necessary for the assignment of any Station Contract (which shall not require any payment to any such third party), and (ii) execution of reasonable estoppel certificates by lessors under any Real Property Leases requiring consent to assignment (if any), but no such consents or estoppel certificates are conditions to Closing except for the Required Consents. Receipt of consent to assign to Buyer the Station Contracts designated with a diamond on *Schedule 1.1(c)* (if any) is a condition precedent to Buyer's obligation to close under this Agreement ("Required Consents").

(b) To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing and is not also a Required Consent, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Seller's obligations arising under the Station Contract from and after Closing in accordance with its terms.

5.6 Notification of Certain Matters. Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to Seller, of: (i) any oral or written communication from the FCC concerning the FCC Application; (ii) any material inaccuracy in any representation or warranty made by such party to which such party is constructively aware, or (iii) any failure of the party to comply with or satisfy any material covenant, condition or agreement to be complied with or satisfied by such party under this Agreement to which such party is constructively aware; provided, however, that no such notification or failure to give notice shall affect the representations or warranties or covenants or agreements of the parties or the conditions to the obligations of the parties hereunder.

5.7 Employees. Buyer shall have no obligation to offer employment to any employee of Seller or the Stations. Buyer shall have no liability with respect to any such employee or for any such employee's benefits of any kind or nature, except to the extent that Buyer shall offer employment to any such employee and then only from and after the time at which such offer shall have been extended by Buyer and accepted by such employee, and subject to the terms and conditions thereof.

ARTICLE 6: SELLER CLOSING CONDITIONS

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

6.1 Representations and Covenants.

(a) The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements set forth in this Agreement to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) No governmental or judicial authority shall have enacted, enforced, issued or entered any law, rule, regulation or order, including in connection with any action or proceeding brought by a third party (not subsequently dismissed, settled or otherwise terminated), which prohibits or invalidates the transactions contemplated by this Agreement or any other Buyer Document or prevents, limits, restricts or impairs the ownership, use or operation of the Station Assets by Seller, other than an action or proceeding instituted by Seller;

(d) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in **Sections 6.1(a) and (b)** have been satisfied.

6.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

6.3 FCC Authorization. The FCC Consent pursuant to the FCC's initial order shall have been obtained.

6.4 Deliveries. Buyer shall have complied with its obligations set forth in **Section 8.2**.

ARTICLE 7: BUYER CLOSING CONDITIONS

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

7.1 Representations and Covenants.

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements set forth in this Agreement to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) No governmental or judicial authority shall have enacted, enforced, issued or entered any law, rule, regulation or order, including in connection with any action or proceeding brought by a third party (not subsequently dismissed, settled or otherwise terminated), which prohibits or invalidates the transactions contemplated by this Agreement or any other Seller Document or prevents, limits, restricts or impairs the ownership, use or operation of the Station Assets by Buyer, other than an action or proceeding instituted by Buyer;

(d) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized officer of Seller to the effect that the conditions set forth in **Sections 7.1(a) and (b)** have been satisfied.

7.2 Proceedings. Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

7.3 FCC Authorization. The FCC Consent shall have been obtained.

7.4 Deliveries. Seller shall have complied with its obligations set forth in **Section 8.1**.

7.5 Consents. The Required Consents (if any) shall have been obtained.

7.6 Lien Releases. All Liens, other than Permitted Liens, shall have been released, as evidenced by payoff letters from any party holding a Lien to be released at the Closing, and releases or UCC-3 termination statements sufficient to terminate Liens on the Station Assets acquired at such Closing; and

7.7 License to Cover Application. The License to Cover Application shall have been filed with the FCC and shall be valid in all material respects.

ARTICLE 8: CLOSING DELIVERIES

8.1 Seller Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer:

(a) certified copies of resolutions authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(b) the certificate described in **Section 7.1(c)**;

(c) an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;

(d) an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer;

(e) an assignment and assumption of leases assigning the Real Property Leases (if any) from Seller to Buyer;

(f) a bill of sale conveying the other Station Assets from Seller to Buyer;

(g) joint written instructions to the Escrow Agent directing the Escrow Agent to release the Deposit to the Seller;

(h) any deed(s) associated with the Real Property; and such other documents to be delivered by Seller hereunder as are reasonably necessary for Buyer to effectuate and document the transactions contemplated hereby; and

(i) any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 Buyer Documents. At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (a) the balance of the Purchase Price in accordance with **Section 1.5**;
- (b) joint written instructions to the Escrow Agent directing the Escrow Agent to release the Deposit to the Seller;
- (c) the Secured Promissory Note;
- (d) certified copies of resolutions authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;
- (e) the certificate described in **Section 6.1(c)**;
- (f) an assignment and assumption of contracts assuming the Station Contracts;
- (g) an assignment and assumption of leases assuming the Real Property Leases (if any);
- (h) such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

ARTICLE 9: SURVIVAL; INDEMNIFICATION

9.1 Survival. The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except as set forth in **Section 10.3**, and except that if within such twelve (12) month period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed. The right of any party to recover Damages (as hereinafter defined) on any Claim (as hereinafter defined) shall not be affected by the termination of any representations and warranties as set forth above, provided that notice of the existence of such claim has been given by the indemnified party to the indemnifying party prior to such termination.

9.2 Indemnification.

(a) Subject to **Section 9.2(b)**, from and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Buyer arising out of or resulting from:

- (i) any breach by Seller of its representations and warranties made under this Agreement; or

Agreement; or

- (ii) any default by Seller of any covenant or agreement made under this

- (iii) the Retained Obligations; or

- (iv) the business or operation of the Stations before the Effective Time, except for the Assumed Obligations.

(b) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Seller shall have no liability to Buyer under clause (i) of **Section 9.2(a)** except to the extent Buyer's aggregate Damages exceed ten percent (10%) of the sum of the Deposit and the Cash Amount, and (ii) the maximum aggregate liability of Seller under **Section 9.2(a)** shall be an amount equal to fifty percent (50%) of the sum of the Deposit and the Cash Amount.

(c) Subject to **Section 9.2(d)**, from and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

- (i) any breach by Buyer of its representations and warranties made under this Agreement; or

- (ii) any default by Buyer of any covenant or agreement made under this Agreement; or

- (iii) the Assumed Obligations; or

- (iv) the business or operation of the Stations after the Effective Time.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Buyer shall have no liability to Seller under clause (i) of **Section 9.2(c)** except to the extent Seller's aggregate Damages exceed ten percent (10%) of the sum of the Deposit and the Cash Amount, and (ii) the maximum aggregate liability of Buyer under **Section 9.2(c)** shall be an amount equal to fifty percent (50%) of the sum of the Deposit and the Cash Amount.

9.3 Procedures.

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in **Section 9.1**.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost (subject to the right of the indemnifying party to assume defense of or

opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim;

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim; and

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

ARTICLE 10: TERMINATION AND REMEDIES

10.1 Termination. Subject to **Section 10.3**, this Agreement may be terminated prior to Closing as follows:

(a) by mutual written consent of Buyer and Seller;

(b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement or the TBA and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below), provided Buyer is not also in breach of this Agreement or the TBA, as set forth in **Section 10.1(c)**;

(c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement or the TBA and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period, provided Seller is not also in breach of this Agreement or the TBA, as set forth in **Section 10.1(b)**; and provided further, that the Cure Period shall not apply to Buyer's obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing;

(d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date twelve (12) months after the date of this Agreement;

(e) by written notice of Seller to Buyer or Buyer to Seller if the FCC by Final Order (defined below) dismisses or denies the FCC Application, provided that the right to

terminate this Agreement under this **Section 10.1(e)** shall not apply to any party whose action or inaction in fulfilling a material obligation under this Agreement shall have been a cause for the failure of the FCC to dismiss or deny the FCC Application. In addition, either party may at its option terminate this Agreement upon five (5) business days' prior written notice to the other party in the event that the FCC should designate a hearing regarding the transaction proposed herein, and such termination shall be without liability to the other party unless the designation of such hearing is the result of the breach of any representation, warranty or covenant contained herein by the terminating party;

(f) by written notice of Seller to Buyer or Buyer to Seller if the FCC has not granted the FCC Application by the twelve (12) month anniversary of the date hereof, provided that the failure to obtain the FCC Consent shall not have been due to the action or inaction of the party seeking to exercise such termination right;

(g) by either Buyer or Seller if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become a "Final Order." For purposes of this Agreement, the term "Final Order" shall mean an order of the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which is not reversed, stayed, enjoined or set aside, and with respect to which no timely for stay, reconsideration, review, rehearing or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the FCC, and for any reconsideration, stay or setting aside by the FCC on its own motion or initiative has expired; or

(h) by written notice of Buyer to Seller, or of Seller to Buyer, if the TBA is validly terminated for any reason other than the Closing of the transactions that are the subject hereof.

10.2 Cure Period. Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date determined under **Section 1.8**; provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Closing Date determined under **Section 1.8**, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date determined under **Section 1.8**.

10.3 Survival. Except as provided by **Section 10.5**, the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, **Sections 1.6** (Deposit) (and **Section 10.5** with respect to the Deposit), **5.1** (Confidentiality) and **11.1** (Expenses) shall survive any termination of this Agreement. In addition, the representations and warranties set forth at **2.1 and 2.2** (Seller Organization and Authorization) and **2.14** (Taxes), as well as all representations and warranties relating to title to the Station Assets, shall survive indefinitely.

10.4 Liquidated Damages. If Seller terminates this Agreement pursuant to **Section 10.1(c)**, then Buyer instruct the Escrow Agent to release the Deposit to Seller, and such release shall constitute the total amount of liquidated damages and the sole remedy of Seller under this Agreement. Buyer acknowledges and agrees that Seller's recovery of such amount shall constitute payment of liquidated damages and not a penalty and that Seller's liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer's material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

10.5 Specific Performance as Remedy for Seller's Breach. Seller acknowledges and agrees that the Station Assets are unique assets not readily available on the open market, and in the event Seller shall fail to perform its obligations to consummate the transactions contemplated hereby, Seller acknowledges that money damages alone cannot adequately compensate Buyer for its injury and therefore Buyer shall be entitled to the remedy of specific performance, in addition to any other remedies it may seek at law or at equity, and Seller shall waive any and all defenses that Buyer has an adequate remedy at law. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

ARTICLE 11: MISCELLANEOUS

11.1 Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. All governmental fees and charges applicable to any requests for the FCC Consent shall be paid by the party upon whom the applicable governmental authority imposes the fee or charge (or shall be shared equally if not imposed upon either party). Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

11.2 Further Assurances. After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

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

11.4 Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to Seller: KMB Broadcasting, Inc.
2821 N Beechwood Circle
Arlington, VA 22207
Attn: Jim and Betsy Cooke

with a copy (which shall not constitute notice) to: Edinger Associates PLLC
1725 I Street, NW, Suite 300
Washington, DC 20006
Attn: Brook A. Edinger

if to Buyer: Aurora Media, LLC
P.O. Box 1011
Manistee, MI 49660
Attn: Todd Mohr

with a copy (which shall not constitute notice) to: Mark B. Denbo, Esq.
c/o Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, D.C. 20016

11.5 Amendments. No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

11.6 Entire Agreement. This Agreement (including the Schedules hereto) and the TBA constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Stations, which shall remain in full force and effect. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Seller makes no representation or warranty to Buyer with respect to any projections, budgets or other estimates of the Stations' revenues, expenses or results of operations, or, except as expressly set forth in Article 2, any other financial or other information made available to Buyer with respect to the Stations.

11.7 Severability. If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

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

11.9 Governing Law. The construction and performance of this Agreement shall be governed by the laws of the State of Michigan without giving effect to the choice of law provisions thereof.

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

11.11 Time of Essence. Time is of the essence of this Agreement in the performance of this Agreement and each and every provision hereof.

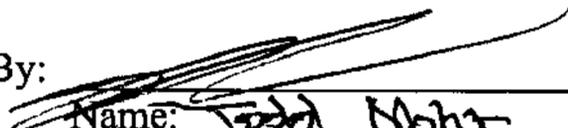
11.12 Unwind. The parties herein agree to close the transaction following the initial grant of the FCC Consent without allowing such consent to become a Final Order. If following Closing, the FCC Consent is reversed on reconsideration, review or appeal or otherwise overturned on its own motion and such reversal becomes a Final Order, the parties agree to cooperate and to take all necessary and advisable actions to unwind the transaction and to return the parties to the *status quo ante* within ninety (90) days thereof.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER: AURORA MEDIA, LLC

By: 
Name: Todd Mohr
Title: President

SELLER: KMB BROADCASTING, INC.

By: _____
Name:
Title:

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER: AURORA MEDIA, LLC

By: _____
Name:
Title:

SELLER: KMB BROADCASTING, INC.

By: James Cooke
Name: JAMES COOKE
Title: TREASURER