

## **ASSET PURCHASE AGREEMENT**

**This ASSET PURCHASE AGREEMENT** (this “**Agreement**”) is dated as of November 8, 2013, by and between **OBIDIA PORRAS**, an individual resident of the state of California (the “**Seller**”), and **NEW YORK BROADBAND LLC**, a limited liability company organized under the laws of the State of Delaware, or its permitted assignee (the “**Buyer**”).

### **R E C I T A L S**

**WHEREAS**, Seller holds licenses issued by the Federal Communications Commission (“**FCC**”) for digital low power television Station KVHD-LD, Channel 40, Glendale, California (FCC Facility ID No. 67901) (the “**Station**”); and

**WHEREAS**, Seller owns or leases certain other assets that are used or useful in the business and operations of the Station; and

**WHEREAS**, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Assets (as defined herein) for the price and on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

### **AGREEMENTS**

In consideration of the above recitals and of the mutual agreements and covenants contained in this Agreement, Buyer and Seller, intending to be bound legally, agree as follows:

#### **SECTION 1. PURCHASE AND SALE OF ASSETS**

1.1 **Agreement to Sell and Buy.** Subject to the terms and conditions set forth in this Agreement, upon the consummation of the purchase and sale (the “**Closing**”), Seller hereby agrees to sell, transfer, assign, and deliver to Buyer on the date of the Closing (the “**Closing Date**”), free and clear of debts, liens, and encumbrances, other than liens for taxes not yet due and payable, and Buyer agrees to purchase from Seller substantially all of the assets used or useful in the business and operation of the Station (the “**Assets**”), including:

(a) The licenses issued by the FCC for the Station and any and all other licenses, permits, registrations, or authorizations issued by the FCC and used or held for use in connection with the Station and any applications for modification or renewal of the same, including those listed on Schedule 1.1(a) hereto (the “**FCC Authorizations**”);

(b) Technical information and data, engineering records, files, and computer disks used by Seller in connection with the Station, and any and all records required by the FCC to be kept by the FCC Authorizations concerning the Station;

(c) Intellectual property and intangible property rights and interests issued to or owned by Seller and used or useful in the business and operations of the Station as set forth on Schedule 1.1(c);

(d) Each contract and lease agreement listed on Schedule 1.1(d) hereto and any other contract entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume (each a "**Contract**" and collectively the "**Contracts**"); and

(e) The tangible personal property used or held for use in the operation of the Station, listed on Schedule 1.1(e) hereto (the "**Tangible Personal Property**"), including all of Seller's right, title, and interest in and to all service agreements, maintenance agreements and express and implied warranties, if any, of third parties that are transferable and continue in effect following the Closing with respect to the Tangible Personal Property. The Tangible Personal Property shall include EAS units capable of receiving Common Alerting Protocol ("**CAP**") formatted EAS alerts in compliance with Part 11 of the FCC's rules and related policies.

Notwithstanding the foregoing, the following properties and assets shall not be included within the meaning of the term "**Assets**": the encoder and MUX used in the operation of the station, Seller's current month-to-month tower lease with American Tower (the "**Existing Tower Lease**"); Seller's cash or cash equivalents; records of Seller relating to tax matters; Seller's insurance policies and rights and claims thereunder; Seller's accounts receivable; all of Seller's claims, rights and interest in and to any refunds for federal, state or local income or other taxes or fees of any nature whatsoever for periods prior to the Closing Date; all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller; and Seller's studio facilities and Seller's lease therefor..

1.2 Purchase Price. The purchase price for the Assets shall be Three Million Three Hundred Fifty Thousand Dollars (\$3,350,000.00) (the "**Purchase Price**") payable as follows:

(a) Deposit. Within five (5) business days after full execution of this Agreement, Buyer shall deliver to Escrow Agent a deposit in the amount of five percent (5%) of the Purchase Price (i.e., One Hundred Sixty-Seven Thousand Five Hundred Dollars (\$167,500.00) (the "**Deposit**"). The Deposit shall be held pursuant to the terms of that certain Escrow Agreement between Seller, Buyer and Kalil & Co., as escrow agent ("**Escrow Agent**"), and shall be payable to the Seller at Closing (as defined below) as partial payment of the Purchase Price, or upon a certification by Seller that has not been timely contested by Buyer that (i) the conditions for closing under this Agreement (including but not limited to FCC approval of the assignment, securing of an acceptable new tower site lease with American Tower for the Station's licensed transmitter site (the "**New Tower Lease**"), and Seller's compliance with the terms and conditions of this Agreement) have been satisfied and (ii) Buyer has failed or refused to Close and tender the Purchase Price in accordance with this Agreement. In the event that the Closing does not occur for any reason other than Buyer's wrongful failure or refusal to Close and tender the Purchase Price to Seller, the Deposit and any interest accrued thereon shall be returned to Buyer.

(b) Cash. At Closing, (i) Buyer and Seller jointly shall release to Seller the Deposit, and unless otherwise directed, any interest thereon shall be delivered to Buyer, and (ii)

Buyer shall pay to Seller remainder of the Purchase Price by wire transfer of immediately available funds pursuant to wire instructions provided by Seller at least three (3) business days in advance of Closing.

1.3 Prorations. The Purchase Price shall be increased or decreased as required to effectuate the proration of the revenue and expenses of the Station as of the Closing Date. All revenue and all expenses relating to the Station, including business and license fees, personal property taxes, and assessments levied against the Assets, annual regulatory fees imposed by the FCC, and similar prepaid and deferred items (but excluding any proration of tower rent under the Existing Tower Lease, tower lease security deposit, utility charges), shall be prorated between Buyer and Seller in accordance with Generally Accepted Accounting Principles and the principle that Seller shall be entitled to all revenue and shall be responsible for all expenses, costs, and obligations allocable to the period prior to the Closing Date and Buyer shall be entitled to all revenue and shall be responsible for all expenses, costs, and obligations allocable to the period on and after the Closing Date. Seller and Buyer shall cooperate and use commercially reasonable efforts to agree upon such prorations as soon as practicable prior to the Closing Date. Any adjustment to the Purchase Price pursuant to this Section 1.3 will, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment by the appropriate party no later than sixty (60) days following the Closing Date.

1.4 Assignment and Assumption. As of the Closing Date, Seller shall assign and Buyer shall assume and undertake to pay, discharge, and perform all obligations and liabilities of Seller with respect to the Assets insofar as they relate to the time on and after the Closing Date. Without limiting the generality of the foregoing, Seller shall assign and Buyer shall assume and perform all obligations on and after the Closing Date under the Contracts assumed by Buyer. Buyer shall not assume any other obligations or liabilities of Seller.

1.5 Allocation. Seller and Buyer agree to allocate the Purchase Price among the Assets and the goodwill of the Station being purchased as set forth on Schedule 1.5. Seller and Buyer shall use such allocation for all purposes related to the valuation of the Assets, including, without limitation, in connection with any federal, state, county or local Tax returns filed after the Closing. Unless required to do so in accordance with a “determination” as defined in Section 1313(a) (1) of the Internal Revenue Code of 1986, as amended, neither Seller nor Buyer shall take any position in any Tax return, Tax proceeding, Tax audit or otherwise that is inconsistent with such allocation.

## **SECTION 2. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

2.1 Standing, and Authority. Seller is an individual residing in the state of California. Seller has all requisite authority to own, lease, and operate the Assets and to conduct the business of the Station as now being conducted. Seller has all requisite power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Seller hereunder and thereunder.

2.2 Authorization and Binding Obligation. This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

2.3 Absence of Conflicting Agreements. Subject to obtaining the consent of the FCC to assign the FCC Authorizations from Seller to Buyer (the "**FCC Consent**"), and subject to obtaining the consent of parties to the Contracts, where required, the execution, delivery, and performance of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with, result in a breach of, or constitute a default under, any law, judgment, order, ordinance, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality with jurisdiction over Seller; (ii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Seller is a party or by which Seller may be bound; and (iii) will not create any claim, liability, mortgage, lien, pledge, condition, charge, or encumbrance of any nature whatsoever upon the Assets.

2.4 FCC Authorizations and Station Operations. The FCC Authorizations listed on Schedule 1.1(a), exclusive of listed pending applications, have been validly issued and are in full force and effect, have not been revoked, suspended, canceled, rescinded or terminated and have not expired, and Seller is the authorized legal holder thereof. There are no other material permits, licenses, or authorizations that have been issued by any governmental agency relating to the Station. The FCC Authorizations comprise all of the authorizations required by the FCC for the operation of the Station as it is currently operated. The FCC Authorizations are not subject to any restriction or condition that would limit Buyer's ability to operate the Station as authorized on the face of the FCC Authorizations. There is not pending nor, to Seller's knowledge, threatened, any action by the FCC to revoke, cancel, rescind, modify, or refuse to renew in the ordinary course the FCC Authorizations. There is not now issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture against Seller with respect to the Station. Seller has not granted a waiver to any other station to cause prohibited interference to the Station. Except as set forth on Schedule 2.4, the Station is operating in material compliance with the FCC Authorizations and all applicable FCC rules and regulations. Seller does not own the tower from which the Station operates.

2.5 Consents. Except for the FCC Consent and any required consent noted on Schedule 1.1(d) hereto as "material," no consent, approval, permit, or authorization of, or declaration to or filing with, any governmental or regulatory authority, or any other third party (other than parties to the Contracts), is required to (i) consummate this Agreement and the transactions contemplated hereby or (ii) permit Seller to assign or transfer the Assets to Buyer.

2.6 Contracts. All of the Contracts, and the Existing Tower Lease (which will not be assigned) are in full force and effect and valid, binding, and enforceable in accordance with their terms, except as such enforceability may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies. Seller is not in material default under any Contract or the Existing Tower Lease

(which will not be assigned), and to Seller's knowledge, no other party to any Contract is in material default thereunder.

2.7 Tangible Personal Property. Seller has good title to each item of Tangible Personal Property, and none of the Tangible Personal Property is subject to any security interest, mortgage, pledge, conditional sales agreement, or other lien or encumbrance, except for liens set forth on Schedule 1.1(e) hereto, all of which shall be removed at or before the Closing. Any and all liens or encumbrances attaching between the date hereof and the Closing Date, shall be removed before the Closing.

2.8 Leased Real Property. Seller has good and valid leasehold rights under the Existing Tower Lease. Seller is not in material breach of or in material default under, nor has any event occurred which (with or without the giving of notice or the passage of time or both) would constitute a default by Seller under the Existing Tower Lease. To the knowledge of Seller, the lessor under the Existing Tower Lease is not in breach thereof or in default thereunder. Seller has full right and power to occupy or possess, as the case may be, the site covered by such agreement.

2.9 Environmental Matters.

(a) Seller has received no written notice of any investigation or inquiry by any governmental entity under any Applicable Environmental Laws (as defined below) relating to the ownership or operation of the Assets or the Station and (i) Seller has not disposed of any hazardous material (as defined below) on any of the Assets or the site used under the Existing Tower Lease, and (ii) to Seller's knowledge no condition exists on any of the Assets which would subject Seller or the Assets to any remedial obligations under any Applicable Environmental Laws.

(b) For purposes of this Agreement, "Applicable Environmental Laws" means any and all Applicable Laws pertaining to health, safety, or the environment in effect in any and all jurisdictions in which the Assets are located or in which Seller has conducted operations of the Station, including, without limitation, the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Rivers and Harbors Act of 1899, as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, and other environmental conservation or protection laws. For purposes of this Agreement, the term "hazardous material" means (i) any substance which is listed or defined as a hazardous substance, hazardous constituent, or solid waste pursuant to any Applicable Environmental Laws and (ii) petroleum (including crude oil and any fraction thereof), natural gas, and natural gas liquids.

2.10 Claims and Legal Actions. There is no claim, legal action, counterclaim, suit, arbitration, governmental investigation, or other legal, administrative, or tax proceeding, nor any order, decree, or judgment, in progress or pending or, to the knowledge of Seller threatened,

against or relating to the Station or the Assets, nor does Seller know or have reason to be aware of any basis for the same.

2.11 Tax Matters. Seller has (and as of the Closing Date will have) (i) duly filed all material, federal, state, and local tax returns reporting the results of operation of the Station required to be filed with the IRS or other applicable taxing authority, (ii) paid all material taxes due, or claimed by any taxing authority to be due, from or with respect to the Station, except taxes that are being contested in good faith by appropriate legal proceedings and for which adequate reserves have been set aside, and (iii) made all material deposits required with respect to taxes, in each such case to the extent that the failure to do so would have a material adverse effect on Seller, the Assets or the Station or would result in the imposition of any encumbrance on the Assets.

2.12 Broker. Neither Seller nor any person acting on Seller's behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

2.13 Disclaimer. No representation or warranty made by Seller in this Agreement, and no statement of Seller contained in any document, certificate or other writing furnished or to be furnished by Seller pursuant hereto or in connection herewith, contains or will contain, at the time of delivery, any untrue statement of a material fact or omits or will omit, at the time of delivery, to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they are made, not misleading. Seller knows of no matter which has not been disclosed to Buyer pursuant to this Agreement which has or, so far as Seller can now reasonably foresee, will have a material adverse effect on the Assets or the Station.

### **SECTION 3. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

3.1 Organization, Standing, and Authority. Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of State of Delaware. Buyer has all requisite power and authority to execute and deliver this Agreement and the documents contemplated hereby and to perform and comply with all of the terms, covenants, and conditions to be performed and complied with by Buyer hereunder and thereunder.

3.2 Authorization and Binding Obligation. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions on the part of Buyer. This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

3.3 Absence of Conflicting Agreements. Subject to obtaining the FCC Consent, the execution, delivery, and performance by Buyer of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both): (i) will not conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality

applicable to Buyer; and (ii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permits to which Buyer is a party or by which Buyer may be bound, such that Buyer could not acquire the Assets.

3.4 Broker. Neither Buyer nor any person acting on Buyer's behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement except to Kalil & Co., whose fee is the sole obligation of Buyer.

3.5 Qualifications. Subject to obtaining the FCC Consent, Buyer is, and at the Closing will be, legally, financially, and technically qualified under FCC standards to acquire and to hold the FCC Authorizations.

3.6 Litigation. There are no suits, arbitrations, administrative charges, or other legal proceedings, claims, or governmental investigations pending against or, to Buyer's knowledge, threatened against, Buyer relating to or affecting this Agreement or the transactions contemplated hereby nor, to Buyer's knowledge, is there any basis for any such suit, arbitration, administrative charge, or other legal proceeding, claim, or governmental investigation.

## **SECTION 4. COVENANTS PRIOR TO CLOSING**

From the date hereof until the Closing:

4.1 Restrictions on Certain Actions. Seller shall not cause or permit, by any act or failure to act, the FCC Authorizations to expire or be revoked, suspended, or modified, or take any action that could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation, or adverse modification of the FCC Authorizations. Seller shall not file any application to modify the FCC Authorizations. Seller shall not waive any material right relating to the Assets or the Station. Seller shall not mortgage or pledge any of the Assets or create or suffer to exist any encumbrance thereon; sell, lease, transfer, or otherwise dispose of, directly or indirectly, any of the Assets other than items that are replaced prior to the Closing Date with items of comparable or superior value and utility in the operation of the Station; amend, modify, or change any existing material lease, contract, permit, or agreement relating to the Station or the Assets, other than in the ordinary course of business consistent with past practice and except as specifically provided for herein or as may be required by order or regulation of the FCC; or acquire or enter into any new agreement or contract which will bind the Station beyond the Closing except as specifically provided for herein. Seller shall cause any agreement, including any programming agreement, not assumed by Buyer hereunder to be terminated no later than the Closing Date. Seller shall maintain the Tangible Personal Property in its current condition, ordinary wear and tear excepted, and maintain in effect its insurance policies on the Assets. Buyer may but will have no obligation to hire Seller or any principal or employee of Seller at or after Closing.

4.2 Notifications. Seller shall promptly notify Buyer in writing of any unusual or material developments with respect to the Assets or the Station, and of any material change in any of the information contained in Seller's representations and warranties contained in Section 2 of this Agreement. Buyer shall promptly notify Seller in writing of any material change in any of the information contained in Buyer's representations and warranties contained

in Section 3 of this Agreement. Seller shall provide Buyer with copies of all applications, filings, or notices filed with the FCC regarding the Station.

4.3 Tower Site Lease. Buyer shall use commercially reasonable best efforts to negotiate and obtain a commitment from American Tower to enter into the New Tower Lease for a term of at least two years from the Closing Date.

4.4 No Inconsistent Action. Neither Seller nor Buyer shall take any action that is inconsistent with their respective obligations under this Agreement or that could hinder or delay the consummation of the transactions contemplated by this Agreement.

4.5 Access. Buyer shall have the right, itself or through its representatives, during normal business hours and after reasonable notice to Seller, to inspect the Assets and Seller's records relating to the Station, including, without limitation, applications and reports to the FCC, and Seller shall furnish Buyer with such information respecting the Assets as Buyer may, from time to time, reasonably request.

4.6 Risk of Loss.

The risk of casualty loss, damage or destruction to any of the Tangible Personal Property (the "Damaged Asset") shall be borne by Seller at all times from the date of this Agreement until Closing on the Closing Date, and Seller shall repair or cause to be repaired and restore or replace the Damaged Asset to its condition prior to any such loss, damage or destruction. In the event of any casualty loss, damage or destruction to any of the Tangible Personal Property that results in a Broadcast Interruption (defined below) after the date of this Agreement, Seller shall promptly notify Buyer thereof in writing. In the event that the Damaged Asset is not repaired, replaced or restored on or before the scheduled Closing Date, the parties shall consummate the Closing and Buyer shall accept the Damaged Asset in its then condition, in which event the Purchase Price shall be reduced by the estimated cost of completion of repair, replacement or restoration. If the aggregate Purchase Price adjustment hereunder exceeds twenty-five (25%) percent of the Purchase Price, then either Seller or Buyer may, at its option, terminate this Agreement by written notice to the other.

## **SECTION 5. FCC CONSENT**

5.1 The assignment of the FCC Authorizations pursuant to this Agreement shall be subject to the prior consent and approval of the FCC. Seller and Buyer shall promptly prepare an application (FCC Form 345) for assignment of the FCC Authorizations from Seller to Buyer (or an affiliate or subsidiary of Buyer) (the "**Assignment Application**") and shall file the Assignment Application with the FCC within five (5) business days of the execution of this Agreement. The parties shall prosecute the Assignment Application with all reasonable diligence and otherwise use their reasonable commercial efforts to obtain a grant of the application as expeditiously as practicable; *provided, however*, that no party shall be required to participate in a trial-type hearing or a judicial appeal in pursuit of a grant. Each party shall bear its own costs in connection with the preparation, filing, and prosecution of the Assignment Application, except that Buyer and Seller shall each pay one-half of the FCC filing fee associated with the Assignment Application. Seller shall pay the requisite FCC filing fee at the time of



filing and, if not reimbursed by Buyer for one-half of the fee prior to the Closing Date, shall be entitled to a credit at closing for one-half of such filing fee.

## **SECTION 6. CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER AT CLOSING**

6.1 Conditions to Obligations of Buyer. All obligations of Buyer at the Closing are subject at Buyer's option to the fulfillment by Seller prior to or on the Closing Date of each of the following conditions:

(a) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time.

(b) Covenants and Conditions. Seller shall have performed and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date.

(c) Station Operations. The Station shall be on the air operating in compliance with its authorized facilities.

(d) FCC Consent. The FCC Consent shall have been granted, with no condition materially adverse to Buyer and, if so directed by Buyer pursuant to Section 7, shall have become a Final Order. Seller shall have complied with any conditions imposed on it by the FCC Consent.

(e) New Tower Lease. Buyer shall have been able to secure an acceptable New Tower Lease with American Tower for the Station's tower/transmitter, valid for at least two (2) years after Closing.

(f) Governmental Authorizations. Seller shall be the holder of the FCC Authorizations for the Station, and there shall not have been any modification of the FCC Authorizations that could have a material adverse effect on the operation of the Station as authorized in the FCC Authorizations. No proceeding shall be pending the effect of which could be to revoke, cancel, fail to renew, suspend, or modify adversely the FCC Authorizations.

(g) Consents. All Consents designated as "material" on Schedule 1.1(d) (the "**Material Consents**") shall have been obtained and delivered to Buyer.

(h) Deliveries. Seller shall deliver to Buyer on the Closing Date duly executed documents to convey to Buyer all of Seller's rights, title, and interest in and to the Assets, including but not limited to (i) bills of sale and assignments pursuant to which Seller shall convey to Buyer the Assets and (ii) a certificate from Seller confirming Seller's warranties, representations, and compliance with all covenants and obligations required hereunder to be complied with on or before the Closing.

(i) No Proceedings. There shall be no suit, action, claim, investigation, inquiry, or proceeding instituted or threatened or an order, decree or judgment of any court,

arbitrator, agency or governmental authority rendered which (i) questions the validity or legality of any transaction contemplated hereby, or (ii) seeks to enjoin any transaction contemplated hereby.

6.2 Conditions to Obligations of Seller. All obligations of Seller at the Closing are subject at Seller's option to the fulfillment by Buyer prior to or on 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 complete in all material respects at and as of the Closing Date as though made at and as of that time.

(b) Covenants and Conditions. Buyer shall have performed and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date.

(c) Deliveries. Buyer shall stand ready to deliver to Seller on the Closing Date the Purchase Price, as adjusted, and appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Assets as they relate to the time on or after the Closing Date.

(d) FCC Consent. The FCC Consent shall have been granted, with no conditions materially adverse to Seller, and Buyer shall have complied with any conditions imposed on it by the FCC Consent.

(e) No Proceedings. There shall be no suit, action, claim, investigation, inquiry, or proceeding instituted or threatened or an order, decree or judgment of any court, arbitrator, agency, or governmental authority rendered which (i) questions the validity or legality of any transaction contemplated hereby, or (ii) seeks to enjoin any transaction contemplated hereby.

## **SECTION 7. CLOSING**

Subject to the satisfaction or waiver of the conditions of Closing set forth in Sections 6.1 and 6.2, the Closing shall take place at 10:00 a.m. on a date within ten (10) business days after the initial grant of the FCC Consent, unless Buyer, in its sole discretion, elects to postpone the Closing until ten (10) calendar days after the FCC Consent shall have become a Final Order. For purposes of this Agreement, the term "Final Order" shall mean an order of the Commission (including action duly taken by the Commission's staff, pursuant to delegated authority) which is not reversed, stayed, enjoined, or set aside, and with respect to which no timely request 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 Commission, and for any reconsideration, stay, or setting aside by the Commission on its own motion or initiative, has expired. The Closing shall be held on the Closing Date by exchanging the closing documents required by this Agreement and such other closing deliveries as the parties may reasonably require by e-mail and facsimile (with originals to follow by mail) if reasonably feasible or otherwise at the offices of Buyer's counsel in Arlington, Virginia, and by

Buyer's delivery of the Purchase Price (adjusted as provided above) by wire transfer of immediately available funds.

## **[SECTION 8. RESERVED**

## **SECTION 9. TERMINATION**

9.1 Termination by Seller. This Agreement may be terminated by Seller and the purchase and sale of the Assets abandoned, if Seller is not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(a) Conditions. If the Deposit is not fully funded by Buyer within five (5) business days of the date of this Agreement; or if, on the date that would otherwise be the Closing Date, Seller shall have notified Buyer in writing that one or more of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied by Buyer or waived in writing by Seller and such conditions shall not have been satisfied by Buyer within ten (10) business days following such notice.

(b) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Seller that would prevent or make unlawful the Closing.

(c) Upset Date. If by twelve (12) months from the date of execution of this Agreement the Closing has not been consummated by the parties to this Agreement.

(d) Breach. If Buyer has failed to cure any material breach of any of its representations, warranties or covenants under this Agreement within ten (10) business days after Buyer has received written notice of such breach from Seller.

9.2 Termination by Buyer. This Agreement may be terminated by Buyer, provided that the Buyer is not then in material default, and the purchase and sale of the Assets abandoned and the Deposit and all interest accrued thereon returned to Buyer, upon the occurrence of any of the following:

(a) Conditions. If, on the date that would otherwise be the Closing Date, Buyer shall have notified Seller in writing that one or more of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied by Seller or waived by Buyer, and such conditions shall not have been satisfied by Seller within ten (10) business days following such notice.

(b) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Buyer that would prevent or make unlawful the Closing.

(c) Upset Date. If within twelve (12) months from the date of execution of this Agreement the Closing has not been consummated by the parties to this Agreement.

(d) Breach. If Seller has failed to cure any material breach of any of its representations, warranties, or covenants under this Agreement within thirty (30) calendar days after Seller has received written notice of such breach from Buyer.

9.3 Rights on Termination. If this Agreement is terminated pursuant to Section 9.1 or 9.2 and neither party is in material breach of any provision of this Agreement, the parties hereto shall not have any further liability to each other with respect to the purchase and sale of the Assets, and Buyer shall be entitled to a return of the Deposit and all interest accrued thereon. Buyer agrees that in the event Seller terminates this Agreement pursuant to Section 9.1(d), Seller shall be entitled to release of the Deposit and any interest accrued thereon as liquidated damages, which shall be Seller's sole and exclusive remedy for a breach by Buyer of this Agreement. The parties acknowledge and agree that payment of such amount shall constitute payment of liquidated damages and is not a penalty and that the liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by 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. If the FCC Consent shall not have been granted and the transaction consummated within twelve (12) months of this Agreement, or if Buyer terminates this Agreement pursuant to Section 9.2, then this Agreement shall terminate and Buyer shall be entitled to a return of the Deposit and any interest accrued thereon. If Buyer terminates this Agreement pursuant to Section 9.2(d) as a result of Seller's material breach of this Agreement, Buyer shall be entitled to have all rights and remedies available at law or equity.

## **SECTION 10. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; CERTAIN REMEDIES.**

10.1 Representations and Warranties. All representations and warranties contained in this Agreement shall be deemed continuing representations and warranties and shall survive the Closing for a period of twelve (12) months. Any investigations by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, or covenant contained in this Agreement. No notice or information delivered by either party shall affect the other party's right to rely on any representation or warranty made by such party or relieve such party of any obligations under this Agreement as the result of a breach of any of its representations and warranties.

10.2 Indemnification by Seller. Seller hereby agrees to indemnify and hold Buyer harmless against and with respect to, and shall reimburse Buyer for any and all losses, liabilities, or damages (including reasonable legal fees and expenses) resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant by Seller contained in this Agreement; or in any certificate, schedule, document, or instrument delivered to Buyer under this Agreement; or from claims arising from the operation of the Station prior to the Closing.

10.3 Indemnification by Buyer. Buyer hereby agrees to indemnify and hold Seller harmless against and with respect to, and shall reimburse Seller for any and all losses, liabilities, or damages (including reasonable legal fees and expenses) resulting from any untrue representation, breach of warranty, or nonfulfillment of any covenant by Buyer contained in this Agreement; or in any certificate, schedule, document, or instrument delivered to Seller under this Agreement; or from claims arising from the operation of any of the Station after Closing.

10.4 Limits on Indemnification. Notwithstanding the provisions of Sections 10.2 and 10.3, the maximum liability of the indemnifying party to the indemnified party for all claims, in the aggregate, shall be 20% of the Purchase Price. No indemnification shall be required to be made by either party hereto until the aggregate amount of all indemnification claims against such indemnifying party exceeds Ten Thousand Dollars (\$10,000.00), and then only the amount in excess of \$10,000 may be claimed. The indemnification provisions in this Section 10 sets forth the exclusive remedies of the parties hereto following the Closing for a breach of a representation, warranty or covenant under this Agreement or any other claims relating to this Agreement.

10.5 Defense. With respect to claims made under Sections 10.2 or 10.3, the indemnified party must notify the indemnifying party of any third party claim promptly after learning of such claim and in time to permit the indemnifying party to assert a timely defense. An indemnifying party may not settle a third party claim without the consent of the indemnified party unless the settlement includes a complete release of the indemnified party from liability to the claimant and no payment by the released party.

10.6 Specific Performance. Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, in the event of failure or threatened failure by Seller to comply with the terms of this Agreement, Buyer shall have the right specifically to enforce Seller's performance under this Agreement as its sole remedy, subject to obtaining any necessary Commission consent, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

## **SECTION 11. MISCELLANEOUS.**

11.1 Attorneys' Fees. In the event of a default by either party that results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses.

11.2 Fees and Expenses. Any federal, state, or local sales or transfer tax arising in connection with the conveyance of the Assets by Seller to Buyer pursuant to this Agreement shall be paid by Seller. Except as otherwise provided in this Agreement, each party shall pay its own expenses incurred in connection with the authorization, preparation, execution, and performance of this Agreement, including all fees and expenses of counsel, accountants, agents, and representatives, and each party shall be responsible for all fees or commissions payable to any finder, broker, advisor, or similar person retained by or on behalf of such party.

11.3 Notices. All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be (a) in writing, (b) delivered by personal delivery, or sent by commercial delivery service or registered or certified mail, return receipt requested, sent by telecopy or facsimile transmission, with receipt of a confirmation answerback, or sent by electronic mail, with confirmation of receipt requested, (c) deemed to have been given on the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt, and (d) addressed as follows:

If to Seller:

Mrs. Obidia Porras  
12601 El Dorado Place  
Victorville, CA 92393  
Fax: \_\_\_\_\_  
Email: [obiporras@aol.com](mailto:obiporras@aol.com)

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

Sciarrino & Shubert, PLLC  
Attn: Shelley Sadowsky, Esq.  
5938 Dorchester Way  
Rockville, MD 20852  
Fax: 703-991-7120  
Email: [shelley@sciarrinolaw.com](mailto:shelley@sciarrinolaw.com)

If to Buyer:

New York Broadband LLC  
Attn: Charles M. Naumer, Managing Member  
1580 Lincoln St., Suite 520  
Denver, CO 80203  
Fax: (303) 997-0277  
Email: [cnaumer@cmmbusa.com](mailto:cnaumer@cmmbusa.com)

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

Fletcher Heald & Hildreth PLC  
Attn: Peter Tannenwald, Esq./Kathleen Victory, Esq.  
1300 N. 17<sup>th</sup> St., Suite 1100  
Arlington, VA 22209  
Fax: (703) 812-0486  
Email: [tannenwald@fhhlaw.com](mailto:tannenwald@fhhlaw.com)/[victory@fhhlaw.com](mailto:victory@fhhlaw.com)

or to any other or additional persons and addresses as the parties may from time to time designate in a writing delivered in accordance with this Section 11.3.

11.4 Entire Agreement; Amendment. This Agreement supersedes all prior agreements and understandings of the parties, oral and written, with respect to its subject matter. This Agreement may be modified only by an agreement in writing executed by all of the parties thereto. No waiver of compliance with any provision of this Agreement will be effective unless evidenced by an instrument evidenced in writing and signed by the parties thereto.

11.5 Further Assurances. From time to time after the date of execution hereof, the parties shall take such further action and execute such further documents, assurances and certificates as either party reasonably may request of the other to effectuate the purposes of this Agreement.

11.6 Counterparts. 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, and shall become effective when each of the parties hereto shall have delivered to it this Agreement duly executed by the other parties hereto, and shall be considered as compliant under the Electronic Signature Act, and shall have the same full force and effect as if an original executed copy of this Assignment and Assumption had been delivered.

11.6 Headings. The headings in this Agreement are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

11.7 Governing Law. This Agreement shall be construed in a manner consistent with federal law and otherwise under and in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of law.

11.8 Arbitration. Except as otherwise provided to the contrary below, any dispute arising out of or related to this Agreement that Seller and Buyer are unable to resolve by themselves shall be settled by alternative dispute resolution. In the absence of an agreement to mediate or if mediation fails, disputes shall be resolved by arbitration by a panel of three (3) neutral arbitrators who shall be selected in accordance with the procedures set forth in the commercial arbitration rules of the American Arbitration Association; provided, however, that the parties may agree to use a single mediator. The persons selected as arbitrators shall have prior experience in the broadcasting industry but need not be professional arbitrators, and persons such as lawyers, accountants, brokers and bankers shall be acceptable. Before undertaking to resolve the dispute, each arbitrator shall be duly sworn faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of his or her understanding. The arbitration hearing shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association in Washington, D.C. The written decision of a majority of the arbitrators shall be final and binding on Seller and Buyer. The costs and expenses of the arbitration proceeding shall be awarded to Seller and/or Buyer, as applicable, in accordance with the requirement of Section 11.1, and the amount of such award shall be set forth in the decision and award of the arbitrators. The arbitrators shall not have any authority to award punitive damages, treble damages, consequential or indirect damages, or any other damages not measured by the prevailing party's actual damages. Judgment on the award, if it is not paid within thirty days, may be entered in any court having jurisdiction over the matter. No action at law or suit in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by Seller or Buyer against the other except (i) an action to compel arbitration pursuant to this Section, or (ii) an action to enforce the award of the arbitration panel rendered in accordance with this Section.

11.9 Benefit and Binding Effect; Assignability. This Agreement shall inure to the benefit of and be binding upon Seller, Buyer and their respective heirs, successors, and permitted assigns. Neither Buyer nor Seller may assign this Agreement without the prior written consent of the other, except that Buyer may assign its rights and obligations to an entity in which Buyer or Buyer's owners have a majority ownership interest.

11.10 Confidentiality. Except as necessary for the consummation of the transaction contemplated by this Agreement, and except as and to the extent required by law, each party will keep confidential any information obtained from the other party in connection with the transactions contemplated by this Agreement. If this Agreement is terminated, each party will return to the other party all information obtained by such party from the other party in connection with the transactions contemplated by this Agreement which information is not readily available from other sources. Notwithstanding anything in this Agreement to the contrary, the obligations contained in this Section 10.10 shall indefinitely survive the termination of this Agreement.

11.11 No Solicitation. From the date hereof until the Closing Date or the effective date of a termination of this Agreement, neither Seller nor her agents, employees, or representatives shall, directly or indirectly, (i) solicit, initiate or encourage submission of any proposal or offer from any person relating to any acquisition or purchase of the Stations or all or any substantial amount of the assets subject to the this Agreement (an “**Acquisition Transaction**”) or (ii) participate in any discussion or negotiations regarding, or furnish to any person any information with respect to, or otherwise cooperate in any way, or assist or participate in, facilitate or encourage, any effort or attempt by any person to enter into an Acquisition Transaction.

[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF**, the parties hereto have duly executed this Asset Purchase Agreement as of the day and year first above written.

**SELLER:**

  
OBIDIA PORRAS

**BUYER:**

**NEW YORK BROADBAND LLC**

By: \_\_\_\_\_  
Charles M. Naumer  
Managing Member

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Asset Purchase Agreement as of the day and year first above written.

**SELLER:**

\_\_\_\_\_  
OBIDIA PORRAS

**BUYER:**

**NEW YORK BROADBAND LLC**

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



Charles M. Naumer  
Managing Member

**Schedule 1.1(a)**  
**FCC Authorizations**

**KVHD-LD, Ch. 40, Glendale, California, FCC Facility ID 67901**

License: FCC File No. BLDTL-20110207AEJ, expires December 1, 2014, unless renewed.

Pending displacement application: FCC File No. BDISDVL-20110826AA