

## **DONATION AGREEMENT**

**THIS DONATION AGREEMENT** (this “Agreement”) is made on this 11th day of October, 2011, by and between WZEZ, Inc. and Hoffman Communications, Inc. (“Hoffman”), each a Virginia for-profit corporation (collectively, the “Licensees” or “Donors”), and Delmarva Educational Association, a Virginia non-profit corporation classified as a public charity pursuant to Sections 501(c)(3) and 509(a) of the Internal Revenue Code of 1986, as amended (the “Code”) (the “Donee”). The Licensees and Donee are sometimes individually referred to in this Agreement as a “Party” and collectively as the “Parties.”

### **WITNESSETH**

**WHEREAS**, WZEZ, Inc. is the duly authorized Federal Communications Commission (“FCC”) licensee of Station WZEZ(FM) (Facility Id. 87127), licensed to Goochland, Virginia; and

**WHEREAS**, Hoffman is the duly authorized FCC licensee of Station WGGM(AM), (Facility Id. 27440), Chester, Virginia (together with WZEZ(FM), the “Stations”); and

**WHEREAS**, Licensees desire to make a charitable contribution to Donee, a charitable organization duly qualified as such under applicable provisions of the Internal Revenue Code and the Code of Virginia, of all rights, title, and interest in and to substantially all of the assets of the Stations, subject to the terms and conditions stated herein; and

**WHEREAS**, Donee desires to receive and own the Stations and their assets under the terms and conditions stated herein; and

**WHEREAS**, the consummation of this Agreement is subject to the prior consent of the FCC.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained, it is hereby agreed as follows:

1. **ASSETS**. Subject to the prior approval of the FCC, the Licensees agree to donate, transfer, assign, convey, and deliver to Donee, and Donee agrees to receive and accept, free and clear of all liabilities, debts, liens, charges, assessments and encumbrances of any kind (except as specifically contemplated herein), any and all of the following (collectively referred to hereinafter as the “Donated Assets”):

- (a) licenses, authorizations or other rights of any kind issued or granted by the FCC to Licensees with respect to the Stations (the “Licenses”), as described in Schedule 1(a) attached hereto;
- (b) the real property and improvements thereon being twenty-seven (27) acres of land, more or less, for WGGM(AM) station’s tower site located at 10610 Jefferson Davis Highway and 10300 Brightwood Avenue,

Chesterfield County, Virginia (the “Real Property”), as described in Schedule 1(b), and the broadcast tower, transmission building and equipment situated on said property;

- (c) the assignment of that certain 70 year ground lease for location of the 500’ broadcast tower in Goochland County, Virginia from which the signal for WZEZ-FM is broadcast, dated October 3, 2005, and assigned to Goochland Tower Site, LLC (the “Lessor”) in an assignment agreement dated October 1, 2006 (the “FM Tower Ground Lease”), as described in Schedule 1(c), and the broadcast tower, FM Antenna, transmission building and equipment situated in Goochland County under the terms of the aforesaid FM Tower Ground Lease;
- (d) broadcast transmission and production equipment used and useful in the operation of the Stations (the “Equipment”) listed in Schedule 1(d);
- (e) certain intangible property of the Station (“Intangible Property”) listed in Schedule 1(e); and
- (f) FCC files and records pertaining to the Stations (the “FCC Records”).

The Donated Assets shall specifically exclude:

- (g) all cash, bank accounts, depository receipts and accounts receivable of Donors;
- (h) any accounts receivable for advertising time purchased prior to the Closing Date (as defined herein) and which air on or after the Closing Date for a period of One Hundred Twenty (120) days following the Closing Date, which Donee shall collect and remit to Donors; and
- (i) life insurance, liability insurance or property insurance policies or proceeds.

2. **CHARITABLE CONTRIBUTION.** Subject to the terms and conditions of this Agreement (which include prior approval and consent of the FCC), Donors agree to make a charitable contribution of, and Donee agrees to accept, the Donated Assets. Licensees agree to convey the Donated Assets to Donee as a gift and, as such, will not require any form of payment from Donee in exchange for said gift, provided that Donee shall perform the covenants and obligations contained herein. Licensees shall engage one or more qualified appraisers to appraise the value of the Donated Assets (the “Appraisal Value”) and may seek charitable donation deductions to the extent allowable under the Internal Revenue Code of 1986, as amended (the “Code”), based upon such Appraisal Value. Donee shall provide any cooperation, further assistance and documentation to Licensees necessary to satisfy the requirement of any federal or state tax or regulatory authority with respect to each Licensee’s claim of a charitable donation deduction, including but not limited to documentation to confirm the delivery of the Donated

Assets to Donee. Recognizing that this gift and donation is for charitable purposes, for a period of three (3) years following the Closing Date (the “Retention Period”), the Donee shall provide written notice to Licensees of any decision by Donee’s board of directors to divest, by gift or by sale, the Donated Assets; moreover, during the Retention Period (and subject to FCC approval), Donor shall only convey, by gift or by sale, the Donated Assets, including assignment of the FCC Licenses, to a non-profit corporation or entity which is qualified as a Section 501(c)(3) entity pursuant to the Code.

3. **LICENSEES COVENANTS AND WARRANTIES.** Licensees hereby covenant and warrant as follows:

- (a) that the FCC Licenses are in full force and effect.
- (b) that the Licensees know of no reason why the FCC Licenses would not be renewed in the ordinary course;
- (c) that the Licensees have good marketable title to all owned Donated Assets;
- (d) that the Licensees will convey said Donated Assets to Donee in “as is” condition on the Closing Date without representations or warranties of any kind, express or implied, whether relating to the conformance of the Donated Assets to requirements of the Stations’ FCC Licenses, applicable rules and regulations of the FCC, or otherwise;
- (e) that the FM Tower Ground Lease is in good standing and in full force and effect;
- (f) that the Licensees will deliver the Donated Assets at Closing free and clear of all liabilities, debts, liens, claims, charges, assessments or other encumbrances of any kind;
- (g) that the Licensees have full power and authority to enter into and perform this Agreement and that this Agreement will constitute a valid and binding Agreement of Licensees enforceable in accordance with its terms;
- (h) that the Licensees are responsible for all liabilities and other obligations to all current employees of the Stations and any employees hired by the Licensees up to and including the Closing Date. It is understood and agreed by the Parties hereto that Donee assumes no liabilities or obligations whatsoever for the Stations’ current employees, and is under no obligation to hire any such employees; and

- (i) that, as of the Closing Date, the Licensees will have paid all tangible and intangible taxes and assessments, rents, water, sewer, and other utility charges or assessments then due relating to the Donated Assets, if any.

4. **DONEE'S COVENANTS AND WARRANTIES.** Donee hereby covenants and warrants as follows:

- (a) Donee is a non-profit corporation duly formed, validly existing and in good standing under the laws of the State of Virginia. Donee is recognized by the Internal Revenue Service as a tax-exempt organization and public charity under Sections 501(c)(3) and 509(a)(3) of the Code;
- (b) Donee has the full legal right, power and authority required to enter into, execute and deliver this Agreement, and to perform fully its obligations hereunder. This Agreement has been duly authorized, executed and delivered by an authorized officer of the Donee, and is the legal, valid and binding obligation of the Donee, enforceable against the Donee in accordance with its terms;
- (c) Donee agrees to indemnify, defend, and hold harmless the Donors from, against, for and in respect of and to any and all direct or indirect damages, losses, liabilities, deficiencies, fines, settlement costs, and/or other costs and expenses (including attorneys' fees and court costs) incurred or accrued by the Donors in this Section 4 (i) for any material inaccuracy, untruth, incompleteness by the Donee contained herein; (ii) for any act of omission or commission by the Donee which constitutes a material breach by the Donee of any warranty, representation, or other commitment set forth in this Agreement; and (iii) any act of gross negligence or willful misconduct on the part of Donee in its ownership of the Donated Assets, which causes economic damage to the Donor;
- (d) Prior to Closing, Donee will have inspected the Donated Assets to be conveyed pursuant to the terms of this Agreement and found each item to be in satisfactory condition and suitable for Donee's purposes;
- (e) Donee understands and acknowledges that the FM Tower to be conveyed among the Equipment is subject to a conditional use permit issued by the Goochland County Board of Supervisors (the "Permit") and Donee agrees, at Closing, to be bound by the terms of that Permit;
- (f) Donee is legally and financially qualified to hold the FCC Licenses and Donee knows of no reason why it should not be approved to become the FCC Licensee of the Stations;
- (g) Donee intends to use the Donated Assets for a purpose related to its 501(c)(3) tax exempt purposes; and

- (h) Except as otherwise provided in this Agreement, the Donee shall bear all expenses in connection with the consummation of this transaction, e.g. attorney's fees, filing fees typically paid for by an assignor and assignee of an FCC license, and all recordation taxes or closing costs typically paid by a grantor and grantee of real property.

5. **FCC ASSIGNMENT APPLICATION.** The Parties agree to file applications with the FCC seeking consent to the assignment of the FCC Licenses to Donee within five (5) business days after executing this Agreement and to cooperate fully and diligently in seeking the FCC's consent to assignment of the FCC Licenses from Licensees to Donee (the "Assignment Applications"). Donee alone will bear the costs of any FCC fees and attorneys' fees required for filing Assignment Applications.

6. **FCC ACTION.** If the FCC has refused or failed to grant its written consent to assignment of either or both Stations' FCC Licenses on or before October 1, 2012, either Party hereto may terminate this Agreement by giving the other Party written notice of such intent. Upon the exercise of a Party's right to terminate this Agreement in accordance with this Section 6, neither Party shall have any further rights, duties, obligations, or liabilities under this Agreement to the other Party.

7. **CLOSING.** Closing (the "Closing") shall take place at the Hoffman Company, 2461 Eisenhower Avenue, Alexandria, Virginia 22331-0100 within ten (10) business days after the date of the grant of FCC consent to the assignment of the FCC Licenses (the "Closing Date").

8. **TERMINATION.** In addition to termination rights under Section 6 above, in the event that prior to Closing, the Donated Assets are damaged or destroyed such that either of the Stations is rendered inoperable for a period of thirty (30) days or more, or if condemnation proceedings are commenced against the Donated Assets such that the Station or Stations is rendered inoperable for a period of thirty (30) days or more, either Party shall have the right to terminate this Agreement, exercisable by giving written notice of such decision to the other Party within ten (10) days after receiving written notice of such damage, destruction, or condemnation proceedings. Upon a Party's exercise of its right to terminate this Agreement in accordance with the provisions of Section 6 or this Section 8, neither Party shall have any further rights, duties, obligations, or liabilities under this Agreement to the other Party.

9. **STATION CONTROL.** Prior to Closing, each Licensee shall have complete control over the Donated Assets and operation of its respective Station. After first obtaining the Donors' consents, Donee shall have the right to reasonable access to logs and other records as to the operation of the Stations prior to Closing and to inspect the Donated Assets. Upon Closing and the transfer and assignment of the Donated Assets, as contemplated herein, the Donee shall have complete control over the Donated Assets and operation of the Stations.

10. **INDEMNIFICATION.**

- (a) Licensees hereby agrees to indemnify, defend, save, and hold Donee harmless with respect to any and all claims, losses, obligations, liabilities, costs and expenses, including reasonable counsel fees, threatened, suffered, incurred, or sustained by Donee by reason of any misrepresentations by Licensees or any breach by Licensees of this Agreement or of any of Licensees' warranties, covenants, or representations contained in this Agreement, or arising from or by reason of Licensees' ownership of the Donated Assets or operation of the Stations prior to the Closing Date hereunder, or arising out of any breach by Licensees of the FM Tower Ground Lease or of any other agreements which might be assigned to Donee hereunder because of events occurring prior to the Closing Date. This Section 10(a) shall survive Closing for one (1) year.
- (b) Subject to the limitations of the laws of the State of Virginia, Donee hereby agrees to indemnify, defend, save, and hold Licensees harmless with respect to any and all claims, losses, obligations, liabilities, costs, and expenses, including reasonable counsel fees, threatened, suffered, incurred, or sustained by Licensees by reason of any misrepresentations by Donee or any breach by Donee of this Agreement or of any of Donee's warranties, covenants, or representations contained in this Agreement or arising from or by reason of Donee's ownership of the Donated Assets or operation of the Stations subsequent to the Closing Date hereunder or arising out of any breach by Donee of the FM Tower Ground Lease assigned to the Donee hereunder because of events occurring after the Closing Date hereunder. This Section 10(b) shall survive Closing for one (1) year.

11. **CLOSING DOCUMENTS AND OBLIGATIONS.**

- (a) Licensees will at Closing execute and deliver to Donee customary assignments, instruments, and other documents sufficient to grant to Donee title to the Donated Assets, free and clear of liabilities, debts, claims, assessments, liens and other encumbrances of any kind.
- (b) The Parties shall, at Closing, execute a Form 8283 charitable income tax donation receipt, in amount and form approved by Donors.
- (c) The Donee will, at Closing, execute an assignment and acceptance of the FM Tower Ground Lease and substitute the Donee as the Guarantor of the FM Tower Ground Lease in place of Hoffman Communications, Inc., by such instruments as are reasonably acceptable to all Parties. All Parties shall use good faith efforts to secure the consent of the Lessor to the substitution of the Donee for Hoffman Communications, Inc., as the

Guarantor of the FM Tower Ground Lease under that Guaranty of Lease dated October 3, 2005 (the "Guaranty"). All rent and other payments due under the FM Tower Ground Lease through the Closing Date will be paid by Donors and all Rent and other payments due under the FM Tower Ground Lease following the Closing Date will be paid by Donee. The Donors will cause to be drafted, at their expense, the necessary assignment and substitution of guarantor agreements or instruments. If for whatever reason the consent of the Lessor of the FM Tower Ground Lease cannot be obtained for the substitution of the Guarantor despite the fact that the Donor has the right to assign the Lease, the Donee will execute an indemnification and hold harmless agreement in favor of the Donors and Hoffman Communications, Inc. as security for any call under the Guaranty for the Donee's default under the FM Tower Ground Lease and any costs or expenses incurred by the Guarantor in connection with a demand or claim made by the Lessor against the Guarantor in a form reasonably acceptable to Donor.

- (d) Effective on the Closing Date, risk of loss for the Donated Assets shall transfer to the Donee and all financial obligations associated with the Donated Assets shall be the responsibility of the Donee, e.g., real estate taxes, utilities, FM Tower Ground Lease rents, music license agreement fees, insurance, maintenance, repair, and replacement costs.
- (e) The operation of the Station and normal operating expenses attributable thereto through 11:59:59 p.m. (Eastern Time) at the end of the Closing Date (the "Effective Time") shall be for the account of Donors and thereafter for the account of Donee and, if any income or expense is properly allocable or credited, then it shall be allocated, charged or prorated accordingly, subject to Section 1(h) hereof. Expenses for goods or services received both before and after the Effective Time, power and utilities charges, frequency discounts, prepaid cash (excluding deposits), and rents and similar prepaid and deferred items shall be prorated between Donors and Donee as of the Effective Time. At Closing, the parties shall make all known prorations and estimate any remaining prorations.

12. **NOTICES**. All notices required or permitted to be given under the provisions of this Agreement shall be in writing, delivered by personal delivery, or sent by commercial delivery service or certified mail, return-receipt requested. Notices shall be 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. Notices shall be addressed as follows:

If to Licensees:           Stations WZEZ and WGGM  
                                  c/o Hoffman Company  
                                  2461 Eisenhower Ave.  
                                  Alexandria, VA 22331  
                                  Attn: Lauren K. Douglas, Esq.

If to Donee: Delmarva Educational Association  
3780 Will Scarlet Road  
Winston-Salem, NC 27104  
Attn: Nancy Epperson

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

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209  
Attn: James P. Riley, Esq.

13. **STRICT COMPLIANCE**. No failure of a Party to exercise any right or to insist upon strict compliance by the other Party with any obligations and no custom or practice of the Parties at variance with this Agreement shall constitute a waiver of the right of a Party to demand strict and exact compliance. Waiver by one Party of any particular default by the other Party shall not affect or impair a Party's rights in respect to a subsequent default of the same or of a different nature, nor shall any delay or omission of a Party to exercise any rights arising from such default affect or impair the rights of that Party as to such default or any subsequent default.

14. **ASSIGNMENT**. Except as is provided in this Section 14 and in Section 15 of this Agreement, no Party shall assign any right under this Agreement nor delegate any duty under this Agreement unless the other Parties have consented to any such assignment or delegation in writing. This document shall be binding on the heirs, successors, and assigns of the Parties hereto.

15. **SEVERABILITY AND INDEPENDENT COVENANTS**. If any covenant or other provision of this Agreement is invalid, illegal, or incapable of being enforced by reason of any law, administrative order, judicial decision, or public policy, all other conditions and provisions shall remain in full force and effect. No covenant shall be deemed dependent upon any other covenant or provision unless so expressed in this Agreement.

16. **FURTHER ASSURANCES**. The Parties shall take any actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this Agreement. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third person, to create the relationship of principal and agent, or partnership, of joint venture, of trustee and beneficiary, or of any association between the Donor and Donee. Time shall be of the essence in the performance of obligations in this Agreement.

17. **GOVERNING LAW**. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Virginia, without regard, however, to the choice of law provisions thereof which may direct the application of the laws of another jurisdiction. The Parties agree that the exclusive forum and the site for the resolution of any

dispute arising out of, under or related to the transactions contemplated by this Agreement shall be exclusively before the federal and state courts located in the City of Alexandria, Virginia.

18. **ENTIRE AGREEMENT.** This Agreement, the Schedules hereto, and all documents, certificates, and other documents to be delivered by the Parties pursuant hereto collectively represent the entire understanding and agreement between Licensees and Donee with respect to the subject matter of this Agreement. This Agreement supersedes all prior negotiations among the Parties and cannot be amended, supplemented, or changed except by an agreement in writing that makes specific reference to this Agreement and that is signed by the Party against which enforcement of any such amendment, supplement, or modification is sought.

19. **WAIVER OF COMPLIANCE; CONSENTS.** Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver of failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement, or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance set forth in this Section 19.

20. **ATTORNEYS FEES.** In the event of a default by either Party which results in a judgment, award of damages or adverse ruling in a lawsuit or other legal proceeding for any remedy available under this Agreement, the non-defaulting or non-breaching Party which is the beneficiary of the judgment, award or ruling shall be entitled to reimbursement from the breaching party of its reasonable legal fees and expenses.

21. **COUNTERPARTS.** This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument.

*[The remainder of this page intentionally left blank.]*

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

**LICENSEES:**

**WZEZ, INC.**

By:   
Name: Hubert N. Hoffman III  
Title: Chief Executive Officer

**HOFFMAN COMMUNICATIONS, INC.**

By:   
Name: Hubert N. Hoffman III, Trustee  
Title: President

**DONEE:**

**DELMARVA EDUCATIONAL ASSOCIATION**

By: \_\_\_\_\_  
Name: Nancy A. Epperson  
Title: President

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

**LICENSEES:**

**WZEZ, INC.**

By: \_\_\_\_\_  
Name: Hubert N. Hoffman III  
Title: Chief Executive Officer

**HOFFMAN COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Name: Hubert N. Hoffman III, Trustee  
Title: President

**DONEE:**

**DELMARVA EDUCATIONAL ASSOCIATION**

By:   
Name: Nancy A. Epperson  
Title: President

**SCHEDULE 1(A)**

**FCC LICENSES**

**WZEZ (FM), Goochland, Virginia**

- License, File No. BLH-20081118ABW (expiration 10/01/2019)
- License Renewal Application, File No. BRH-20110601ACS (granted 09/27/2011, expires 10/01/2019)

**WGGM (AM), Chester, Virginia**

- License, File No. BL-20060725AFI (expiration 10/01/2019)
- License Renewal Application, File No. BR-20110601ACP (granted 09/27/2011, expires 10/01/2019)
- Broadcast Auxiliaries:
  - Remote Pickup, WPNV663
  - Aural Studio Transmitter Link, WPOT854