

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

CALVARY CHAPEL OF COSTA MESA

AND

INTERMOUNTAIN PUBLIC RADIO, INC.

DATED AS OF

~~MARCH~~ <sup>April</sup> 11, 2016

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Exhibit A: Definitions

Exhibit B: Escrow Agreement

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**"), made as of this 11<sup>th</sup> day of ~~March~~ <sup>April</sup>, 2016, is by and between INTERMOUNTAIN PUBLIC RADIO, INC., a Wyoming nonprofit corporation ("**Buyer**"), and CALVARY CHAPEL OF COSTA MESA, a California nonprofit corporation ("**Seller**").

### PRELIMINARY STATEMENT

Seller owns and operates Non-Commercial Educational FM Station KWDS (Facility ID No. 92414), licensed to Kettleman City, California (the "**Station**") pursuant to an FCC License issued by the Federal Communications Commission (the "**FCC**");

Subject to the terms and conditions set forth herein, Seller desires to transfer, convey, assign and deliver to Buyer, and Buyer desires to acquire from Seller, all of the assets used or useful in the business and operation of the Station on the terms and subject to the conditions set forth herein.

### AGREEMENT

In consideration of the statements above and the mutual agreements and covenants contained in this Agreement, the parties to this Agreement, intending to be bound legally, hereby agree as follows:

#### SECTION 1 - DEFINITIONS

**1.1 Certain Defined Terms.** The terms set forth in Exhibit A hereto, as used in this Agreement, have the meanings set forth in Exhibit A. All terms defined in this Agreement have the defined meanings when used in any certificate, instrument or other document made or delivered pursuant hereto, unless otherwise defined therein.

**1.2 Rules of Construction.** A reference to one gender shall include any other gender. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement. Except as specifically otherwise provided in this Agreement, a reference to a Section, the Schedules or any Exhibit is a reference to a Section of this Agreement or the Schedules or Exhibits hereto, and the terms "hereof," "herein," and other like terms refer to this Agreement as a whole, including the Schedules and Exhibits to this Agreement. All references to "Dollars" and "\$" refer to the currency of the United States.

**1.3 Sections.** The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

## SECTION 2 - PURCHASE AND SALE

**2.1 *Purchase and Sale of the Assets.*** Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to transfer, convey, assign and deliver to Buyer on the Closing Date, and Buyer agrees to acquire, substantially all of the assets used or useful in the business or operation of the Station, but excluding the Excluded Assets (such assets being conveyed being collectively referred to herein as the “**Assets**”), free and clear of any Lien, except for Permitted Liens, including, without limitation, the following:

- (a) the Tangible Personal Property as set forth in *Schedule 3.6*;
- (b) Assumed Contracts;
- (c) the FCC Licenses;
- (d) the Intangibles, including, but not limited to, the call sign “KWDS;”
- (e) the leasehold or license interests in real property;
- (f) the deposits and prepaid expenses related to the Station as allocated in accordance with Section 2.6(a);
- (g) the FCC logs and all records required by the FCC to be kept by the Station, all other books and records relating to the Station, including, without limitation, executed copies of the Assumed Contracts, Real Property leases or licenses, and account books;
- (h) the claims and rights against third parties if and to the extent they relate to or affect the business or operation of the Station after the Effective Time, including, without limitation, all rights under manufacturers' and vendors' warranties relating to the Assets; and
- (i) all goodwill related thereto.

**2.2 *Excluded Assets.*** The Assets shall not include the following assets and properties of Seller (the “**Excluded Assets**”):

- (a) cash and cash equivalents;
- (b) Accounts Receivable;
- (c) contracts of insurance and insurance plans;
- (d) Contracts that are not Assumed Contracts (collectively, the “**Excluded Contracts**”);
- (e) Seller's formation documents that pertain to internal corporate matters of Seller;
- (f) the employee benefits plans; and

- (g) the assets of Seller that are listed and described on *Schedule 2.2(g)*.

**2.3 Assumption of Liabilities and Obligations.**

(a) As of the Closing Date, Buyer shall assume and undertake to pay, discharge and perform only the obligations and liabilities of Seller under the Assumed Contracts that relate to the period after the Effective Time and arise out of events related to Buyer's ownership of the Assets or Buyer's operation of the Station after the Effective Time the ("**Assumed Liabilities**").

(b) Seller shall retain all liabilities of Seller not expressly assumed by Buyer as an Assumed Liability (the "**Retained Liabilities**").

**2.4 Escrow Deposit.** Pursuant to the terms of the Escrow Agreement dated as of the date hereof, Buyer shall deliver into escrow an amount equal to Five Thousand Dollars (\$5,000.00) (the "**Escrow Amount**"). The Escrow Amount, together with all interest accrued thereon (the "**Escrow Proceeds**") shall be held and disbursed by the Escrow Agent in accordance with the terms of the Escrow Agreement and the terms hereof.

**2.5 Purchase Price.** As consideration for the sale of the Assets pursuant to the terms and subject to the conditions hereof, at the Closing, Buyer shall pay to Seller, and for the benefit of Seller, by wire transfer of immediately available funds to such account for which instructions are delivered by Seller to Buyer not less than three (3) days prior to the Closing, a total aggregate amount equal to Fifty Thousand Dollars (\$50,000.00), of which the Escrow Amount shall be a part, subject to adjustment pursuant to Section 2.7 and Section 2.8 hereof (the "**Purchase Price**").

**2.6 Prorations and Adjustments at Closing.** All revenues and all expenses arising from the Assets shall be allocated between Buyer and Seller in accordance with generally accepted accounting principles, consistently applied, and to effect the principle that Seller shall receive all revenues and shall be responsible for all expenses, costs and liabilities related to the period prior to the Effective Time, or arising out of events related to Seller's ownership of the Assets or Seller's operation of the Station prior to the Effective Time, and Buyer shall receive all revenues and shall be responsible for all expenses, costs and obligations related to the period on and after the Effective Time and arising out of events related to Buyer's ownership of the Assets or Buyer's operation of the Station after the Effective Time.

(a) Notwithstanding anything else in this Section 2.6 to the contrary, there shall be no prorations or adjustment pursuant to Section 2.6(a) for, and Seller shall remain solely liable with respect to, the Excluded Assets and Retained Liabilities.

**2.7 Preliminary Adjustment Statement Post-Closing Adjustment.**

- (a) Intentionally Omitted.

(b) Within thirty (30) days after the Closing Date, Seller shall prepare and deliver to Buyer an itemized list of the final prorations and adjustments calculated in accordance with Section 2.6 (the “**Closing Adjustment Statement**”). The Closing Adjustment Statement shall include a description of the net amount payable by Buyer or Seller as an adjustment pursuant to Section 2.6 hereof (the “**Closing Adjustment Amount**”). The Closing Adjustment Statement shall be prepared in accordance with generally accepted accounting principles, consistently applied. Seller shall, upon delivery of such Closing Adjustment Statement, permit Buyer and its representatives reasonable access to the accounting records and accountant work papers (if any) used in connection with the preparation of the Closing Adjustment Statement.

(c) Within fifteen (15) days after the date the Closing Adjustment Statement is delivered to Buyer, Buyer shall complete its examination of the Closing Adjustment Statement and shall deliver to Seller either (i) the written acknowledgement of its acceptance of the Closing Adjustment Statement and the Closing Adjustment Amount, or (ii) a written report setting forth any proposed adjustments to the Closing Adjustment Statement and the Closing Adjustment Amount (the “**Adjustment Report**”). In the event Buyer, within such fifteen (15) day period, fails to deliver an Adjustment Report, the Closing Adjustment Statement shall be deemed to be correct and the Closing Adjustment Amount to have been finally determined for purposes of Section 2.7(d) hereof.

(d) In the event Seller and Buyer fail to agree on any or all of the proposed adjustments to the Closing Adjustment Amount contained in the Adjustment Report within thirty (30) days after Buyer delivers the Adjustment Report, then any party hereto may retain a nationally-recognized independent certified public accounting firm, having an office in Bakersfield, California, as mutually agreed upon by the parties and such independent auditor shall not be for Seller or Buyer separately (the “**Independent Auditor**”). The Independent Auditor shall be instructed to make the final determination with respect to the correctness of the Adjustment Report in accordance with the terms and provisions of this Agreement within thirty (30) days after being retained as provided above. The decision by the Independent Auditor as to the adjustments that should be made to the Closing Adjustment Statement (the “**Final Adjustment**”) shall be final and binding on Seller and Buyer. Buyer and Seller shall share equally the costs and expenses of the Independent Auditor but each party hereto shall bear its own legal and other expenses, if any, provided, that if the Final Adjustment is less than twenty-five percent (25%) different from the amount calculated by the party who retained the Independent Auditor, such party shall bear the expenses of the Independent Auditor.

(e) The term “**Final Adjustment Statement**” shall mean the Closing Adjustment Statement delivered by Buyer pursuant to Section 2.7(a), as adjusted, if at all, pursuant to this Section 2.7; the term “**Final Adjustment Amount**” shall mean the amount determined from the Final Adjustment Statement; and the date on which the Final Adjustment Statement is finally determined pursuant to this Section 2.7(d) shall hereinafter be referred to as the “**Adjustment Settlement Date**.” The Final Adjustment Amount shall be paid by the party owing the debt to the party owed the debt within five (5) Business Days after the Adjustment Settlement Date.



(f) Any payments required pursuant to Section 2.7(d) shall be made by wire transfer of immediately available funds for credit to the party owed the debt in accordance with wire transfer instructions provided by such recipient in writing.

(g) If either Buyer or Seller fails to pay when due any amount under this Section 2.7, interest on such amount will accrue from the date payment was due and be payable until paid at the per annum rate of the “prime rate” as published in the Money Rates column of the Eastern Edition of *The Wall Street Journal* (or the average of such rates if more than one rate is indicated) plus two percent (2%) and shall be payable upon demand.

**2.8 Transfer Taxes.** All recordation, transfer, documentary, excise, sales, value added, use, stamp, conveyance or other similar Taxes, duties or governmental charges, and all recording or filing fees or similar costs, imposed or levied by reason of, in connection with, or attributable to this Agreement or the transactions contemplated hereby, but excluding all income taxes and other fees based upon gain realized by Seller or as a result of the sale of the Assets (collectively, “**Transfer Taxes**”), shall be borne equally by Seller and Buyer.

### **SECTION 3 - REPRESENTATIONS AND WARRANTIES OF SELLER**

#### **No Additional Representations or Warranties; No Reliance**

(a) Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that neither Seller nor any of its representatives is making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in Section 3, and that any claims Buyer may have for breach of a representation or warranty shall be based solely on the representations and warranties of Seller expressly set forth in Section 3.

(b) Except for the representations and warranties expressly set forth in Section 3, Buyer has not been induced by, and has not relied on, any representation or warranty, express or implied, with respect to Seller or with respect to any information provided or made available to Buyer in connection with the transactions contemplated hereby. Buyer agrees, to the fullest extent permitted by applicable law, that neither Seller nor any of its respective Affiliates or representatives will have or be subject to any liability on any basis (including, without limitation, in contract or tort, under federal or state securities laws or otherwise) to Buyer, any Affiliate of Buyer or any of their respective representatives based upon any information provided or made available, or statements made, to Buyer or any Affiliates of Buyer, or any of their respective representatives (or any omissions therefrom), beyond that set forth in Section 3 of this Agreement (and then only to the extent in accordance with the limitations set forth in this Agreement), resulting from the distribution to Buyer or its representatives, or Buyer’s use, of any such information.

Seller hereby represents and warrants to Buyer as follows:

**3.1 Organization, Qualification and Authority.** Seller is a non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of California. Seller has the requisite power and authority to own and operate the Assets, to carry

on the business and operation of the Station and to execute, deliver and perform this Agreement and the documents contemplated hereby according to their respective terms.

**3.2            *Authorization and Binding Obligation.*** The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, by Seller have been duly and validly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller and 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.

**3.3            *Absence of Conflicting Agreements; Consent.*** Except as set forth in *Schedule 3.3*, subject to the receipt of the FCC Consent, the execution, delivery and performance by Seller of this Agreement (with or without the giving of notice, the lapse of time, or both), and the consummation by Seller of the transactions contemplated hereby: (a) does not require the consent of any third party; (b) will not conflict with the Articles of Incorporation and Bylaws of Seller; (c) will not conflict in any material respect with, result in a material breach of or constitute a material default under (i) any Applicable Law of any Governmental Authority applicable to Seller or (ii) any Contract; and (d) will not result in the creation of any Lien on the Assets other than Permitted Liens. Seller is not a party to, nor is Seller bound by, any agreement or commitment that prohibits the execution and delivery by Seller of this Agreement or the consummation of the transactions by Seller contemplated hereby.

**3.4            *FCC Licenses.***

(a)        *Schedule 3.4* identifies and includes an accurate and complete list of all FCC Licenses. Each FCC License is in full force and effect and the Seller is the authorized legal holder thereof. The FCC Licenses listed on *Schedule 3.4* constitute all of the licenses and authorizations required under the Communications Act or the current rules, regulations and policies of the FCC for the Station. The conduct of the business and operation of the Station are in accordance with the FCC Licenses and the Communications Act or the current rules, regulations and policies of the FCC for the Station.

(b)        *Schedule 3.4* sets forth a true, correct and complete list of any and all material pending applications filed with the FCC with respect to the Station, true, correct and complete copies of which have been delivered by Seller to Buyer.

(c)        Other than proceedings generally applicable to radio Station of the type, nature and class of the Station, there is not pending or, to Seller's Best Knowledge, threatened investigation or proceeding by or before the FCC, nor any pending or, to Seller's Best Knowledge, threatened order to show cause, notice of violation, notice of apparent liability, notice of forfeiture or complaint by, before or with the FCC with respect to Seller or any or all of the Station. There are no facts, conditions or events relating to Seller or the Station that would disqualify Seller under the Communications Act or the existing rules, regulations and policies of the FCC as assignor of the FCC Licenses as provided in this Agreement or from obtaining the FCC Consent to the transactions contemplated herein within the times contemplated herein.

(d) All returns, reports and statements that Seller is required to file with FCC or Federal Aviation Administration have been filed in a timely manner and such returns, reports and statements are true, correct and complete.

(e) The Station are in compliance with all rules and regulations of the Federal Aviation Administration.

### **3.5 *Leasehold or License Interests***

(a) *Schedule 3.5* contains an accurate and complete list of Seller's leasehold or license interests in Real Property. Seller has good leasehold or license title to the leasehold or license interests. *Schedule 3.5* includes all leases or licenses used or useful in the business and operation of the Station.

(b) To the Seller's Best Knowledge, all buildings, towers, fixtures, fittings, antenna and other improvements leased or licensed by Seller included within the Assets are in good working order for the purposes for which they are currently used by Seller (ordinary wear and tear excepted) and are located in their entirety on the leased or licensed Real Property.

(c) The leased or licensed real property is accessible directly by a public right of way. To the Seller's Best Knowledge, the current use by Seller of the leased or licensed Real Property is in compliance with applicable zoning and land-use laws.

**3.6 *Tangible Personal Property.*** *Schedule 3.6* lists all items of Tangible Personal Property included in the Assets. Seller owns and has good title to the Tangible Personal Property listed thereon and none of the Tangible Personal Property is subject to any conditional sale or other title retention agreement or any Liens, except for Permitted Liens. Except as set forth in *Schedule 3.6*, all material items of Tangible Personal Property are in good operating condition (ordinary wear and tear excepted). The Tangible Personal Property included in the Assets includes all tangible personal property used or useful in the business and operation of the Station.

**3.7 *Assumed Contracts.*** *Schedule 3.7* includes a complete list of all Assumed Contracts. Except as set forth in *Schedule 3.7*, the Assumed Contracts constitute all Contracts used or useful in the business and operation of the Station. Seller has delivered or made available to Buyer true, correct and complete copies of all written Assumed Contracts listed on *Schedule 3.6* and accurate descriptions of all oral Assumed Contracts listed on *Schedule 3.6*. Seller is not in default under any Assumed Contract (and no event has occurred that with the giving of notice or passage of time, or both, would constitute such a default) and, to Seller's Best Knowledge, no other party to any such Assumed Contract is in default thereunder (and, to Seller's Best Knowledge, no event has occurred that with the giving of notice or passage of time, or both, would constitute such a default). The Assumed Contracts (and Excluded Contracts) constitute all of the contracts used or useful in the business and operation of the Station. *Schedule 3.6* includes a complete list of all Excluded Contracts. Each Assumed Contract is legal, valid, binding, enforceable and in full force and effect.

**3.8 *Intangibles.*** *Schedule 3.8* is a complete list of all of the Intangibles (exclusive of the FCC Licenses). Seller has provided or made available to Buyer copies of all documents

establishing or evidencing the Intangibles listed on *Schedule 3.8*. Seller has not received any notice or demand alleging that Seller or the Station are infringing upon any trademarks, trade names, service marks, service names, copyrights or similar intellectual property rights owned by or licensed to any other Person and, to Seller's Best Knowledge, there is no basis for any such notice or demand. The Intangibles include all of the intangibles used or useful in the business and operation of the Station.

**3.9 Insurance.** *Schedule 3.9* is a true, correct and complete list of all insurance policies with respect to the Station. All policies of insurance listed in *Schedule 3.9* are in full force and effect.

**3.10 Claims and Legal Actions.** To the Seller's Best Knowledge, there is no claim, legal action, counterclaim, suit, arbitration, or other legal, administrative or tax proceeding, nor any order, decree or judgment, in progress or pending, or to Seller's Best Knowledge threatened, against Seller, the Assets or the Station.

**3.11 Compliance with Laws.** Seller is in compliance in all material respects with the FCC Licenses and all Applicable Law with respect to the Station, except for such non-compliance as would not reasonably be expected to have a Material Adverse Effect.

**3.12 No Broker.** Neither Seller nor any other Person acting on its behalf has incurred any liability for any finders' or brokers' fees or commissions in connection with the transactions contemplated by this Agreement.

**3.13 Transactions with Affiliates.** Except as set forth in *Schedule 3.13*, Seller is not a party, directly or indirectly, to any contract, lease, arrangement or transaction which is material to the Station, whether for the purchase, lease or sale of property, for the rendition of services or otherwise, with any Affiliate of Seller, or any officer, director, employee, proprietor, partner or shareholder of Seller and no such Person has any interest in or right to any of the Assets. The terms and conditions of the transactions involving Seller and any Affiliate of Seller which are identified on *Schedule 3.13* are described briefly therein.

**3.14 Good Title Conveyed; Required Consents.** Subject to the receipt of the FCC Consent and the Required Consents, Seller has complete and unrestricted power and the unqualified right to sell, transfer, assign, convey and deliver to the Buyer, and upon consummation of the transaction contemplated by this Agreement, Buyer will acquire, good title to the Assets, and valid leases to the Real Property, in each case free and clear of all Liens other than Permitted Liens. All Required Consents are listed in *Schedule 3.14*. Except as noted on *Schedule 3.14*, Seller is in sole and exclusive possession, and the sole and exclusive owner of, the Assets, free and clear of any restrictions on transfer, taxes, Liens, purchase rights, contracts, commitments, equities, claims, or demands.

**3.15 Assets of the Business.** The Assets, together with the Excluded Assets, comprise all of the assets used and useful in the business and operation of the Station.

**3.16 No Restrictions.** There are no Contracts or other arrangements to which Seller is a party that prohibit or restrict the actions that the Station may undertake.

### **3.17 No Additional Representations or Warranties; No Reliance**

(a) Notwithstanding anything contained in this Agreement to the contrary, Seller acknowledges and agrees that neither Buyer nor any of its representatives is making any representations or warranties whatsoever, express or implied, beyond those expressly given by Buyer in Section 4, and that any claims Seller may have for breach of a representation or warranty shall be based solely on the representations and warranties of Buyer expressly set forth in Section 4.

(b) Except for the representations and warranties expressly set forth in Section 4, Seller has not been induced by, and has not relied on, any representation or warranty, express or implied, with respect to Buyer or with respect to any information provided or made available to Seller in connection with the transactions contemplated hereby. Seller agrees, to the fullest extent permitted by applicable law, that neither Buyer nor any of its respective Affiliates or representatives will have or be subject to any liability on any basis (including, without limitation, in contract or tort, under federal or state securities laws or otherwise) to Seller, any Affiliate of Seller or any of their respective representatives based upon any information provided or made available, or statements made, to Seller or any Affiliates of Seller, or any of their respective representatives (or any omissions therefrom), beyond that set forth in Section 4 of this Agreement (and then only to the extent in accordance with the limitations set forth in this Agreement), resulting from the distribution to Seller or its representatives, or Seller's use, of any such information.

## **SECTION 4 - REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

**4.1 Organization, Standing and Authority.** Buyer is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Wyoming. Buyer is duly qualified to conduct business in each jurisdiction in which such qualification is necessary for Buyer to own the Assets and operate the Station and conduct the business of the Station. Buyer has the requisite power and authority to (a) execute, deliver and perform this Agreement and consummate the transactions contemplated hereby and (b) own the Assets, subject to obtaining the FCC Consent.

**4.2 Authorization and Binding Obligation.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby by Buyer have been duly and validly authorized by all necessary action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes a 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. The execution, delivery and performance of the Assignment and Acceptance Agreement and the consummation of the transactions contemplated thereby by Buyer will be duly and validly authorized by all necessary action on the part of Buyer. The Assignment and Acceptance Agreement will be duly executed and delivered by Buyer and will constitute a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms,

except as the enforceability of the Assignment and Acceptance Agreement may be affected by bankruptcy, insolvency or similar laws affecting creditors' rights, generally and by judicial discretion in the enforcement of equitable remedies.

**4.3        *Absence of Conflicting Agreements and Required Consents.*** Subject to the receipt of 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): (a) do not require the consent of any other Person; (b) will not conflict with the Articles of Incorporation or By-Laws of Buyer; and (c) will not conflict in any material respect with, result in a material breach of or constitute a material default under any Applicable Law or any material contract or agreement to which Buyer is a party.

**4.4        *No Broker.*** Neither Buyer nor any other Person acting on behalf of Buyer has incurred any liability for any finders' or brokers' fees or commissions in connection with this Agreement or the transactions contemplated hereby.

## **SECTION 5 - OPERATION OF THE STATION PRIOR TO CLOSING**

**5.1        *Generally.*** Subject to any action or inaction of Buyer:

(a) During the period commencing on the date hereof and ending on the earlier of the Closing Date or the Termination Date, Seller shall operate and control the Station in all material respects in the ordinary course of business and refrain from any extraordinary transactions (except where such conduct would conflict with the other covenants set forth in this Section 5.1 or with Seller's other obligations under this Agreement) in all cases in accordance with the covenants contained in this Section 5.

(b) Seller shall keep records and files as would be reasonable for a noncommercial educational radio broadcast station.

(c) Seller shall continue to operate and control the FCC Licenses in accordance with the terms thereof and in compliance with all Applicable Law. Seller shall execute and file promptly all necessary applications for renewal of the FCC Licenses and timely file with the FCC all required reports of the Station. Seller will deliver to Buyer, within ten (10) Business Days after filing, copies of any reports, applications or responses to the FCC related to the Station which are filed prior to the Closing Date.

(d) Prior to the Closing Date, except as otherwise permitted by any provision of this Section 5, Seller shall not, without the prior written consent of Buyer:

(i) incur any receivables relating to the Station other than in the ordinary course of the Station consistent with past practice, including, without limitation, in respect of the amount and nature of such receivables;

(ii) apply to the FCC for or seek to amend any construction permit or other pending application that would restrict the Station's operations or make any material change in the Station's buildings, leasehold improvements or fixtures that is not in the ordinary course of business, except when such change is necessary to maintain or continue the

transmission of the Station's signal at substantially the same power and strength and interference level as transmitted on the date hereof,

(iii) enter into, renew, amend or modify any contract, lease, license or other agreement unless such document is either (1) subject to termination on thirty (30) days' written notice, (2) will be fully performed and satisfied on or prior to the date thirty (30) days following its execution or (3) an Excluded Contract;

(iv) assign, lease or otherwise transfer or dispose of any of the Assets, except in connection with the acquisition of replacement property of equivalent kind and use; or

(v) except as required by Applicable Law or existing contract, (A) hire any employee except in the ordinary course of business, or (B) enter into, renew, amend or modify any contract of employment, collective bargaining agreement or other labor contract.

(e) Prior to the Closing Date, Seller will deliver copies of all Contracts entered into by Seller with respect to the Station between the date of this Agreement and the Closing Date; such delivery to be made promptly after such Contracts are entered into.

**5.2 Insurance.** Seller shall maintain the existing insurance policies on the Assets or other policies providing substantially similar coverages until the Closing.

**5.3 Notice of Certain Matters.** Seller shall give prompt written notice to Buyer and Buyer shall give prompt written notice to Seller of any failure of Seller or Buyer, as the case may be, to comply with or satisfy any representation, warranty, covenant, condition or agreement to be complied with or satisfied by it hereunder.

**5.4 Notice of Proceedings.** Seller and Buyer shall promptly notify the other in writing upon becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement or the transactions contemplated hereunder, or upon receiving any notice from any Governmental Authority of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of this Agreement or the transactions contemplated hereby. Seller and Buyer will each use commercially reasonable efforts to contest, defend and resolve any such suit, proceeding or injunction brought against it so as to permit the prompt consummation of the transactions contemplated hereby. Seller shall notify Buyer promptly of any material action filed or threatened against the Station or the Assets.

**5.5 Station Silent.** Notwithstanding anything herein, Buyer acknowledges that the Station has been silent since December 29, 2015 and that Special Temporary Authority to remain silent (BLSTA-20160212AAC) has been granted by the FCC. Said STA expires on August 29, 2016.

## **SECTION 6 - SPECIAL COVENANTS AND AGREEMENTS**

### **6.1 *FCC Consent.***

(a) The assignment of the FCC Licenses from Seller to Buyer as contemplated by this Agreement is subject to the prior consent and approval of the FCC.

(b) Within ten (10) days after the date hereof, Seller shall prepare and file with the FCC the Assignment Application. The parties shall thereafter prosecute the Assignment Application with commercially reasonable diligence and otherwise use their commercially reasonable efforts to obtain the grant of the Assignment Application as expeditiously as practicable. Each party hereto will promptly provide to the other party hereto a copy of any pleading, order or other document served on them relating to such Assignment Application.

(c) Each party hereto agrees to comply with any condition imposed on it by any FCC Consent, except that no party hereto shall be required to comply with a condition if compliance with the condition would have a material adverse effect upon it. Seller and Buyer shall equally share the costs to and shall jointly oppose any petitions to deny or other objections filed with respect to the application for any FCC Consent and any requests for reconsideration or review of any FCC Consent.

(d) If the Closing shall not have occurred for any reason within the original effective period of any FCC Consent, and none of the parties shall have terminated this Agreement under Section 9, the parties hereto shall jointly request an extension of the effective period of such FCC Consent. No extension of the effective period of any FCC Consent shall limit the exercise by any party hereto of its right to terminate the Agreement under Section 9 hereof.

**6.2 *Third Party Consents.*** Seller shall obtain the Required Consents in a form and substance acceptable to Buyer in Buyer's sole discretion, together with any other third party consent that may be necessary in connection with the transactions contemplated herein. In addition, Seller shall obtain from the lessors under all leases that are Assumed Contracts estoppels and consents in the form reasonably acceptable to Buyer. If a Required Consent is not obtained, or if an attempted assignment of the related Assumed Contract would be ineffective, Seller shall provide to Buyer the benefits of such Assumed Contract and, to the extent Buyer is provided with the benefits of such Assumed Contract, Buyer shall perform or discharge on behalf of Seller the obligations and liabilities under such Assumed Contract in accordance with the provisions thereof.

### **6.3 *Confidentiality.***

(a) None of the parties hereto will use or disclose to any other Person (except as may be necessary for the consummation of the transactions contemplated hereby, or as required by Applicable Law, and then only with prior notice to the other party hereto) this Agreement or any information received from the other party hereto or their agents in the course of investigating, negotiating and performing the transactions contemplated by this Agreement; *provided, however*, that each party hereto may disclose such information to such party's officers, directors, employees, lenders, advisors, attorneys, accountants and financial advisors who need to know



such information in connection with the consummation of the transactions contemplated by this Agreement and who are informed by such party of the confidential nature of such information. Nothing shall be deemed to be confidential information that: (i) is already in such party's possession, provided that such information is not known by such party to be subject to another confidentiality agreement with or other obligation of secrecy to the other party hereto or another party, or (ii) becomes generally available to the public other than as a result of a disclosure by such party or such party's officers, directors, employees, lenders, advisors, attorneys or accountants, or (iii) becomes available to such party on a non-confidential basis from a source other than another party or its advisors, provided that such source is not known by such party to be bound by a confidentiality agreement with, or other obligation of secrecy to, any of the other party hereto or another party, or (iv) is developed independently by any party hereto without resort to the confidential information of the other party hereto. In the event this Agreement is terminated and the transactions contemplated hereby abandoned, each party hereto will return to the other party hereto all information, including, without limitation, all documents and other written confidential material, obtained by such party from the other party hereto in connection with the transactions contemplated by this Agreement.

**(b)** No party hereto shall publish any press release or make any other public announcement concerning this Agreement or the transactions contemplated hereby without the prior written consent of the other party hereto, which shall not be withheld unreasonably; *provided, however*, that nothing contained in this Agreement shall prevent any party hereto from making any filings with governmental authorities, including, without limitation, in respect of filings or public announcements in accordance with federal securities Laws and the Communications Act, that, in the judgment of the disclosing party, may be required or advisable in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

**6.4 Cooperation.** Buyer and Seller shall cooperate fully with each other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement, and Buyer and Seller shall execute such other documents as may be necessary or desirable to implement and consummate this Agreement, and otherwise use their commercially reasonable efforts to consummate the transactions contemplated hereby and to fulfill their obligations under this Agreement.

**6.5 Access to Information.** Seller shall provide Buyer, and its representatives, agents and employees, access to and the right to copy, if applicable, any Assets and any books and records related to the Assets or the business and operation of the Station as reasonably requested by Buyer or its representatives, agents or employees. Prior to the Closing and for two (2) years after the Closing, Seller shall provide to Buyer copies of such accounting information and reports relating to the Station that are reasonably available to Seller in the ordinary course of business as Buyer deems reasonably necessary to enable Buyer to satisfy disclosure requirements of lenders or other reasonable business purposes. Seller agrees to use reasonable efforts to make its outside independent accountants available to Buyer and its accountants.

**6.6 Further Assurances.** From and after the Closing, each party hereto shall from time to time, at the request of any other party hereto and without further cost or expense to such requesting party, execute and deliver such other instruments of conveyance and transfer and take

such other actions as such other party hereto may reasonably request in order more effectively to carry out this Agreement and the other agreements specified in this Agreement and to vest in the Buyer good title to the Assets, and good and marketable title to the Real Property, in all cases free and clear of all Liens, except Permitted Liens.

## **SECTION 7 - CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER**

**7.1**        *Conditions to Obligations of Buyer.* All obligations of Buyer at the Closing are subject at Buyer's option to the satisfaction or waiver on or prior to the Closing Date of each of the following conditions:

(a)        All representations and warranties of Seller contained in this Agreement, if specifically qualified by materiality, shall be true and accurate in all respects, and, if not so qualified, shall be true and accurate in all material respects, at and as of the Closing Date as though made at and as of that time.

(b)        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 it prior to or on the Closing Date.

(c)        There shall not have been any modification of any FCC License that could have a Material Adverse Effect. Excluding any proceeding relating to the FCC Consent or disclosed on *Schedule 3.4*, no proceeding shall be pending the effect of which could be to revoke, cancel, fail to renew, suspend or modify adversely any FCC License.

(d)        Seller shall have delivered the items required to be delivered pursuant to Section 8.3.

(e)        No injunction, order, judgment or decree of any nature of any Governmental Authority of competent jurisdiction shall be in effect that restrains or prohibits the consummation of the transactions contemplated by this Agreement.

(f)        There shall not have been a material adverse change to any of the Assets, Assumed Liabilities or the Station.

(g)        The FCC Consent shall have been granted and shall have become a Final Order.

(i)        Buyer shall have secured from Crown Castle GT Company LLC, the landlord of the transmitter site used by the Station (FCC ASR No. 1019408), an extension of the lease/license or new lease/license, for the Station's continued occupancy of such premises on terms similar to the current lease/license terms or as otherwise reasonably satisfactory to Buyer.

**7.2**        *Conditions to Obligations of Seller.* All obligations of Seller at the Closing hereunder are subject at Seller's option to the satisfaction or waiver on or prior to the Closing Date of each of the following conditions:

(a) All representations and warranties of Buyer contained in this Agreement, if specifically qualified by materiality, shall be true and accurate in all respects, and, if not so qualified, shall be true and accurate in all material respects, at and as of the Closing Date as though made at and as of that time.

(b) 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 it prior to or on the Closing Date.

(c) Buyer shall have delivered the items required to be delivered pursuant to Section 8.4.

(d) No injunction, order, judgment or decree of any nature of any Governmental Authority of competent jurisdiction shall be in effect that restrains or prohibits the consummation of the transactions contemplated by this Agreement.

## **SECTION 8 - CLOSING AND CLOSING DELIVERIES**

### **8.1 Closing.**

(a) Subject to the satisfaction or waiver (by the party for whose benefit the condition is imposed) of the conditions described in Article 7, the parties hereto shall consummate the transactions contemplated hereby at the Closing, which shall take place as of 12:01 a.m., Washington D.C. time, on a date that is within ten (10) Business Days following the date the FCC Consent becomes a Final Order (or, upon waiver of such Final Order condition by Buyer, in its sole discretion, within ten (10) Business Days following the publication of the grant of the FCC Consent) and as Buyer shall specify in writing to Seller at least five (5) Business Days in advance or, if Buyer fails to so specify, on the last date in the time period provided for in the foregoing (the “**Closing Date**”).

#### **(b) Risk of Loss; Damage and Destruction; Condemnation.**

(i) Except with respect to the Diligence Items, the risk of any material loss, damage, impairment, confiscation or condemnation of any of the Assets for any cause shall be borne by Seller at all times prior to the Closing and by Buyer at all times thereafter.

(ii) Seller shall promptly notify Buyer of the occurrence of any material damage to or destruction of the Assets (for the avoidance of doubt, excluding any Diligence Items, or damage or destruction resulting therefrom) that occurs prior to the Closing Date. Should any damage or destruction to the Assets (for the avoidance of doubt, excluding any Diligence Items, or damage or destruction resulting therefrom) occur prior to the Closing Date that is either uninsured or not fully insured, the cost of which to repair would total less than \$300,000.00, then unless Seller causes the same to be repaired and restored in all material respects prior to the Closing Date (in which case the Purchase Price shall be unaffected and the parties shall proceed with the Closing as though such damage, destruction or proceedings had never occurred or been initiated), Buyer’s sole remedy shall be to receive a dollar-for-dollar reduction in the Purchase Price in an amount equal to the sum of (i) the cost of such repairs, less (ii) the amount of any insurance proceeds with respect thereto assigned to Buyer at the Closing,

and consummate the transaction contemplated herein. If any damage or destruction to the Assets (for the avoidance of doubt, excluding any Diligence Items, or damage or destruction resulting therefrom) occurs prior to the Closing Date that is either uninsured or not fully insured, the cost of which to repair would total \$50,000,000 or more, then irrespective of whether the same can be repaired and/or restored prior to the Closing Date, Buyer shall have the right and option to (i) postpone Closing for a period of up to six (6) months while Seller repairs or replaces such Assets, (ii) terminate this Agreement, or (iii) elect to close with the Assets in their current condition, in which case Seller shall assign all proceeds from insurance on such lost or damaged Assets to Buyer, and Buyer shall have the responsibility to repair or replace the Assets. Notwithstanding anything to the contrary in this Agreement, the risk of loss or damage to the Assets shall unconditionally shift to the Buyer on the Closing Date. For avoidance of doubt, Buyer and Seller intend that the provisions of this Section 8.1 shall control over any right or remedy to which the Buyer may otherwise be entitled under this Agreement by reason of the occurrence of any event subject to this Section 8.1(b)(iii).

**8.2**            **Closing Place.** The Closing shall be held virtually, via electronic transfer of executed documents and transfer of funds.

**8.3**            **Deliveries by Seller.** Prior to or on the Closing Date, Seller shall deliver to Buyer the following, in form and substance reasonably satisfactory to Buyer and its counsel:

(a)        Duly executed assignments and other conveyancing documents to convey and vest good title in and to the Assets to Buyer, free and clear of all Liens, except for Permitted Liens. Such documents shall include, without limitation, the following:

(i)        An Assignment and Assumption Agreement (the “**Assignment and Assumption Agreement**”), duly executed by Seller;

(ii)       An Assignment and Acceptance Agreement of the FCC Licenses (the “**Assignment and Acceptance Agreement**”), duly executed by Licensee;

(iii)      A Bill of Sale (the “**Bill of Sale**”), duly executed by Seller; and

(iv)      An Assignment (the “**Assignment**”), duly executed by Seller and, if required, consented to by the landlord, for all Real Property leases or licenses.

(b)       The Required Consents in a form and substance acceptable to Buyer in Buyer’s reasonable discretion, together with any other consents received prior to Closing;

(c)       A certificate, dated as of the Closing Date, executed by Seller, certifying to the fulfillment of the conditions set forth in Sections 7.1(a) and (b);

(d)       A certificate, dated as of the Closing Date, executed by Seller, certifying that the resolutions were duly adopted by Seller, authorizing and approving the execution of this Agreement and the consummation of the transactions contemplated hereby and that such resolutions remain in full force and effect;

(e) Termination statements and such other documentation as Buyer may reasonably require and in form reasonably acceptable to Buyer evidencing the discharge and release of any Liens (other than Permitted Liens) on the Assets; and

(f) Such other documents as may reasonably be requested by Buyer.

**8.4 Deliveries by Buyer.** Prior to or on the Closing Date, Buyer shall deliver to Seller and Seller the following, in form and substance reasonably satisfactory to Seller and its counsel:

(a) The Purchase Price, in accordance with Section 2.5 hereof,

(b) Appropriate assumption and acceptance agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the Assumed Contracts s (except that Buyer may, at its absolute discretion, elect not to assume and perform the studio lease identified in *Schedule 3.6*) and under the FCC Licenses to the extent such obligations arise after Closing, including, without limitation, the following:

(i) The Assignment and Assumption Agreement, duly executed by Buyer;

(ii) The Assignment and Acceptance Agreement, duly executed by Buyer;

(iii) The Bill of Sale, duly executed by Buyer; and

(iv) The Assignment(s).

(c) A certificate, dated as of the Closing Date, executed by Buyer, certifying to the fulfillment of the conditions set forth in Sections 7.2(a) and (b);

(d) A certificate, dated as of the Closing Date, executed by Buyer, certifying that the resolutions were duly adopted by the Board of Directors of Buyer, authorizing and approving the execution of this Agreement and the consummation of the transactions contemplated hereby and that such resolutions remain in full force and effect;

(e) Such other documents as may be reasonably requested by Seller.

## **SECTION 9 - TERMINATION**

**9.1 Termination of Agreement.** This Agreement may be terminated only as follows:

(a) at any time by mutual written consent of Seller, on the one hand, and Buyer, on the other;

(b) by Buyer in the event of a breach by Seller of any representation, warranty, covenant or other obligation contained herein that (i) would give rise to the failure of a

condition set forth in Section 7.1(a) or 7.1(b) and (ii) has not been cured within thirty (30) days after the giving of written notice to Seller of such breach; *provided, however*, that the Buyer is not then in default or breach in any material respect of its obligations under this Agreement;

(c) by Seller in the event of a breach by Buyer of any representation, warranty, covenant or other obligation contained herein that (i) would give rise to the failure of a condition set forth in Section 7.2(a) or 7.2(b) and (ii) cannot be or has not been cured within thirty (30) days after the giving of written notice to Buyer of such breach; *provided, however*, that the Seller is not then in default or breach in any material respect of its obligations under this Agreement;

(d) by any party hereto, upon written notice to the other party, if any Governmental Authority of competent jurisdiction shall have issued a final and permanent order enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement;

(e) by Buyer, in the event that Seller becomes or is declared insolvent or bankrupt, makes an assignment for the benefit of all or substantially all of its creditors, enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, or becomes the subject of any proceeding related to its liquidation or insolvency or for the appointment of a receiver or similar officer and such proceeding is not dismissed within sixty (60) days;

(f) by Seller, in the event that Buyer becomes or is declared insolvent or bankrupt, makes an assignment for the benefit of all or substantially all of its creditors, enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, or becomes the subject of any proceeding related to its liquidation or insolvency or for the appointment of a receiver or similar officer and such proceeding is not dismissed within sixty (60) days;

(g) by Buyer in accordance with 8.1(b); or

(h) by Buyer, upon written notice to Seller, in the event that the Closing has not taken place on or before the date that is one year from the date on which the Assignment Application was accepted for filing by the FCC (other than as a result of any failure on the part of Buyer to comply with or perform in any material respect any covenant or obligations set forth in this Agreement).

## **9.2 Procedure and Effect of Termination.**

(a) In the event of termination of this Agreement by any party or parties hereto pursuant to Section 9.1, written notice thereof shall be given promptly to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by any of the parties hereto, but subject to and without limiting any of the rights of the parties specified herein in the event a party hereto is in default or breach in any material respect of its obligations under this Agreement. In the event that this Agreement is terminated pursuant to the terms and subject to the conditions hereof, upon the Termination Date:

(i) Except as otherwise provided herein, none of the parties hereto nor any of their respective partners, directors, officers, shareholders, employers, agents or Affiliates (each, a “**Related Party**”) shall have any liability or further obligation to the other party or any of their respective Related Parties pursuant to this Agreement with respect to which termination has occurred, except for the obligations of Seller and Buyer as stated in Sections 6.3 and 10 and this Section 9.2; and

(ii) All filings, applications and other submissions relating to the transactions contemplated hereby as to which termination has occurred shall, to the extent practicable, be withdrawn from the agency or other Person to which made.

(b) If this Agreement is terminated by Seller pursuant to Section 9.1(c) hereof, Seller shall have the right to receive the Escrow Amount and Escrow Proceeds as liquidated damages and as Seller's sole and exclusive remedy. In the event this Agreement is terminated for any other reason, Buyer shall have the right to receive the Escrow Amount and Escrow Proceeds.

**9.3 Attorneys' Fees, Costs and Expenses.** If Buyer or Seller commences an action against the other to enforce any of the terms of this Agreement or because of the breach by Buyer or Seller of any of the terms of this Agreement, the non-prevailing party shall pay to the prevailing party its reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. The term “prevailing party” means the party obtaining substantially the relief sought, whether by compromise, settlement or judgment.

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

**10.1 Survival.** The representations and warranties contained herein shall survive the Closing for a period of eighteen (18) months after the Closing Date and shall terminate on such date except to the extent that any claims for indemnification in respect of a breach of any such representation or warranty is made on or before such date, in which case such representation or warranty shall survive until the resolution of such claim. Any claim for indemnification in respect of a covenant or agreement hereunder to be performed before the Closing shall be made before the date that is eighteen (18) months after the Closing Date. The covenants and agreements contained herein and to be performed to any extent after the Closing Date shall survive the Closing for a period of eighteen (18) months after the Closing Date and shall terminate on such date and any claims for indemnification in respect of a breach of such covenants to be performed in any respect after the Closing Date must be made on or before such date. The covenants and agreements that survive for any other period as specifically provided in this Agreement shall survive for the period so specified. Notwithstanding anything in the foregoing to the contrary, the eighteen (18) months limitation shall not be applicable to claims arising under the Seller Fundamental Representations which shall survive until the expiration of the applicable statute of limitations for each respective claim.

## **10.2 Indemnification by Seller.**

(a) After the Closing, Seller hereby agrees to indemnify, defend and hold Buyer harmless against and with respect to, and shall reimburse Buyer for, any and all Damages which Buyer may suffer or incur as a result of or in connection with:

(i) any breach or inaccuracy of any representation or warranty of Seller made in this Agreement or any certificate, document or instrument prepared by Seller and delivered to Buyer pursuant to the terms and subject to the conditions hereof;

(ii) any failure by Seller to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking or obligation of Seller under this Agreement;

(iii) the Retained Liabilities;

(iv) any Person claiming a broker's or finder's fee or commission, or similar payment or remuneration in respect of the transactions contemplated herein; and

(v) any suit, action or other proceeding brought by any Governmental Authority or any other Person arising out of, or related to, any of the matters referred to in the foregoing clauses (i) through (iv) of this Section 10.2(a).

(b) Seller's obligation to indemnify Buyer pursuant to Section 10.2(a) shall be subject to all of the following limitations:

(i) Buyer shall be entitled to indemnification only for those Damages arising with respect to any claim as to which Buyer has given Seller written notice within the appropriate time period set forth in Section 10.1 hereof for such claim.

(ii) The parties agree that the payment of any and all claims made by Buyer for indemnification hereunder, for whatever reason, other than for claims for indemnification with respect to any Retained Liabilities, shall be limited to an aggregate amount equal to the Purchase Price.

## **10.3 Indemnification by Buyer.**

After the Closing, Buyer hereby agrees to indemnify, defend and hold Seller harmless against and with respect to, and shall reimburse Seller for, any and all Damages which Seller may suffer or incur as a result of or in connection with:

(i) any breach or inaccuracy of any representation or warranty of Buyer made in this Agreement or any certificate, document or instrument prepared by Buyer and delivered to Seller pursuant to the terms and subject to the conditions hereof;

(ii) any failure by Buyer to carry out, perform or otherwise fulfill or comply with any covenant, agreement, undertaking or obligation of Buyer under this Agreement;

(iii) the Assumed Liabilities;



(iv) any Person claiming a broker's or finder's fee or commission, or similar payment or remuneration in respect of the transactions contemplated herein; and

(v) any suit, action or other proceeding brought by any Governmental Authority or any other Person arising out of, or related to, any of the matters referred to in the foregoing clauses (i) through (iv).

(b) Seller shall be entitled to indemnification pursuant to Section 10.3(a) only for those Damages arising with respect to any claim as to which Seller have given Buyer written notice within the appropriate time period set forth in Section 10.1 hereof for such claim.

**10.4**        ***Procedure for Indemnification.*** The procedure for indemnification shall be as follows:

(a) The party claiming indemnification (the "**Claimant**") shall promptly give notice to the party or parties hereto from which indemnification is claimed (the "**Indemnifying Party**") of any claim, specifying in reasonable detail the factual basis for the claim, the amount thereof, estimated in good faith, all with reasonable particularity and containing a reference to the provisions of this Agreement in respect of which such indemnification claim shall have occurred. If the claim relates to an action, suit or proceeding filed by another Person against Claimant, such notice shall be given by Claimant within ten (10) Business Days after written notice of such action, suit or proceeding was given to Claimant.

(b) With respect to claims solely between the parties, following receipt of notice from the Claimant of a claim, the Indemnifying Party shall have thirty (30) days to make such investigation of the claim as the Indemnifying Party deems necessary or desirable, and the Claimant agrees to make available to the Indemnifying Party and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnifying Party agree at or prior to the expiration of the thirty (30)-day period to the validity and amount of such claim, the Indemnifying Party shall immediately pay to the Claimant the full amount of the claim, subject to the terms hereof. If the Claimant and the Indemnifying Party do not agree within the thirty (30)-day period, the Claimant may seek appropriate remedy at law or equity, as applicable, subject to the limitations hereof.

(c) With respect to any claim by any other Person against the Claimant (a "**Third Party Claim**"), the Indemnifying Party shall have the right at its own expense, to participate in or assume control of the defense of such claim, and the Claimant shall cooperate fully with the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred by the Claimant as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of any Third Party Claim, the Claimant shall have the right to participate in the defense of such claim at its own expense. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third Party Claim, then the Claimant may defend through counsel of its own choosing and (so long as it gives the Indemnifying Party at least ten (10) Business Days' notice of the terms of the proposed settlement thereof and permits the Indemnifying Party to then undertake the defense thereof) settle such claim, action or suit and to recover from the Indemnifying Party the amount of such settlement or of any judgment and the costs and expenses of such defense. The

Indemnifying Party shall not compromise or settle any Third Party Claim without the prior written consent of the Claimant, which consent will not be unreasonably withheld or delayed.

(d) If a claim, whether between the parties or by any other Person, requires immediate action, the parties will make every effort to reach a decision with respect thereto as expeditiously as possible.

(e) Subject to the limitations set forth herein and without expanding the total liability of Buyer or Seller hereunder, the indemnification rights provided in this Section 10 shall extend to the Related Parties although for the purpose of the procedures set forth in this Section 10.4, any indemnification claims by such Related Parties shall be made by and through the Claimant.

## **SECTION 11 - MISCELLANEOUS**

**11.1 Fees and Expenses.** Except as otherwise provided in this Agreement, each party hereto shall pay its own expenses incurred in connection with the authorization, preparation, execution and performance of this Agreement, including, without limitation, all fees and expenses of counsel, accountants, agents and representatives.

**11.2 Notices.** All notices, demands and requests required or permitted to be given under the provisions of this Agreement shall be (i) in writing, (ii) delivered by personal delivery or sent by commercial delivery service or certified mail, return receipt requested, (iii) deemed to have been given the date of personal delivery or the date set forth in the records of the delivery service or on the return receipt and (iv) addressed as follows:

(a) If to Seller:

Calvary Chapel of Costa Mesa  
3000 W. Macarthur Boulevard  
Suite 500  
Santa Ana, CA 92704

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

Hardy, Carey, Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471  
Attn: Mark A. Balkin, Esq.

(b) If to Buyer:

Intermountain Public Radio, Inc.  
P.O. Box 1065  
Thayne, WY 83127

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

Thompson Hine LLP  
1919 M Street, NW, 7th Floor  
Washington, D.C. 20036  
Attention: Barry Friedman, Esq.

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 11.2.

**11.3      *Benefit and Binding Effect.*** No party hereto may assign this Agreement without the prior written consent of the other party hereto, except that Buyer shall have the right, without the consent of Seller, to assign its rights and obligations under this Agreement, in whole or in part, to an Affiliate of Buyer. As used in this Section 11.3, the term “Affiliate” shall mean any entity that is controlled by or under common control with the Buyer or the owners of the equity of Buyer as of the date of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**11.4      *Further Assurances.*** Subject to the terms and conditions of this Agreement, from time to time prior to, at and after the Closing Date, each party hereto will use commercially reasonable efforts to take, or cause to be taken, all such actions and to do or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate and make effective the transactions contemplated by this Agreement.

**11.5      *Governing Law; Venue.*** This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of California without regard to its conflict of law rules and each of the parties hereto consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any action or proceeding and waives any objection thereto. Process in any action or proceeding referred to in this Section may be served on either party hereto anywhere in the world.

**11.6      *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 hereto entitled to the benefits thereof only by a written instrument signed by the party or parties granting such waiver, but such waiver 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 as set forth in this Section 11.6.

**11.7      *Severability.*** If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by Applicable Law so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original

intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.


**11.8        *Specific Performance.*** The parties recognize and agree that the Assets are unique and that if, prior to Closing, Seller breaches this Agreement and refuses to perform under the provisions hereof, Buyer would be damaged irreparably and the award of monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled to obtain specific performance of the terms of this Agreement, and to injunctive or other equitable relief as remedies or any such breach or failure to perform. If any action for specific performance is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is adequate remedy at law.

**11.9        *Entire Agreement.*** This Agreement, the Schedules and Exhibits hereto, and all documents, certificates and other documents to be delivered by the parties pursuant hereto, and the Escrow Agreement represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter of this Agreement. This Agreement supersedes all prior negotiations between the parties and cannot be amended, supplemented or changed except by an agreement in writing that is signed by the parties hereto.

**11.10       *Counterparts.*** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Each party hereto agrees that the delivery of the Agreement by facsimile or other electronic transmission will be deemed to be an original of the Agreement so transmitted.

**IN WITNESS WHEREOF,** this Asset Purchase Agreement has been executed by the duly authorized officers of Buyer and Seller.

**CALVARY CHAPEL OF COSTA MESA**

By:   
Its.

**INTERMOUNTAIN PUBLIC RADIO, INC.**

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

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IN WITNESS WHEREOF, this Asset Purchase Agreement has been executed by the duly authorized officers of Buyer and Seller.

**CALVARY CHAPEL OF COSTA MESA**

By: \_\_\_\_\_  
Its.

**INTERMOUNTAIN PUBLIC RADIO, INC.**

By:   
Its PRES.

## EXHIBIT A

### DEFINED TERMS

**Accounts Receivable** means the rights of Seller as of the Closing Date to payment for underwriting pledges for announcements broadcast on the Station prior to the Effective Time.

**Adjustment Report** has the meaning ascribed thereto in Section 2.7(c).

**Adjustment Settlement Date** has the meaning ascribed thereto in Section 2.7(e).

**Affiliate** means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person.

**Agreement** has the meaning ascribed thereto in the preamble.

**Applicable Law** means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement, ruling or decision of, agreement with, or by a Governmental Authority.

**Assets** has the meaning ascribed thereto in Section 2.1.

**Assignment and Acceptance Agreement** has the meaning ascribed thereto in Section 8.3(a)(ii).

**Assignment and Assumption Agreement** has the meaning ascribed thereto in Section 8.3(a)(i).

**Assignment Application** means the application to be filed with the FCC in order to obtain the consent of the FCC to the assignment of the FCC Licenses from Seller to Buyer.

**Assumed Contracts** means (i) all Contracts listed on *Schedule 3.7*, (ii) all leases or licenses of Real Property listed on *Schedule 3.5*, and (iii) any Contracts entered into by Seller between the date of this Agreement and the Closing Date that Buyer agrees in writing to assume; *provided, however*, that Assumed Contracts shall in no event include Excluded Contracts.

**Assumed Liabilities** has the meaning ascribed thereto in Section 2.3(a).

**Best Knowledge** means the actual knowledge of the officers and directors of Seller or Buyer, as the case may be, and the knowledge that they would have after due and diligent inquiry into the relevant subject matter, which shall be deemed to include the knowledge that they could obtain through discussions with the employees and representatives of Seller or Buyer, as the case may be, with knowledge of or responsibility for the subject matter in question.

**Bill of Sale** has the meaning ascribed thereto in Section 8.3(a)(iii) hereof.

**Business Day** means any day excluding Saturdays, Sundays and any day that is a legal holiday under the laws of the United States or is a day on which federal banking institutions located in or

around Bakersfield, California are authorized or required by law or other governmental action to close.

**Buyer** has the meaning ascribed thereto in the Preamble.

**Claimant** has the meaning ascribed thereto in Section 10.4(a).

**Closing** means the consummation of the purchase and sale of the Assets pursuant to this Agreement in accordance with the provisions of Section 8.

**Closing Adjustment Amount** has the meaning ascribed thereto in Section 2.7(b).

**Closing Adjustment Statement** has the meaning ascribed thereto in Section 2.7(b).

**Closing Date** has the meaning ascribed thereto in Section 8.1.

**Code** means the Internal Revenue Code of 1986, as amended.

**Communications Act** means the Communications Act of 1934, as amended, and the rules, regulations, and policies of the FCC promulgated thereunder.

**Contracts** means all contracts, leases, non-governmental licenses and other agreements (including, without limitation, leases for personal or real property and employment agreements), written or oral (including, without limitation, any amendments and other modifications thereto).

**Control** means having the power to direct the affairs of a Person by reason of either (i) owning or controlling the right to vote a sufficient number of shares of voting stock or other voting interest of such Person or (ii) having the right to direct the general management of the affairs of such Person by contract or otherwise.

**Damages** means all claims, demands, actions, causes of action, assessments, losses, investigations, proceedings, damages, penalties, fines, costs, payments, expenses and judgments, including, without limitation, interest and penalties and reasonable attorneys' fees, disbursements and expenses. Notwithstanding any provision of this Agreement to the contrary, Damages shall not include, and neither party shall be liable hereunder for, any incidental or consequential damages, or loss of profits or opportunities, or any exemplary or punitive damages, regardless of the circumstances from which such damages arose.

**Deed** has the meaning ascribed thereto in Section 8.3(a)(iv).

**Effective Time** means 12:01 a.m., Pacific time, on the Closing Date.

**Escrow Agent** means Hardy, Carey, Chautin & Balkin, LLP.

**Escrow Agreement** means that certain Escrow Agreement, dated as of even date herewith, by and among Seller, Buyer and Escrow Agent. The Escrow Agreement is attached hereto as Exhibit B.

**Escrow Amount** shall have the meaning set forth in Section 2.4.

**Escrow Proceeds** shall have the meaning ascribed thereto in Section 2.4.

**Excluded Assets** shall have the meaning ascribed thereto in Section 2.2.

**Excluded Contracts** shall have the meaning ascribed thereto in Section 2.2(d).

**FCC** shall have the meaning ascribed thereto in the Preliminary Statement.

**FCC Consent** means action by the FCC granting its consent to the Assignment Application and the consummation of the transactions contemplated thereby.

**FCC Licenses** means (i) all licenses, permits, construction permits and other authorizations issued by or pending before the FCC necessary or useful for the business or operation of the Station or the conduct of the Station (including, without limitation, the rights in and to each Station's call sign), and (ii) those items listed in *Schedule 3.4*.

**Final Adjustment** has the meaning ascribed thereto in Section 2.7(d).

**Final Adjustment Amount** has the meaning ascribed thereto in Section 2.7(e).

**Final Adjustment Statement** has the meaning ascribed thereto in Section 2.7(e).

**Final Order** means an action by the FCC or other regulatory authority having jurisdiction (i) with respect to which action no timely request for stay, motion or petition for reconsideration or rehearing, application or request for review or notice of appeal or other judicial petition for review is pending and (ii) as to which the time for filing any such request, motion, petition, application, appeal or notice and for the entry of orders staying, reconsidering or reviewing on the FCC's or such other regulatory authority's own motion has expired.

**Force Majeure Event** means acts of God, strikes or threats thereof, force majeure or other causes beyond the reasonable control of the party affected by such event or cause.

**Governmental Authority** means any government, any governmental entity, department, commission, board, agency or instrumentality and any court, tribunal or judicial or arbitral body, whether federal, state or local.

**Indemnifying Party** has the meaning ascribed thereto in Section 10.4(a).

**Independent Auditor** has the meaning ascribed thereto in Section 2.7(d).

**Intangibles** means (i) all copyrights (including registrations and any applications for registration), trademarks, trade names, service marks, service names, franchises, licenses, software, computer programs and computer license interests, patents, permits, jingles, logos, proprietary information, technical information and data and other similar intangible property rights and interests applied for, issued to or owned by Seller or under which Seller is licensed or franchised and that are used or useful in the business or operation of the Station, and (ii) those items listed on *Schedule 3.8*.



**Licensee** has the meaning ascribed thereto in the Preamble.

**Lien** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, restriction or encumbrance of any kind, whether statutory or otherwise, in respect of such asset.

**Material Adverse Effect** means an adverse effect that is material to business or operation of the Station and the Assets, taken as a whole, financially or otherwise.

**Permitted Liens** means (i) liens for Taxes not yet due and payable; (ii) liens for property Taxes not delinquent; and (iii) any Liens disclosed in *Schedules 3.5* or *3.6*.

**Person** means an individual, corporation, association, partnership, joint venture, trust, estate, limited liability company, limited liability partnership or other entity or organization.

**Purchase Price** has the meaning ascribed thereto in Section 2.5.

**Purchase Price Adjustment** has the meaning ascribed thereto in Section 2.8.

**Purchase Price Adjustment Period** has the meaning ascribed thereto in Section 2.8.

**Real Property** means leased or licensed real property listed on *Schedule 3.5*.

**Related Party** has the meaning ascribed thereto in Section 9.2(b)(i).

**Required Consents** means consents, approvals, waivers, clearances and estoppels, if applicable, to those certain Assumed Contracts that may require consent to assign to Buyer or its designee and such other consents, approvals, waivers, or clearances from Governmental Authorities or third parties.

**Retained Liabilities** has the meaning ascribed thereto in Section 2.3(b).

**Seller** has the meaning ascribed thereto in the Preamble.

**Seller Fundamental Representations** shall mean Sections 3.1, 3.2, 3.3, 3.4, 3.9, 3.14 and 3.17.

**Social Media** means such websites and Internet applications used to undertake communications with members of the public, including, but not limited to, Facebook, Twitter, WhatsApp, etc.

**Station** has the meaning ascribed thereto in the Preliminary Statement.

**Tangible Personal Property** means (i) all machinery, equipment, computers, tools, vehicles, fixtures, furniture, office equipment, inventory, spare parts, products, customer lists relating to the Station, proprietary information, technical information, data, maps, computer discs and tapes, plans, diagrams, blueprints and schematics and other tangible personal property that is used or useful in the business or operation of the Station, and (ii) those items listed on *Schedule 3.6*.

**Tax** means any federal, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, license, excise, franchise, capital, transfer, employment,

withholding or other tax or governmental assessment, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**Tax Return** means any tax return, declaration of estimated tax, tax report or other tax statement or any other similar filing required to be submitted by Seller relating to the Station to any governmental authority with respect to any Tax.

**Termination Date** means the date on which a termination of this Agreement pursuant to the terms and subject to the conditions of this Agreement shall be effective.

**Third Party Claim** has the meaning ascribed thereto in Section 10.4(c).

**Transfer Taxes** has the meaning ascribed thereto in Section 2.9.

Exhibit B

Escrow Agreement

See attached

Schedule 3.4

FCC AUTHORIZATIONS

<b><u>Call Sign/ FCC Facility Id. No.</u></b>	<b><u>Community of License</u></b>	<b><u>FCC File Number</u></b>	<b><u>Grant Date</u></b>	<b><u>Expiration Date</u></b>
KWDS 94214	Kettleman City, CA	BRED-20130801AFI	12/16/2013	12/01/2021
KWDS 94214	Kettleman City, CA	BLSTA-20160212AAC	3/2/2016	8/29/2016

Schedule 3.5

LEASED PROPERTY

See attached Site License dated September 1, 2011 for Crown Castle GT Company LLC site  
“Kettleman City Rev.”

### Schedule 3.6

#### KWDS EQUIPMENT LIST

- (1) Nautel NV10 Transmitter
- (1) Rohn Model EST2956A 12' x 24' x 9' Equipment Shelter with all fixtures.
- (1) Andrew 1.8 Meter Satellite Dish with Feedhorn and Pipe Mount
- (2) Bard Model WA602-A05EP5XXJ Air Conditioning Unit with EHWA05-A05 Heater Package
- (1) Ice Bridge
- (1) Approximately 250 feet of Andrew HJ7 1 5/8" Transmission Line with connectors and connecting hardware
- (1) Nitrogen Regulator
- (1) ERI Model P300-4BC-DA Antenna
- (1) ERI Model LP Non-Directional Antenna Parts\*

\* The parts are for Antenna No. LPX-3C 89.9 and contained in five boxes located in Seller's warehouse located at 3232 West MacArthur Blvd., Santa Ana, CA 92704. Buyer may pick up the parts during regular business hours any time after closing. Buyer shall provide Seller with notice (to Lance Emma – [lemma@cccm.com](mailto:lemma@cccm.com)) at least 24 hours in advance.

Schedule 3.7

ASSUMED CONTRACTS

See Schedule 3.5

Schedule 3.9

INSURANCE POLICIES

Philadelphia Insurance Co	Policy No. PHPK1350821-25
Markel American Insurance Co.	Policy No. EO860797



Schedule 3.14

NEEDED CONSENTS

Consent from Crown Castle GT Company, LLC for assignment of License (see schedule 3.5).

4850-8279-3263, v. 1