

## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement") is made and entered this 18th day of January, 2007, by and between **EDWARD P. DELAHUNT**, an individual resident of Minnesota (hereinafter referred to as "Assignor") and **THROW FIRE PROJECT**, a Minnesota non-profit corporation (hereinafter referred to as "Assignee").

### RECITALS

**WHEREAS**, Assignor is the holder of a permit issued by the Federal Communication Commission (the "FCC") which allows him to construct a new AM broadcast station to be licensed to Baxter, Minnesota (the "Station"), File No. BNP-20020508AAN, Facility ID No. 136921 (the "Permit"); and

**WHEREAS**, Assignee desires to acquire from Assignor all right, title, and interest in the Permit.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Purchase of Permit.** On the terms and subject to the conditions hereof, on the Closing Date, Assignor shall sell, assign, transfer, convey and deliver to Assignee free and clear of all debts, security interests, mortgages, trusts, claims, pledges or other liens, liabilities, encumbrances or rights of third parties whatsoever (other than those set forth in Section 4) and Assignee shall acquire, assume, and purchase from Assignor, all of the rights, title and interests of Assignor in and to the following, which shall collectively be referred to herein as the "Assets":

(a) Authorizations. The FCC permits and other authorizations held by Assignor and any other permit, application, permission, authority or approval issued to Assignor by the FCC or any other governmental or quasi-governmental authority, to be used or intended for use in the construction or used and/or useful in the operation of the Permit, including, without limitation, those listed on Schedule A (Authorizations).

(b) Books and Files. All books, files, records and logs relating to the Permit, including all filings with the FCC, the Station's FCC local public file, except to the extent that, after Closing, Assignor shall have full access to such books, files, records, and logs for inspection and duplication at Assignor's expense during normal business hours, and to the originals if required, for the purposes of bookkeeping, tax return preparation and accounting procedures, and for such other purposes as may be customary or reasonably necessary or proper.

(c) Excluded Assets. The assets to be assigned and transferred do not include cash-on-hand, bank deposits, accounts receivable, corporate minute books, any other corporate

records not relating to the construction or operation of the Station, Assignor's corporate seal, or stock or securities of any kind.

**2. Purchase Price.** In consideration for the purchase and assignment of the Assets, Assignee shall pay to Assignor total consideration of Six Hundred Thousand Dollars and No/100 Dollars (\$600,000.00) (the "Purchase Price"). Within five (5) business days of the execution and delivery of this Agreement, Assignee shall pay to Assignor as a non-refundable down payment the sum of Eighteen Thousand Five Hundred and No/100 Dollars (\$18,500.00) (the "Deposit"). At Closing, the Deposit shall be treated as a credit to reduce the Purchase Price payable by Assignee.

**3. Closing.** Except as otherwise mutually agreed upon by Assignee and Assignor, the consummation of the transactions contemplated herein (the "Closing") shall occur no later than ten business days after fulfillment of the conditions precedent specified in Section 7 of this Agreement (the "Closing Date") or upon such other day as Assignee and Assignor shall agree in writing.

**4. Governmental Consents.**

4.1 FCC Consent. It is specifically understood and agreed by Assignee and Assignor that the Closing and purchase of the Permit is expressly conditioned on and subject to the prior consent and approval of the FCC granting the Assignment Application (as defined below) without the imposition of any conditions materially adverse to Assignee or the Assignor (the "FCC Consent").

4.2 FCC Applications.

(a) Assignment Application. As soon as practicable after the execution of this Agreement, Assignee and Assignor shall file an application on FCC Form 314, with the FCC for the FCC Consent (the "Assignment Application"). Assignee and Assignor shall complete the Assignment Application with all reasonable diligence and otherwise use their commercially reasonable efforts to obtain the FCC Consent as expeditiously as practicable; provided, however, that neither Assignee nor Assignor shall have any obligation to satisfy complainants of the FCC by taking any steps which would have a material adverse effect upon it. If the FCC Consent imposes any condition on Assignee or Assignor, such party shall use commercially reasonable efforts to comply with such condition; provided, however, that neither Assignee nor Assignor shall be required hereunder to comply with any condition that would have a material adverse effect upon it. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; *provided, however*, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to Section 11.

(b) Modification Application. Assignor agrees to cooperate with Assignee in the filing of a modification application (FCC Form 301) for modification of the outstanding

construction permit to specify the community Rockville, Minnesota as the permit's proposed community of license, with the parameters described in Attachment A (the "Modification Application"). All costs and expenses incurred by Assignor in conjunction with the preparation, review, filing, and prosecution of the Modification Application shall be paid for or reimbursed by Assignee.

**5. Representations and Warranties.** Whenever in this Agreement a warranty or representation is qualified by a word or phrase referring to a parties knowledge (or similar terms), it shall mean to the actual knowledge of such party, or information that would be readily apparent to such party after having made due inquiry of the representatives and agents of such party who would be expected to have knowledge of the matter. Assignor and Assignee, as the case may be, makes the following representations and warranties to each other, each of which is true and correct on the date hereof, shall survive the Closing for the periods of time provided for in Section 10.1 and, except as provided in Section 10.3(e), shall be unaffected by any investigation heretofore or hereafter made by Assignee:

5.1 By Assignor.

(a) Title. Assignor has good and marketable title to the Assets and has the ability to sell, assign, transfer, convey and deliver good and marketable title to the Assignee free and clear of any encumbrances, of any kind.

(b) Absence of Conflicting Agreements or Required Consents. The execution, delivery and performance of this Agreement by Assignor: (i) does not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a violation of or default under, the provisions of any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Assignor is a party or by which Assignor or the Permit are bound; (iii) will not either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, agreement, instrument, license or permit to which Assignor or the Permit is bound; and (iv) will not result in the creation of any lien, charge or encumbrance on the Permit, excluding in each case violations which, or breaches and approvals the absence of which, individually or in the aggregate could not reasonably have a material adverse effect on the Assignor or the permit.

(c) Adverse Actions. Except for matters affecting the radio broadcast industry generally, there are no threatened or existing applications, complaints, petitions or proceedings pending or, to the best of Assignor's knowledge, threatened as of the date hereof before the FCC or any other governmental or regulatory authority relating to the business or operations of a radio station and the Permit is in full force and effect and is not materially impaired as a result of any act or omission of Assignor.

(d) Transfer Restrictions. Assignor has no reason to believe that the transaction contemplated by the Agreement will not be approved by the FCC.

(e) FCC Filings. All reports, forms, and statements required to be filed by Assignor with the FCC with respect to the Permit since its grant which the failure to file would have a material adverse affect on the Permit have been filed and are complete and accurate in all material respects.

(f) Litigation. Assignor is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree relating to the Permit, and there is no litigation, administrative action, arbitration, proceeding or investigation pending or, to the best knowledge of Assignor, threatened against Assignor with respect to, related to or in connection with the Permit in any federal, state or local court, or before any administrative agency or arbitrator (including, without limitation, any proceeding which seeks the forfeiture of, or opposes the renewal of, the Permit), or before any other tribunal duly authorized to resolve disputes.

(g) Compliance With Laws. Assignor (i) is not in material violation of, nor has Assignor received any notice or communication in writing asserting any non-compliance by it in connection with the Permit with, any applicable statute, rule or regulation, whether federal, state or local; (ii) is not in default with respect to any judgment, order, injunction or decree of any court administrative agency or other governmental authority or any other tribunal duly authorized to resolve disputes which relates to the transaction contemplated hereby; (iii) is in all material respects in compliance with all laws, regulations and governmental orders applicable to the ownership of the Permit, and (iv) to the best of Assignor's knowledge its present use of the Permit does not violate any of such laws, regulations or orders in any material respect.

(h) Commissions or Finder's Fees. There are no finders, consultants or brokers involved in this transaction and Assignor has not agreed to pay any broker, finder or consultant a fee in connection with the transaction. In the event any other consultant, broker or finder asserts a claim in connection with this transaction, the party who is alleged to have engaged or retained such other consultant, broker or finder shall indemnify and hold harmless the other party, if such claim is asserted against such other party by said consultant, broker or finder.

(i) Undisclosed Liabilities. No liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, relating to Assignor's ownership of the Permit exists which, after the Closing, will result in any form of transferee liability against Assignee or subject the Permit to any encumbrance or otherwise affect the full, free and unencumbered use of the Permit by Assignee in the manner permitted on the face of the Permit or as contemplated by the change in location described at Section 4.1 above.

(k) Full Disclosure. No representation or warranty made by Assignor contained in this Agreement or any certificate, document or other instrument furnished or to be furnished by Assignor pursuant hereto contains or will contain any untrue statement of a material fact, or omits or shall omit to state any material fact required to make any statement contained herein or therein not misleading. To the best of Assignor's knowledge as of the date hereof, there is no pending or contemplated event or occurrence that would cause any of the foregoing representations not to be true and complete on the date of such event or occurrence as if made on that date.

## 5.2 By Assignee:

(a) Corporate Status and Authority. Assignee (i) is a corporation duly organized, validly existing and in good standing under the laws of the state, province or jurisdiction of its organization hereto, (ii) has all requisite power and authority to execute, deliver and perform this Agreement and all other Ancillary Documents to be executed and delivered by it and to consummate the transactions contemplated hereby and thereby, and (iii) is duly qualified to do business and is in good standing in the State of Minnesota.

(b) Absence of Conflicting Agreements or Required Consents. The execution, delivery and performance of this Agreement by Assignee: (i) does not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a violation of or default under, the provisions of any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Assignee is a party or by which Assignee is bound; (iii) will not either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, agreement, instrument, license or permit to which Assignee is bound.

(c) Commissions or Finder's Fees. There are no finders, consultants or brokers involved in this transaction and Assignee has not agreed to pay any broker, finder or consultant a fee in connection with the transaction. In the event any other consultant, broker or finder asserts a claim in connection with this transaction, the party who is alleged to have engaged or retained such other consultant, broker or finder shall indemnify and hold harmless the other party, if such claim is asserted against such other party by said consultant, broker or finder.

(d) Assignee has no reason to believe that the transaction contemplated by the Agreement will not be approved by the FCC.

## 6. Covenants.

6.1 Pre-Closing Covenants. Assignor covenants and agrees that between the date hereof and the Closing Date or the earlier termination of this Agreement in accordance with its terms, except as expressly permitted by this Agreement or with the prior written consent of Assignee (which shall not be unreasonably withheld, delayed, or conditioned), Assignor shall

hold the Permit in accordance with FCC rules and regulations and with all other laws, regulations, rules and orders, and shall not (i) cause or permit by any act, or failure to act, the Permit to expire, be surrendered, adversely modified, or otherwise terminated, (ii) cause the FCC to institute any proceedings for the suspension, revocation or adverse modification of the Permit, or (iii) fail to prosecute with due diligence any pending applications with respect thereto to the FCC.

6.2 Notification. Assignor will provide Assignee prompt written notice of any change in any of the information contained in the representations and warranties made in Section 5.1. Assignor agrees to notify Assignee of any litigation, arbitration or administrative proceeding pending or, to the best of its knowledge, threatened, which challenges the transaction contemplated hereby. Subject to the provisions of Sections 4 and 11, should any fact relating to Assignor which would cause the FCC to deny its consent to the transaction contemplated by this Agreement come to Assignor's attention, Assignor will promptly notify Assignee thereof and will use its commercially reasonable efforts to take such steps as may be necessary to remove any such impediment to the FCC's Consent.

6.3 No Inconsistent Action. Assignor shall not take any action which is materially inconsistent with its obligations under this Agreement nor take any action which would cause any representation or warranty of Assignor contained herein to be or become false or invalid or which could reasonably be expected to hinder or delay the consummation of the transactions contemplated by this Agreement.

6.4 Closing. Subject to Section 7 hereof, on the Closing Date, Assignor shall transfer, convey, assign and deliver to Assignee the Assets as provided this Agreement.

6.5 Exclusivity. Assignor agrees that, commencing on the date hereof through the Closing or earlier termination of this Agreement, Assignee shall have the exclusive right to consummate the transaction contemplated herein, and during such exclusive period, Assignor agrees that neither Assignor, nor any representative of Assignor will engage, directly or indirectly, in any discussions or negotiations with respect to a transfer, sale or other assignment of the Assets to anyone other than the Assignee.

6.6 Joint. Assignee and Assignor each covenant and agree that between the date hereof and the Closing Date, they shall act in accordance with the following:

(a) Confidentiality. Subject to the requirements of applicable law, and except as with regard to attorneys, accountants, engineers, or consultants engaged by either party, Assignee and Assignor shall each keep confidential all information obtained by it with respect to the other parties hereto and their respective businesses in connection with this Agreement and the negotiations preceding this Agreement, and will use such information solely in connection with the transaction contemplated by this Agreement, and if the transaction contemplated hereby is not consummated for any reason, each shall return to each other party hereto, without retaining a copy thereof, any schedules, documents or other written information obtained from such other

party in connection with this Agreement and the transaction contemplated hereby, together with any summaries thereof. Notwithstanding the foregoing, no party shall be required to keep confidential or return any information which: (i) is known or available through other lawful sources, and not bound by a confidentiality agreement with the disclosing party; (ii) is or becomes publicly known through no fault of the receiving party or its agents; (iii) is required to be disclosed pursuant to an order or request of a judicial or governmental authority (provided the disclosing party is given reasonable prior notice of the order or request and the purpose of the disclosure); or (iv) is developed by the receiving party independently of the disclosure by the disclosing party.

(b) Press Release. Notwithstanding anything to the contrary herein, either party may in accordance with its legal obligations, make such press releases and other public statements and announcements as it deems necessary and appropriate in connection with this Agreement and the transactions contemplated hereby; provided, however, that prior to making any such unilateral press release or announcement, such party shall first communicate the same in writing to the other and afford the other with a reasonable opportunity under the circumstances to review and make reasonable modifications thereto.

(c) Cooperation. Subject to express limitations contained elsewhere herein, Assignee and Assignor agree to cooperate fully with one another in taking any reasonable actions (including without limitation, reasonable actions to obtain the required consent of any governmental instrumentality or any third party) necessary or helpful to accomplish the transactions contemplated by this Agreement, including but not limited to the satisfaction of any condition to closing set forth herein.

(d) Filings. In addition to the covenants of the parties set forth in Sections 6.1 and 6.2, within fifteen days after the execution of this Agreement, Assignee and Assignor shall use their commercially reasonable efforts to complete the items in Section 4 or any other similar filings or actions that may be required to complete the transaction contemplated by this Agreement.

## **7. Conditions of Closing.**

7.1 By Assignee. The obligations of Assignee hereunder are, at its option, subject to satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

(a) Representations, Warranties and Covenants.

(i) All representations and warranties of Assignor made in this Agreement or in any document delivered pursuant hereto, shall be true and complete, in all material respects, as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes (a) expressly permitted or contemplated by the terms of this Agreement; or (b) which are not, either individually or in the aggregate, material and adverse.

(ii) All of the terms, covenants and conditions to be complied with and performed by Assignor on or prior to the Closing Date shall have been complied with or performed in all material respects.

(iii) Assignee shall have received a certificate or written statement, dated as of the Closing Date, from Assignor to the effect that: (a) the representations and warranties of Assignor contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) Assignor has complied with or performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

(b) Governmental Consents. (i) The FCC Consent granting authority for the assignment of the Permit shall have been obtained and become Final without any modification which has a material adverse effect on the Permit. As used herein, the term “Final” shall mean that such action of the FCC, through the passage of time or otherwise, shall no longer be subject to appeal, review or reconsideration. No proceeding shall be pending which seeks, or the effect of which reasonably could be, to revoke, cancel, fail to renew, suspend or adversely modify the Permit; and (ii) the FCC shall have issued a modified construction permit in accordance with the terms of the Modification Application.

(c) Adverse Proceedings. No suit, action, claim or governmental proceeding shall be pending or threatened against, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered (and remain in effect) against, any party hereto which: (i) would render it unlawful, as of the Closing Date, to effect the transaction contemplated by this Agreement in accordance with its terms; (ii) questions the validity or legality of any transaction contemplated hereby; (iii) seeks to enjoin any transaction contemplated hereby; (iv) seeks material damages on account of the consummation of any transaction contemplated hereby; or (v) is a petition of bankruptcy by or against Assignor, an assignment by Assignor for the benefit of its creditors, or other similar proceeding.

(d) Closing Documents. Assignor shall have delivered or caused to be delivered to Assignee, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 9.1.

7.2 By Assignor. The obligations of Assignor hereunder are, at its option, subject to satisfaction or waiver, at or prior to the Closing Date, of each of the following conditions:

(a) Governmental Consents. The FCC Consent shall have been obtained and final without any modification which has a material adverse effect on the Permit. No proceeding shall be pending which seeks, or the effect of which reasonably could be, to revoke, cancel, fail to renew, suspend or adversely modify the Permit.

(b) Adverse Proceedings. No suit, action, claim or governmental proceeding shall be pending or threatened against, and no other decree or judgment of any court, agency or

other governmental authority shall have been rendered (and remain in effect) against, any party hereto which: (i) would render it unlawful, as of the Closing Date, to effect the transaction contemplated by this Agreement in accordance with its terms; (ii) questions the validity or legality of any transaction contemplated hereby; (iii) seeks to enjoin any transaction contemplated hereby; (iv) seeks material damages on account of the consummation of any transaction contemplated hereby; (v) is a petition in bankruptcy by or against any of Assignee or Regent, an assignment for the benefit of creditors, or other similar proceeding.

(c) Closing Documents. Assignee shall have delivered or caused to be delivered to Assignor, on the Closing Date, the Purchase Price and each of the documents required to be delivered by it pursuant to Section 9.2.

## **8. Fees and Expenses**

8.1 Expenses. Except as otherwise expressly set forth in this Agreement, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

8.2 Specific Charges. All costs of transferring the Permit in accordance with this Agreement, including recordation, transfer and documentary taxes and fees, and any excise, sales or use taxes, shall be paid one-half by Assignor and one-half by Assignee. Any filing or grant fees imposed upon it by any governmental authority the consent of which or the filing with which is required for the consummation of the transactions contemplated hereby shall be paid one-half by Assignor and one-half by Assignee.

## **9. Documents to be Delivered at Closing**

9.1 Assignor's Documents. At the Closing, Assignor shall deliver or cause to be delivered to Assignee the following:

(a) A certificate or statement of Assignor, dated the Closing Date, in the form described in 7.1(a)(iii);

(b) Such certificate, bills of sale, assignment, documents of title and other instruments of conveyance, assignment and transfer, and lien releases, all in form satisfactory to the parties and their counsel, as shall be effective to vest in Assignee good and marketable title in and to the Assets in accordance with the terms of this Agreement, free, clear and unencumbered;

(c) At the time and place of Closing, originals and all copies of any documents or other records required to be maintained by the FCC with respect to the Permit, if any thereby delivered to Assignee;

(d) A cash contribution to the Assignee of \$300,000.00 or to another entity designated by Assignee; and

(e) Such additional information, materials, agreements, documents and instruments as Assignee and their counsel may reasonably request in order to consummate the Closing.

9.2 Assignee's Documents. At the Closing, Assignee shall deliver or cause to be delivered to Assignor the following:

(a) Certified resolutions of the Board of Directors of Assignee approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby;

(b) The Purchase Price in accordance with Section 2; and

(c) Such additional information, materials, agreement, documents and instruments as Assignor and its counsel may reasonably request in order to consummate the Closing.

## **10. Survival, Indemnification, Etc.**

10.1 Survival of Representations, Etc. It is the express intention and agreement of the parties to this Agreement that all covenants and agreements (together, "Covenants") and all representations and warranties (together, "Warranties") made by Assignee and Assignor in this Agreement shall survive the Closing (subject to the provisions of Section 10.3, regardless of any knowledge, investigation, audit or inspection at any time made by or on behalf of Assignee or Assignor) as follows:

(a) the Covenants shall survive the Closing for a period from the Closing Date equal to the statute of limitations for written contracts in Minnesota;

(b) the Warranties in Sections 5.1, 5.2, 5.3 and 5.8 shall survive the Closing without limitation;

(c) all other Warranties shall survive for a period of two (2) years from the Closing Date;

(d) the right of any party to recover Damages (as defined in Section 10.2(a)) pursuant to Section 10.2 shall not be affected by the expiration of any Warranties as set forth herein, provided that notice of the existence of any potential Damages in such reasonable detail from which the basis of a Claim subject to the provisions of Section 10.3 can be determined (but not necessarily the fixed amount of any such Damages) has been given by the indemnified party to the indemnifying party prior to such expiration; and

(e) notwithstanding any provision hereof to the contrary, there shall be no contractual time limit in which Assignee or Assignor may bring any action for actual fraud, regardless of whether such actual fraud also included a breach of any Covenant or Warranty;

provided, however, that any such action must be brought within the period of the applicable statute of limitations plus any extensions or waivers granted or imposed with respect thereto.

10.2 Indemnification.

(a) Assignor shall defend, indemnify and hold harmless Assignee from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Assignee arising out of or related to any breach of the Warranties given or made by Assignor in this Agreement, and any material breach of the Covenants made by Assignor in the Agreement.

(b) Assignee shall defend, indemnify and hold harmless Assignor from and against any and all Damages incurred by Assignor arising out of or related to any breach of the Covenants and Warranties given or made by Assignee in this Agreement.

10.3 Procedures: Third Party and Direct Indemnification Claims. The indemnified party agrees to give written notice within a reasonable time to the indemnifying party of any demand, suit, claim or assertion of liability by third parties or other circumstances that could give rise to an indemnification obligation hereunder against the indemnifying party (hereinafter collectively "Claims," and individually a "Claim"), it being understood that the failure to give such notice shall not affect the indemnified party's right to indemnification and the indemnifying party's obligation to indemnify as set forth in this Agreement, unless the indemnifying party's ability to contest, defend or settle with respect to such Claim is thereby demonstrably and materially prejudiced. The parties also agree that any Claim for Damages arising directly between the parties relating to this Agreement may be brought at any time within the applicable survival period specified in Section 10.1, provided that the notice required with respect thereto as specified in Section 10.1(e) has been given within the applicable survival period.

The obligations and liabilities of the parties hereto with respect to their respective indemnities pursuant to Section 10.2 resulting from any Claim shall be subject to the following additional terms and conditions:

(a) the indemnifying party shall have the right to undertake, by counsel or other representatives of its own choosing, the defense or opposition to such Claim;

(b) In the event that the indemnifying party shall elect not to undertake such defense or opposition within (10) days after notice of any such Claim from the indemnified party or shall otherwise fail to defend or oppose following such election, the indemnified party (upon further written notice to the indemnifying party) shall have the right to undertake the defense, opposition, compromise or settlement of such Claim, by counsel or other representatives of its own choosing, on behalf of and for the account and risk of the indemnifying party (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof);

(c) Anything in this Section 10.3 to the contrary notwithstanding: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim; (ii) the indemnifying party shall not, without the indemnified party's written consent (not to be unreasonably withheld, delayed or conditioned), settle or compromise any Claim or consent to entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the indemnified party of a release from all liability in respect of such Claim, and (iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel or other representatives concerning such Claim and the indemnifying party and the indemnified party, and their respective counsel or other representatives, shall cooperate in good faith with respect to such Claim.

(d) No undertaking of defense or opposition to a Claim shall be construed as an acknowledgment by such party that it is liable to the party claiming indemnification with respect to the Claim at issue or other similar Claims.

## **11. Termination Rights.**

11.1 Termination. This Agreement may be terminated at any time prior to Closing as follows:

(a) upon the mutual written consent of Assignee and Assignor and on such terms and conditions as so agreed;

(b) by written notice of Assignee to Assignor if Assignor breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements herein contained and such breach or default shall not be cured within thirty (30) days of the date of notice of breach or default served by Assignee;

(c) by written notice of Assignor to Assignee if Assignee breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its/their covenants or agreements herein contained and such breach or default shall not be cured within thirty (30) days of the date of notice of breach or default served by Assignor;

(d) by written notice of Assignee to Assignor or by Assignor to Assignee if the FCC denies the Assignment Application;

(e) by written notice of Assignee to Assignor, or by Assignor to Assignee, if any court of competent jurisdiction shall have issued an order, decree or ruling (which then

remains in effect) or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement;

(f) by written notice of Assignee to Assignor, if any court, legislative body or governmental or regulatory authority has taken, or is reasonably expected to take, action that reasonably would have a material adverse effect on the ability of Assignee to operate a radio station as contemplated by Assignee; .

(g) either Assignor or Assignee in the event the FCC Consent has not been received or become Final within eight months of the execution of this Agreement;

(h) by Assignor in the event the grant of the Modification Application has not been granted within eight months of the execution of this Agreement; or

(i) by Assignor or Assignee if the transaction has not been consummated by January 25, 2009.

Notwithstanding the foregoing, no party hereto may effect a termination hereof if such party is in material default or breach of this Agreement. Moreover, any such termination pursuant to the forgoing provisions shall not affect Assignor's rights for liquidated damages, if any, set forth in Section 11.4 hereof.

11.2 Liability. Except as set forth in Section 11.4 below, the termination of this Agreement under Section 11.1 shall not relieve any party of any liability for breach of this Agreement prior to the date of termination.

11.3 Monetary Damages, Specific Performance and Other Remedies. The parties recognize that if Assignor refuses to perform under the provisions of this Agreement in breach of this Agreement, monetary damages alone will not be adequate to compensate Assignee for its injury. Assignee shall therefore be entitled to obtain specific performance of the terms of this Agreement in addition to any other remedies, including, but not limited to, monetary damages, that may be available to it. If any action is brought by Assignee to enforce this Agreement, Assignor shall waive the defense that there is an adequate remedy at law. In the event of a material default by either party, which results in the filing of a lawsuit for damages, specific performance, or other remedy by the other party, the prevailing party shall be entitled to reimbursement by the non-prevailing party of reasonable legal fees and expenses incurred by the prevailing party.

11.4 Assignor's Liquidated Damages. In the event the conditions precedent to this Agreement specified in Section 7 have been fulfilled, but nevertheless Closing has not timely occurred, Assignor's obligation to sell the Permit to Assignee shall terminate, and as liquidated damages, Assignor shall be entitled to receive from Assignee as liquidated damages the sum of Two Hundred and Eighty-One Thousand Five Hundred Dollars (\$281,500.00). Simultaneously with the execution of this Agreement, Assignee's contingent obligation to pay this amount shall

be guaranteed by Andrew W. Hilger, in the form attached hereto as Attachment B. Upon payment of the liquidated damages, Assignee shall be permitted to demand that the Permit be assigned by Assignor to Assignee or its designee, in which case Assignor shall immediately take all steps necessary to assign the Permit to Assignee or its designee.

It is understood and agreed that such liquidated damages amount represents Assignee's and Assignor's reasonable estimate of actual damages and does not constitute a penalty. Recovery of liquidated damages shall be the sole and exclusive remedy of Assignor against Assignee for failing to consummate this Agreement and shall be applicable regardless of the actual amount of damages sustained and all other remedies are deemed waived by Assignor. The receipt of such amount, however, shall not affect the right of Assignor to enforce specific provisions of this Agreement relating to confidentiality in equity and to recover, to the extent allowed, costs and expenses incurred in such enforcement.

## **12. Miscellaneous Provisions.**

12.1 Risk of Loss. The risk of loss or damage to the Permit prior to the Closing Date shall be upon Assignor. If, prior to the Closing Date, the Permit is revoked, cancelled, or otherwise terminated for any reason and Assignor shall not have elected, at its sole option and expense to wholly replace or restore the Permit to its equivalent value and scope, Assignee shall have the right to terminate this Agreement in which event Assignee shall be entitled to receive a full refund of the Deposit.

12.2 Certain Interpretive Matters and Definitions. Unless the context otherwise requires: (a) all references to "Sections" are to Sections of this Agreement; (b) each term defined in this Agreement has the meaning assigned to it; (c) "or" is disjunctive but not necessarily exclusive; (d) words in the singular include the plural and vice versa; and (e) all references to "\$" or dollar amounts will be to lawful currency of the United States of America.

12.3 Further Assurances. After the Closing, the parties shall from time to time, at the request of and without further cost or expense to the other parties, execute and deliver such other instruments of conveyance and transfer and take such other actions as may reasonably be requested in order more effectively to consummate the transaction contemplated hereby, including but not limited to, vesting in Assignee good and marketable title to the Permit being transferred hereunder in accordance with the terms hereof, and the Assignee, as applicable, shall from time to time, at the request of and without further cost or expense to Assignor, execute and deliver such other instruments and take such other actions as may reasonably be requested in order more effectively to consummate the transaction contemplated hereby.

12.4 Benefit and Assignment. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Assignor may not voluntarily or involuntarily assign its interest under this Agreement without the prior written consent of Assignee. Assignee shall have the right to assign and/or delegate all or any portion of its rights and obligations under this Agreement, including without limitation,

assignments as collateral, provided that any assignment by Assignee which will likely cause a delay of more than seven (7) days in the issuance of FCC Consent to the Assignment Application shall require the prior written consent of Assignor, and provided further, that no such assignment and/or delegation shall relieve Assignee of its obligations hereunder in the event that its assignee fails to perform the obligations delegated, which consent shall not be unreasonably withheld, delayed, or conditioned. All covenants, agreements, statements, representations, warranties and indemnities in this Agreement by and on behalf of any of the parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns of the parties hereto. In the event Assignee finds it necessary or is required to provide to a third party a collateral assignment of the Assignee's interest in this Agreement and/or any related documents, Assignor shall cooperate with the Assignee and any third party requesting such assignment including but not limited to signing a consent and acknowledgment of such assignment.

12.5 Amendments. No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

12.6 Headings. The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

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

12.8 Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, including by facsimile, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third (3<sup>rd</sup>) day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, on the business day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery or when dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch) and shall be addressed to the following addresses, or to such other address as any party may request, in the case of Assignor, by notifying Assignee, and in the case of Assignee, by notifying Assignor:

To Assignor: Edward P. DeLaHunt  
P.O. Box 49  
Park Rapids, MN 56470

Copy to: Dan J. Alpert  
The Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Rd.  
Arlington, VA 22201

Fax: (703) 243-8692

To Assignee: Throw Fire Project  
P.O. Box 547  
1310 Second Street  
Sauk Rapids, MN 56379  
Attn: Mr. Andrew W. Hilger

Copy to: Moss & Barnett, a Professional Association  
4800 Well Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-4129  
Fax: (612) 877-5999  
Attn: Dave F. Senger, Esq.

12.9 Counterparts. This Agreement may be executed in one or more counterparts and by facsimile, each of which will be deemed an original and all of which together will constitute one and the same instrument.

12.10 No Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns any rights or remedies under or by reason of this Agreement.

12.11 Severability. The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

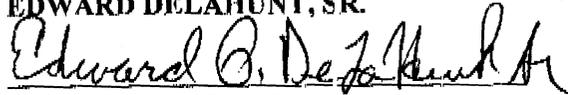
12.12 Entire Agreement. This Agreement and the schedules and exhibits hereto embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

***[Remainder of this page intentionally left blank, signature page to follow]***

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

ASSIGNOR:

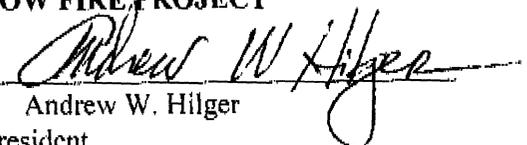
**EDWARD DELAHUNT, SR.**



Edward P. DeLaHunt, Sr.

ASSIGNEE:

**THROW FIRE PROJECT**

By: 

Andrew W. Hilger

Its: President

*[Signature page to Asset Purchase Agreement]*

**Schedule A**

Construction Permit, File No. BNP-20020508AAN, Facility ID No. 136921, currently approved to serve Baxter, Minnesota.

# *Attachment A*

**PRELIMINARY SPECIFICATIONS OF THE  
PROPOSED ROCKVILLE MN AM STATION  
1180 KHz**

**Transmitter Coordinates (D & N):** 45°-21 '-42"; 94°-17'-39"

**Day Theoretical Operating Parameters:**

Power: 50.0 KW

Theoretical RMS: 2195.25 mV/m at 1 km

**Night Theoretical Operating Parameters:**

Power: 5.0 KW

Theoretical RMS: 634.32 mV/m at 1 km

**Critical Hours Operating Parameters**

Not yet determined. Will either be day pattern at reduced power or night pattern at full power.

**City of License Coverage**

The proposed facility will provide the required predicted 5 mV/m signal over the city of Rockville daytime.

The predicted night 8.86 mV/m contour will encompass the required 80% area within the Rockville city boundaries.



**PRELIMINARY SPECIFICATIONS OF THE  
PROPOSED ROCKVILLE MN AM STATION  
1180 KHz**

**Transmitter Coordinates (D & N):** 45°-21'-42"; 94°-17'-39"

**Day Theoretical Operating Parameters:**

Power: 50.0 KW  
Theoretical RMS: 2195.25 mV/m at 1 km

<u>Tower#</u>	<u>Field</u>	<u>Phase(°)</u>	<u>Spacing(°)</u>	<u>Orient.(°)</u>	<u>Height(°)</u>
1	1.000	0.0	0.0	0.0	84.6
7	0.835	-105.8	93.0	0.0	84.6

**Night Theoretical Operating Parameters:**

Power: 5.0 KW  
Theoretical RMS: 634.32 mV/m at 1 km

<u>Tower#</u>	<u>Field</u>	<u>Phase(°)</u>	<u>Spacing(°)</u>	<u>Orient.(°)</u>	<u>Height(°)</u>
1	0.457	-8.2	0.0	0.0	84.6
2	1.000	0.0	180.6	120.4	84.6
3	0.525	14.5	368.0	116.6	84.6
4	0.418	66.9	124.1	214.5	84.6
5	0.989	98.4	201.9	144.7	84.6
6	0.564	121.6	375.4	130.4	84.6

**Critical Hours Operating Parameters**

Not yet determined. Will either be day pattern at reduced power or night pattern at full power.



### **City of Rockville Corporate Boundaries**

The corporate boundaries of the city of Rockville (which are the same as the boundaries of the old township of Rockville) are approximated by a four-sided polygon whose vertices are located at the following geographical coordinates:

45°-30'-02"; 94°-23'-03"  
45°-30'-04"; 94°-15'-36"  
45°-24'-51"; 94°-15'-39"  
45°-24'-49"; 94°-22'-59"

### **City of License Coverage**

The proposed facility will easily place a predicted 5 mV/m signal over the entire city of Rockville daytime.

The calculated night interference-free signal is 8.86 mV/m, based on the 50% RSS exclusion (taken from WHAM, Rochester, NY). The predicted night 8.86 mV/m contour will encompass 81% of the area within the Rockville city boundaries, thus meeting the 80% requirement in the FCC rules.

*Attachment B*

## GUARANTY

This **GUARANTY**, dated as of January 17, 2007, made by each person listed on the signature pages hereto ("**Guarantor**"), in favor of Edward P. DeLaHunt, Sr. ("DeLaHunt").

## RECITALS

**WHEREAS**, by Asset Purchase Agreement dated January 17, 2007 (the "APA"), DeLaHunt and Throw Fire Project, a Minnesota not-for-profit corporation ("Throw Fire") have entered into an agreement for the sale of a construction permit for Baxter, Minnesota; and

**WHEREAS**, pursuant to Section 11.4 of the APA, Throw Fire has agreed to pay DeLaHunt the sum of \$281,500.00 if certain events occur; and

**WHEREAS**, Guarantor has agreed to personally guarantee the payment of the sum of \$281,500.00, as specified herein; and

**WHEREAS**, the Guarantor has determined that the execution, delivery and performance of this Guaranty directly benefit, and are within the best interests of, the Guarantor.

**NOW, THEREFORE**, in consideration of the premises and the agreements herein and in order to induce the DeLaHunt to enter into the APA, the Guarantor hereby agrees with DeLaHunt as follows:

SECTION 1. Definitions. All terms used in this Guaranty which are defined in the APA and not otherwise defined herein shall have the same meanings herein as set forth therein.

SECTION 2. Guaranty.

(a) The Guarantor hereby (i) unconditionally and irrevocably guarantees the punctual payment, as and when due and payable, of all amounts from time to time owing by Throw Fire to DeLaHunt pursuant to Section 11.4 of the APA, (such obligations, to the extent not paid by Throw Fire, being the "**Guaranteed Obligations**"), and (ii) agrees to pay any and all expenses (including attorneys' fees and expenses) incurred by DeLaHunt in enforcing any rights under this Guaranty. Without limiting the generality of the foregoing, the Guarantor's liability shall extend also to all amounts that constitute part of the Guaranteed Obligations and would be owed by Throw Fire to DeLaHunt under Section 11.4 of the APA but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving DeLaHunt.

(b) Guarantor shall be liable under this Guaranty for the payment or performance of the Guaranteed Obligations, and shall be obligated to take any and all actions appropriate.

SECTION 3. Guaranty Absolute; Continuing Guaranty; Assignments.

(a) The Guarantor guarantees that the Guaranteed Obligation will be paid strictly in accordance with the terms of the APA, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of DeLaHunt with respect thereto. Guarantor agrees that his guarantee constitutes a guaranty of payment when due and not of collection, and waives any right to require that any resort be made by DeLaHunt to any collateral pledged to DeLaHunt with respect to, or otherwise securing, the Guaranteed Obligations. The obligations of the Guarantor under this Guaranty are independent of the APA, and a separate action or actions may be brought and prosecuted against Guarantor to enforce such obligations, irrespective of whether any action is brought against any Throw Fire or Throw Fire is joined in any such action or actions. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and Guarantor hereby irrevocably waives any defenses Guarantor may now or hereafter have in any way relating to, any or all of the following any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations.

(b) This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until the date which all of the Guaranteed Obligations and all other amounts payable under this Guaranty are paid in full, (ii) be binding upon the Guarantor, his successors and assigns and (iii) inure to the benefit of and be enforceable by DeLaHunt and his successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (iii), DeLaHunt may pledge, assign or otherwise transfer all or any portion of its rights and obligations under the Note and this Guaranty to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to DeLaHunt herein or otherwise, in each case as provided in the Note.

SECTION 4. Waivers and Acknowledgements.

(a) The Guarantor hereby waives: (i) promptness and diligence; (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Guaranty; (iii) except as otherwise expressly provided herein, all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Guaranteed Obligations and the obligations of the Guarantor hereunder, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of such Person's obligations hereunder; and (iv) any requirement that DeLaHunt protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against the Throw Fire or any other Person or any collateral.

(b) The Guarantor hereby waives any right to revoke this Guaranty, and acknowledge that this Guaranty is continuing in nature.

(c) The Guarantor acknowledges that he will receive substantial direct and indirect benefits from the execution of the APA and that the waivers set forth in this Section 4 are knowingly made in contemplation of such benefits.

SECTION 5. Subrogation. No Guarantor may exercise any rights that Guarantor may now or hereafter acquire against Throw Fire that arise from the existence, payment, performance or enforcement of Guarantor's obligations under this Guaranty, including without limitation any right of subrogation, reimbursement, exoneration, contribution or indemnification, or any right to participate in any claim or remedy of DeLaHunt against Throw Fire, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including without limitation the right to take or receive from Throw Fire, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been indefeasibly paid in full in cash. If any amount shall be paid to Guarantor in violation of the immediately preceding sentence at any time prior to the payment in full in cash of the Guaranteed Obligations and all other amounts payable under this Guaranty, such amount shall be held in trust for the benefit of DeLaHunt and shall forthwith be paid to DeLaHunt to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Note, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (a) Guarantor shall make payment to DeLaHunt of all or any part of the Guaranteed Obligations, and (b) all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall be paid in full in cash, DeLaHunt will, at Guarantor's request and expense, execute and deliver to Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to Guarantor of an interest in the Guaranteed Obligations resulting from such payment by Guarantor.

SECTION 6. Representations and Warranties. Guarantor hereby represents and warrants as follows:

(a) Guarantor has the requisite power, competence and authority to execute, deliver and perform this Guaranty and each other writing executed or delivered in connection with this Guaranty, and to perform and consummate the transactions contemplated hereby and thereby.

(b) Guarantor has taken all action necessary to authorize the execution and delivery by Guarantor of this Guaranty and each other writing executed or delivered in connection with this Guaranty, and the performance and consummation the transactions contemplated hereby and thereby.

(c) The execution, delivery and performance by Guarantor of this Guaranty (i) do not and will not contravene any requirement of law or contractual restriction binding on or affecting Guarantor, and (ii) do not and will not result in or require the creation of any Lien upon or with respect to the properties of Guarantor.

(d) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body, and no consent of any other person, is required for the due execution, delivery and performance by Guarantor of this Guaranty.

(e) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor, in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(f) There is no action, suit or proceeding pending or, to Guarantor's knowledge, threatened against or otherwise affecting Guarantor before any court, governmental authority or other regulatory body or any arbitrator (i) which challenges the validity or enforceability of this Guaranty, or (ii) which if adversely determined could reasonably be expected to materially and adversely affect the condition (financial or otherwise), income, assets or liabilities of Guarantor.

(g) There is no fact known to Guarantor (other than public information as to matters of a general economic nature) that materially adversely affects the financial condition, income, assets or liabilities of the Throw Fire or Guarantor that has not been disclosed to DeLaHunt in writing prior to the date hereof.

SECTION 7. Affirmative and Negative Covenants of the Guarantor. Guarantor hereby covenants and agrees that, until full and final payment of the Note, Guarantor will, at his own expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that may be necessary or desirable or that DeLaHunt may reasonably request in order to provide DeLaHunt with the full rights and benefits contemplated by this Guaranty.

SECTION 8. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered, if to a Guarantor, to Guarantor at his address set forth on the signature page hereto; if to DeLaHunt, to it at its address set forth in the APA; or as to either such Person at such other address as shall be designated by such Person in a written notice to such other Person complying as to delivery with the terms of this Section 8. All such notices and other communications shall be effective (i) if mailed (by certified mail, postage prepaid and return receipt requested), when received or three days after deposited in the mails, whichever occurs first; (ii) if telecopied, when transmitted and confirmation is received, provided same is on a Business Day and, if not, on the next Business Day; or (iii) if delivered, upon delivery, provided same is on a Business Day and, if not, on the next Business Day.

SECTION 9. CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE. Guarantor hereby irrevocably and unconditionally:

(a) Submits in any action, suit or proceeding relating to this Guaranty or for recognition and enforcement of any judgment in respect thereof, to the jurisdiction of the courts of the State of Minnesota, the courts of the United States of America for the District of Minnesota, and appellate courts thereof;

(b) Agrees that any such action, suit or proceeding may be brought in such courts and waives any objection that such Person may now or hereafter have to the venue of any such action, suit or proceeding in any such court or that such action, suit or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) To the extent that Guarantor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Guarantor hereby irrevocably waives such immunity in respect of any obligations under this Guaranty;

(d) Agrees that nothing herein shall affect the right of DeLaHunt to effect service of process in any other manner permitted by law; and

(e) Waives any right Guarantor may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

SECTION 10. Miscellaneous.

(a) The Guarantor will make each payment hereunder in lawful money of the United States of America and in immediately available funds to DeLaHunt, at such address specified by DeLaHunt from time to time by notice to the Guarantor.

(b) No amendment or waiver of any provision of this Guaranty and no consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by the Guarantor and DeLaHunt, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of DeLaHunt to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of DeLaHunt provided herein are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

(d) Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(e) This Guaranty shall (i) be binding on the Guarantor and his heirs, executors, administrators, successors and assigns, and (ii) inure, together with all rights and remedies of DeLaHunt hereunder, to the benefit of DeLaHunt and their respective successors, permitted transferees and permitted assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, DeLaHunt may assign or otherwise transfer his rights and obligations under the Guaranty to any other Person, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to DeLaHunt herein or otherwise. None of the rights or obligations of Guarantor hereunder may be assigned or otherwise transferred without the prior written consent of DeLaHunt.

(f) This Guaranty represents the entire agreement of the Guarantor and DeLaHunt with respect to the subject matter hereof, and there are no promises, undertakings,

representations or warranties by DeLaHunt relative to the subject matter thereof not expressly set forth or referred to herein.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

(h) THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF MINNESOTA APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED THEREIN WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

**IN WITNESS WHEREOF**, the Guarantor has caused this Guaranty to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**GUARANTOR:**

ANDREW W. HILGER

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**ACCEPTED AND AGREED:**

EDWARD DELAHUNT, SR.

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