

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of the 23rd day of May, 2016, by and between Radio Perry, Inc. and Radio Peach, Inc. (collectively, the "Sellers"); and Creek Media, LLC, a Georgia limited liability company ("Buyer"):

**WHEREAS**, Radio Perry, Inc. ("Radio Perry") is the licensee and operator of AM Broadcast Station WPGA, 980 kHz, Perry, Georgia, Federal Communications Commission ("Commission" or "FCC") Facility ID # 54727 ("WPGA") and FM Broadcast Station WNEX-FM, 100.9 MHz, Perry, Georgia, FCC Facility ID # 54726 ("WNEX-FM"); and

**WHEREAS**, Radio Peach, Inc. ("Radio Peach") is the licensee and operator of AM Broadcast Station WNEX, 1400 kHz, Macon, Georgia, FCC Facility ID # 54034 ("WNEX") (WPGA, WNEX-FM, and WNEX hereinafter collectively referred to as the "Stations"); and

**WHEREAS**, Gaurav Malhotra ("Receiver") was appointed as Receiver of Radio Perry and Radio Peach by order of the Superior Court of Bibb County, Georgia dated February 19, 2015 ("Receivership Order"); and

**WHEREAS**, pursuant to paragraph 9 of the Receivership Order, Receiver was granted the right to sell assets of Radio Perry and Radio Peach; and

**WHEREAS**, the Buyer desires to purchase the assets, authorizations and goodwill of the Stations in order to serve the public interest, convenience and necessity; and

**WHEREAS**, the grant by the Commission of two separate applications on FCC Form 314 for Commission consent to the assignments of the licenses of the Stations from the respective Sellers to Buyer (which applications will contain this Agreement), is an express condition precedent to the obligation of the Buyer to consummate this Agreement;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Assets to Be Sold**. In consideration for the payments and other good and valuable consideration stated in the paragraphs below, and upon the terms and conditions set forth herein, on the Closing Date (defined in Section 6 below), Seller shall sell, assign, transfer, convey and deliver to Buyer free and clear of all liens, claims, encumbrances, security interests, charges and restrictions, except as specifically stated in Sections 3 and 4 below, all of the assets described as follows (hereinafter the "Sale Assets"):

a. all of Sellers' right, title and interest to the licenses issued to Sellers by the Commission for the operation of the Stations, subject to each license's expiration on April 1, 2020, including all permits and other authorizations issued to Sellers by the FCC with

respect to the Stations, and all of each Station's related broadcast auxiliary authorizations (if any), together with any renewals, extensions or modifications thereof, as listed on Schedule A attached hereto and incorporated by reference herein (the "FCC Licenses");

b. all of Sellers' right, title and interest on an "as is, where is" basis in and to the tangible personal property owned by Radio Perry and Radio Peach devoted to WPGA, WNEX-FM and WNEX exclusively, including without limitation the items set forth in Schedule B attached hereto and incorporated by reference herein (the "Tangible Personal Property");

c. all agreements for the sale of advertising time on the Stations entered into in the ordinary course of business, and all other contracts, agreements, leases and understandings entered into in the ordinary course of the Stations' business, including without limitation those listed on Schedule C hereto and incorporated by reference herein, together with all contracts, agreements and leases made between the date hereof and Closing in accordance with Section 21 (the "Station Contracts");

d. with the understanding that Buyer shall change the call letters of WPGA immediately upon consummation of the transactions contemplated by this Agreement, all of Seller's right, title and interest in and to the call letters "W N E X" and "W N E X - FM" and Sellers' rights in and to the trademarks, trade names, service marks, internet domain names, copyrights, programs and programming material, jingles, slogans, logos, and other intangible property which are used or held for use in the operation of the Stations, including without limitation those listed on Schedule D (the "Intangible Property");

e. Sellers' rights in and to all the files, documents, records and books of account (or copies thereof) relating to the operation of the Stations, including the Stations' local public files required by 47 C.F.R. §73.3526, programming information and studies, engineering data, advertising studies, marketing and demographic data, sales correspondence, lists of advertisers, credit and sales reports, and logs (but excluding records relating to any of the excluded assets defined in Section 3 below);

f. All goodwill associated with the Stations acquired on or before the Closing Date; and

g. Notwithstanding the television tower and all leases associated therewith, all tower lease agreements, site use agreements, and/or any other leases or agreements of a similar nature touching and concerning the Property, including but not limited to that certain Tower Lease Agreement between Radio Perry, Inc. and Broadcast Equities. Corp., dated March 26, 2001, affecting the Peach County Tower, as hereinafter defined (the "Cumulus Lease"), and that certain Tower Lease Agreement between Radio Perry, Inc. and Georgia PCS Management L.L.C., dated November 1, 2000, affecting the Macon Tower, as hereinafter defined (the "Sprint Lease").

2. **Consideration.** As the total consideration for Seller's sale to Buyer of all of the Sale Assets listed in the preceding paragraph, Buyer shall pay to Seller a purchase price of SEVEN HUNDRED NINETY THOUSAND DOLLARS (US\$790,000.00) in lawful money of the United States of America, payable as follows:

a. Buyer agrees to deposit by cashier's check or wire transfer TWENTY-FIVE THOUSAND DOLLARS (US\$25,000.00) as an earnest money down payment (the "Escrowed Funds") with Lighthouse Law Firm, LLC, Attn: Joshua Hale, 3646 Vineville, Avenue, Macon, GA 31204 ("Escrow Agent"). Escrow Agent will serve as escrow agent for the Escrowed Funds.

b. On the Closing Date, upon jointly executed instructions, Escrow Agent will release the Escrowed Funds to the Seller. Simultaneously, Buyer will pay to Seller by cashier's check or wire transfer the sum of SEVEN HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$765,000.00), plus or minus any proration's or adjustments as allowed by this Agreement.

c. All taxes and assessments, utility bills and other ongoing costs of usual operation of the Stations shall be prorated to the Closing Date, and the total purchase price shall be adjusted upward or downward as the case may be. All sales or use taxes, transfer taxes, and similar taxes and fees incurred up to the Closing Date, together with any costs of recordation, filing fees or the like, and taxes incurred subsequent to the Closing Date, shall be allocated between Buyer and Sellers and paid according to legal requirements and prevailing practice in the State of Georgia.

d. Whoever is the licensee on the last day for the payment of annual FCC regulatory fees shall be responsible for their payment (*i.e.*, these fees are not subject to proration).

3. **Cash; Accounts Receivable; Excluded Assets.** It is specifically agreed and understood that any cash on hand at the Stations as of the Closing Date shall be retained by the Sellers. Further, Sellers shall retain any bank accounts, cash equivalents and securities and other investments owned by Sellers as of the Closing Date. All accounts receivable and notes receivable in favor of Radio Perry, Radio Peach and the Receiver in existence as of the Closing Date shall be the property of the Sellers. Sellers are solely responsible for collecting their own receivables that may exist as of the Closing Date. However, any rents, notes, receivables, or any other matters involving payments that affect the Station, , will be prorated as of the date of Closing. Put simply, any money relating to benefits received prior to Closing shall be applied to Sellers, and any money relating to benefits received on or after Closing shall be applied to Buyer. In addition, unless otherwise specified herein, the following assets are excluded from this transaction:

a. All assets related exclusively to the operation of Radio Perry's WPGA-TV, Perry, Georgia, FCC Facility ID #54728;

b. All assets related exclusively to the operation of Radio Peach's WPGA-LP, Macon, Georgia, FCC Facility ID #67972;

c. All real estate owned or operated on by the Receiver, Radio Perry and/or Radio Peach that is not located at or upon the properties commonly known as 2254 Rogers Place, Macon, Georgia 31204 or 670 Aultman Road, Fort Valley, Georgia 31030.

d. Any FM translator stations which rebroadcast WPGA, WNEX-FM or WNEX (Receiver, Radio Perry and Radio Peach are not licensees of any FM translator stations).

4. **No Liabilities Assumed Other Than Those Expressly Disclosed.** The parties hereto agree and understand that this Agreement is for a sale and purchase of free and clear Sale Assets, subject only to the Station Contracts which Buyer has specifically agreed to assume as set forth herein. On the Closing Date, Buyer shall assume the obligations of Sellers arising during, or attributable to, any period of time on or after the Closing Date under the Station Contracts and any other liabilities of Sellers to the extent Buyer receives a credit therefor under Section 2.c. above (collectively, the "Assumed Obligations"). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to have assumed, any other liabilities or obligations of Sellers. Sellers agree that (a) they will not sell any advertising on the Stations which is to be aired after the Closing Date and (b) they will ensure that the Stations will perform all commercial announcements that they are required to air pursuant to barter or "trade out" contracts prior to the Closing Date, so that their barter balance is no worse than "zero" (any products or services which have accrued in favor of Sellers as the result of such barter or "trade out" contracts shall remain the property of Sellers after the Closing Date). Any and all liabilities pertaining to the Stations which are incurred by or on behalf of the Stations subsequent to the Closing Date may only be incurred by the Buyer and shall be discharged by the Buyer. Buyer agrees to hold Seller harmless with respect to any liabilities incurred by Buyer subsequent to the Closing Date.

5. **FCC Consent.** Within three (3) business days of the date of this Agreement, Buyer and Sellers shall file with the Commission two separate applications on FCC Form 314 (the "FCC Applications") requesting FCC consent to the assignments of the FCC Licenses to Buyer. FCC consent to the FCC Applications without any material adverse conditions other than those of general applicability is referred to herein as the "FCC Consent." Buyer and Sellers shall diligently prosecute the FCC Applications and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible. Buyer and Sellers shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder. Except as otherwise provided herein, each party shall pay its own legal fees and other expenses incurred with the preparation and execution of this Agreement and the FCC Applications. Buyer agrees to pay all filing fees for the FCC Applications, which are a total of \$3,150.00.

6. **Closing Date.** The consummation of the sale and purchase of the Sale Assets provided for in this Agreement (the “Closing”) shall take place on a weekday not later than the fifth (5<sup>th</sup>) business day after either (at Buyer’s option) a) the date upon which the FCC or its staff acting pursuant to delegated authority shall have initially granted the FCC Consent or b) such FCC Consent becomes Final (as defined below), in any case subject to the satisfaction or waiver of the conditions set forth in Sections 11 and 12 below. The date on which the Closing is to occur is referred to herein as the “Closing Date.” The Closing shall take place at the offices of Receiver’s local counsel in Macon, Georgia, or at such other place as is mutually satisfactory to the parties, not later than 2:00 p.m. Eastern Time on the Closing Date. For purposes of this Agreement, the term “Final” shall mean that action shall have been taken by the FCC (including action duly taken by the FCC’s staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

7. **Time of the Essence.** Time is of the essence in the completion of this Agreement and the consummation thereof.

8. **Sellers’ Representations and Warranties.** Sellers hereby represent and warrant each of the following, the truth and accuracy of which has induced Buyer to enter into this Agreement:

a. *Authorization and Binding Obligation.* The execution, delivery, and performance of this Agreement by Sellers have been duly authorized by all necessary actions on the part of Receiver. This Agreement has been duly executed and delivered by Sellers and constitutes the legal, valid, and binding obligations of Sellers, enforceable against them in accordance with its respective 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.

b. *Title and Condition of Tangible Personal Property.* Schedule B contains a list of material items of Tangible Personal Property included in the Sale Assets. All Tangible Personal Property included in the Sale Assets are sold “as is, where is” with no warranties of merchantability or fitness for intended purpose. Nonetheless, Sellers do warrant and represent that one or both of the Sellers are the rightful and legal owners of all property listed in Schedule B, and that there is not, to Seller’s knowledge, claims of ownership of said property by anyone other than Sellers.

c. *Contracts.* Each of the Station Contracts is in effect and are binding on Sellers and, to Sellers’ knowledge, the other parties thereto. Sellers have performed their obligations under each of the Station Contracts in all material respects, and are not in material default thereunder, and to Sellers’ knowledge, no other party to any of the Station Contracts is

in default thereunder in any material respect.

d. *Broker.* Neither the Sellers nor any person acting on Sellers' behalf have incurred any liability for any finders' or brokers' fees or commissions with any person or entity in connection with the transactions contemplated by this Agreement.

e. *FCC Matters.* Sellers are the holders of the FCC Licenses described on Schedule A, which are all of the licenses, permits and authorizations required for the present operations of the Stations. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending, or, to Sellers' knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability). There is not issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or order of forfeiture against any of the Stations or against Sellers with respect to any of the Stations that could result in any such action. The Stations are operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC.

f. *Claims and Legal Actions.* Other than the receivership proceeding in the Superior Court of Bibb County, Georgia, Case No. CV 62336, and the Chapter 11 Bankruptcy Proceeding involving Register Communications, Inc., debtor in possession, the parent entity of Sellers, in the United States Bankruptcy Court for the Middle District of Georgia, Case No. 15-52823, there is currently no litigation pending or to the knowledge of Sellers, threatened against or relating to Sellers that would prevent or materially impede the consummation of the transactions contemplated by this Agreement, nor do Sellers know of any basis, including performance of Sellers' obligations set forth herein, for such litigation. Sellers are not subject to any order, judgment, writ, injunction or decree of any court or governmental agency or entity which could have a material adverse affect on their ability to consummate the transactions contemplated herein.

g. *Towers Ownership and Access.* Sellers further warrant and represent that one or both Sellers are the sole and exclusive rightful and legal owners of the Towers, as hereinafter defined, and that no one else is claiming ownership of said towers

h. *Miscellaneous.*

(i) To the Sellers' knowledge, there are NO leases or tenancies affecting the Property, other than the leases specifically referenced herein.

(ii) Notwithstanding the requirements to bring the Tower into compliance that have been discussed between the parties, an exhaustive list of which must be provided in the Due Diligence Materials, to the best of Seller's knowledge, Seller has not received any notice from any governmental entity of any violation of any of the aforesaid statutes, ordinances, rules, regulations, orders or requirements.

(iii) To the best of Sellers' knowledge, this Agreement and the performance by Sellers of its obligations hereunder will not contravene any law or contractual restriction binding on Sellers.

(iv) Unless otherwise specified herein, Sellers have the full right, power and authority to enter into and perform this Agreement; and no consent, approval, order or authorization of any court or other governmental entity is required to be obtained by Sellers in connection with the execution and delivery of this Agreement and the performance hereof by Sellers of Sellers' obligations hereunder.

9. **Buyer's Representations and Warranties.** Buyer represents and warrants to Sellers, the truth and accuracy of each of the following being expressly material to Sellers' execution of this Agreement, as follows:

a. *Authorization and Binding Obligation.* The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with its respective 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.

b. *Absence of Conflicting Agreements.* Subject to obtaining the FCC Consent, the execution, delivery, and performance by Buyer of this Agreement and the documents contemplated hereby and thereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third Party; (ii) will not conflict with the Articles of Incorporation or By-laws of Buyer; (iii) will not conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality; or (iv) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Buyer is a Party or by which Buyer may be bound, such that Buyer could not acquire or operate the Sale Assets.

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

d. *Qualification.* Buyer is legally and financially qualified, including but not limited to under the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC, to acquire the Stations and to timely consummate all of the transactions called for herein, and no waiver will be necessary under the rules, regulations and policies of the FCC for Buyer to acquire the Stations.

e. *Claims and Legal Actions.* There is currently no litigation pending or to the knowledge of Buyer, threatened against or relating to Buyer that would prevent or materially impede the consummation of the transactions contemplated by this Agreement, nor does Buyer know of any basis, including performance of Buyer's obligations set forth herein, for such litigation. Buyer is not subject to any order, judgment, writ, injunction or decree of any court or governmental agency or entity which could have a material adverse effect on its ability to consummate the transactions contemplated herein.

10. **Employees.**

a. Sellers have provided Buyer a list showing employee positions and certain compensation information for employees of the Stations who are available to Buyer for hire. Buyer may, but is not obligated to, offer post-Closing employment to such employees. With respect to each such employee, Buyer shall notify Sellers in writing whether or not it will offer employment to such employee upon Closing. Such notice shall be given at least ten (10) business days prior to Closing to enable Sellers to give appropriate notices to employees without need to pay severance.

b. With respect to employees of the Stations hired by Buyer ("Transferred Employees"), Sellers shall be responsible for all compensation and benefits arising prior to the Closing Date (in accordance with Sellers' employment terms), and Buyer shall be responsible for all compensation and benefits arising after the Closing Date (in accordance with Buyer's employment terms). Buyer shall grant credit to each Transferred Employee for all unused vacation and sick leave accrued as of the Closing Date as an employee of Sellers, and Buyer shall assume and discharge Sellers' obligation to provide such leave to such employees (such obligations being a part of the Assumed Obligations).

11. **Conditions Precedent to Buyer's Obligation to Close.** The obligations of Buyer under this Agreement are, at its election (other than with respect to subparagraph (a) below), subject to the fulfillment on or prior to the Closing Date of each of the following conditions precedent. The parties agree and understand that Buyer's decision to enter into and perform under the terms of this Agreement has been materially premised upon the fulfillment of each of the following conditions, and Sellers agree that all of them are material:

a. The FCC Consent shall have been granted and, unless otherwise waived by Buyer in its sole discretion, shall have become Final.

b. Sellers shall have made or stand willing to make all the deliveries to Buyer at Closing, which shall include various instruments and documents, all of which shall be in a form reasonably satisfactory to Buyer and its counsel, to wit:

i. One or more bills of sale for all the Tangible Personal Property to be sold under this Agreement, including without limitation, a bill of sale to convey the Towers free and clear of all liens, encumbrances, mortgages, deeds of trust, deeds to secure

debt, restrictions, charges, assessments, agreements, options, covenants, easements, licenses, leases, reservations, tenancies, and claims of any character unless otherwise specified herein;

ii. An executed agreement or agreements for the assignment and assumption of the Station Contracts;

iii. An assignment of Sellers' rights in the FCC Licenses, the call letters for the Stations, any domain names listed on Schedule D and any other existing authorizations relative to the Stations;

iv. Any other closing document or instrument reasonably requested by Buyer or its counsel which may be needed to effectuate all of the transactions called for by this Agreement.

v. Execution of an escrow agreement mutually acceptable to the parties hereto establishing an escrow of certain amounts relating to the purchase of the property set forth in the Purchase and Sale Agreement between Green Bull Georgia Partners, LLC and Griffith Downtown Investments, LLC.

c. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement and there shall have been no material breach by Buyer in the performance of any of its covenants or agreements contained herein.

d. Adherence to all terms of the Due Diligence Period, as hereinafter defined.

12. **Conditions Precedent to Sellers' Obligations**. The obligations of Sellers under this Agreement are, at their election (other than with respect to subparagraph (a) below), subject to the satisfaction on or prior to the Closing Date of each of the following conditions precedent:

a. The FCC Consent shall have been granted.

b. Buyer shall deliver the purchase price called for herein.

c. Buyer shall execute an agreement or agreements for the assignment and assumption of the Station Contracts.

d. Buyer shall execute at the request of Sellers or their counsel any additional document or instrument which may be needed to effectuate all of the transactions called for by this Agreement.

e. Seller shall have obtained, if necessary, permission by a court of

competent jurisdiction to consummate the contemplated transaction hereunder.

f. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement and there shall have been no material breach by Buyer in the performance of any of its covenants or agreements contained herein.

g. Execution of an escrow agreement mutually acceptable to the parties hereto establishing an escrow of certain amounts relating to the purchase of the property set forth in the Purchase and Sale Agreement between Green Bull Georgia Partners, LLC and Griffith Downtown Investments, LLC.

13. **Mutual Cooperation.** The parties agree and pledge to each other total mutual cooperation to achieve approval by the Commission of the FCC Applications, including but not limited to prosecuting the FCC Applications in good faith and with due diligence so as to achieve grant and finality thereof as expeditiously as practicable, and to take no action to delay or defeat approval.

14. **Termination.**

a. In the event that the FCC Consent shall not have been granted by November 30, 2016, either party shall have the right to unilaterally terminate this Agreement by giving written notice to the other party of its intention to do so, provided, however, that the party seeking to so terminate is not itself in material breach hereof. Upon such notice, this Agreement shall have no further force and effect and Buyer shall receive a full refund of its Earnest Money.

b. If the Commission designates either of the FCC Applications contemplated by this Agreement for hearing, either party shall have the option of terminating this Agreement by notice to the other party prior to the commencement of the hearing if the terminating party shall not be in default under the provisions of this Agreement; provided that the terminating party shall not be entitled to terminate this Agreement if the hearing results from or was caused by (i) any failure on the part of such party to furnish or make available to the Commission information required to be supplied by such party, or (ii) the willful furnishing by such party of incorrect, inaccurate or incomplete information to the Commission, or (iii) a protest resulting from the solicitation of such protest by the party seeking to terminate this Agreement. In the event either party terminates this Agreement under the authority of this provision, Buyer shall receive a refund of its Earnest Money in full.

15. **Seller's Default; Specific Performance.** It is agreed and understood that the Sale Assets are unique, as stations WPGA and WNEX-FM are the only AM and FM broadcast stations licensed by the Commission to Perry, Georgia, and WNEX is one of only six AM broadcast stations licensed to Macon, Georgia. Therefore, in the event of Sellers' breach of this Agreement which is the result of Sellers' refusal to sell the Stations to Buyer, or default under the terms contained herein, despite Buyer being ready, willing and able to close, Buyer

may and shall be entitled to seek the equitable remedy of specific performance to enforce Sellers' obligations hereunder to sell the Stations to Buyer. Accordingly, Sellers waive any defense to such action in equity that Buyer has an adequate remedy at law. In other situations where Buyer has a claim that Sellers have breached this Agreement (for example, should certain tangible assets not be in condition comparable to that during the period immediately prior to execution of this Agreement), Buyer shall give written notice to Sellers, and Sellers shall have ten (10) business days in which to cure such breach. In the event such a breach is not cured within the prescribed period, or Sellers otherwise default under the terms contained herein, Buyer may, in its sole discretion, elect to cure the breach and deduct the cost thereof from the purchase price, or terminate this Agreement and receive a full refund of its Earnest Money.

16. **Buyer's Default.** Where Sellers have a claim that Buyer has breached this Agreement, Sellers shall give written notice to Buyer, and Buyer shall have ten (10) business days in which to cure such breach, provided, however, that no such notice shall be required nor cure opportunity afforded for Buyer's inability or unwillingness to tender the full purchase price on the Closing Date upon the occurrence of all conditions precedent. Should said breach remain uncured upon the end of said ten business day period, Buyer shall be in default. At that point, Sellers may terminate this Agreement. In the event that Sellers terminate this Agreement in accordance herewith, then Sellers shall be free to sell the Sale Assets and assign the licenses of the Stations (subject to prior written Commission approval) to any other party of their choosing, as well as being able to take advantage of any remedies at law or in equity allowed by Georgia law, and the Earnest Money shall be forfeited to the Seller.

17. **Risk of Loss; Set-off.** Sellers shall bear all risk of loss in connection with the Stations prior to the Closing Date. Should the Stations, or any of the Sale Assets which are material to the operation of the Stations, be substantially damaged or destroyed and are not replaced or repaired promptly, Buyer at its sole option may agree to consummate its purchase of the Stations upon an agreement of set-off or credit for such damaged or destroyed Sale Assets having been reached; if Sellers and Buyer cannot agree as to an appropriate set-off or credit for such damaged or destroyed assets, Sellers and Buyer shall submit the dispute to the nearest office of the American Arbitration Association for resolution.

18. **Taxes.** Sellers shall be solely responsible for any and all taxes applicable to the Stations until and including the Closing Date. The sales, use and/or transfer taxes assessed by the State of Georgia upon the sale of the Sale Assets from Sellers to Buyer shall be paid according to legal requirements and prevailing practice in the State of Georgia. Thereafter, all such taxes applicable to the Stations shall be the sole responsibility of the Buyer.

19. **Allocations.** On or before the Closing Date, the parties hereto will attempt to reach allocations as to the purchase price consistent with the federal Internal Revenue Code and the rules and regulations of the Internal Revenue Service, and will jointly prepare IRS Form 8594 at the Closing or as soon thereafter as is practicable. In the event the parties shall have not reached such an allocation prior to the Closing Date, then the matter shall be determined by an accountant acceptable to both parties or, if they cannot agree on a single

accountant, then by a panel of three accountants, one selected by each of Buyer and Sellers and the third selected by their respective accountants.

20. **Bankruptcy; Receivership; Contingent or Undisclosed Liabilities**. Sellers are not in bankruptcy. Radio Perry and Radio Peach are in a state court receivership under Georgia law appointed by and under the jurisdiction of the Superior Court of Bibb County, Georgia.<sup>2</sup>

21. **Covenants**. From the date hereof onward until the Closing Date, Buyer shall not attempt to interfere with the operations of Sellers and the Stations; however, Buyer shall be permitted a reasonable opportunity to review books and records of the Stations and to inspect the physical condition of the Sale Assets. From the date hereof onward until the Closing Date, Seller shall operate the Stations in all material respects in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders and shall not materially adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses. Nothing contained in the foregoing provision shall preclude Sellers and Buyer from entering into a "Time Brokerage Agreement" which adheres to the rules, regulations, case law and policies of the FCC. Upon the Closing Date, and thereafter, Sellers shall make no attempt to control the Stations, incur any debts or obligations against the Stations, or otherwise interfere in the operations of the Stations; provided that nothing contained in this paragraph shall preclude any officer or employee of Sellers from serving as a management employee of the Stations under the direction and control of Buyer. However, and notwithstanding any provision in this Agreement, prior to the Closing, Sellers may not, without the prior written consent of the Buyer, such consent not to be unreasonably withheld:

a. Make any substantial change in the business of the Stations, except such changes as are unlikely to have any material adverse impact upon the Sale Assets;

b. Sell, lease, transfer or otherwise dispose of any Sale Asset without obtaining a suitable replacement, subject to Buyer's express approval, before the Closing Date, provided that any replacement item which improves the inventory of Sale Assets shall result in an upward adjustment of the purchase price by the actual cost of such item;

c. Mortgage, pledge or encumber any Sale Asset;

d. Waive or agree to waive any rights of material value relating to the Sale Assets or allow to lapse or fail to keep in force any license, permit, authorization or other right relating to the Stations;

e. Except in the ordinary course of business, make or permit any amendment or termination of any material Station Contract included in the Sale Assets or enter into new Station Contracts that will be binding upon Buyer after Closing;

f. Enter into any agreement with any employee binding Sellers and/or Buyer to utilize said employee's services in connection with the Stations other than an

employment agreement terminable at will; or

g. Become a party to any cash, trade or barter agreement for the sale of air time requiring announcements to be made over the Stations subsequent to the Closing Date.

22. **Public Notices.** Sellers shall prepare and give all public notices as are required pursuant to 47 C.F.R. §73.3580. Buyer will reimburse Sellers for the cost of publishing the required public notices in the *Macon Telegraph* newspaper.

23. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns. An assignment shall not relieve the parties of their obligations to guarantee the prompt performance of any and all of their respective obligations thereunder. Buyer shall have the right to assign all or any portion of its rights, duties and obligations hereunder to a corporation, partnership or limited liability company owned by or under common control with Wes Griffith, so long as such assignment does not materially delay FCC approval of this transaction. In that event, Buyer shall remain jointly and severally liable for any duties or obligations not delegated. The parties agree and understand that Receiver is acting only pursuant to a court order entered by the Superior Court of Bibb County, Georgia, and may not be sued by Buyer or its successors, heirs, assigns, representatives or agents in his individual name or capacity.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia; the forum for any disputes arising hereunder shall be the courts of Bibb County, Georgia.

25. **Headings.** The headings of the paragraphs of this Agreement are for the convenience of the parties only, and do not in any way modify, interpret or construe the meaning of the provisions hereof.

26. **Notices.** All notices required or permitted to be given hereunder shall be in writing and copies shall be effective when sent by registered or certified mail, postage and fees prepaid, addressed as follows:

If to Seller:

Mr. Gaurav Malhotra, as Receiver  
15 William Street, Suite 25E  
New York, NY10005  
and  
Stephen J. Latkovic  
c/o Candlewood Partners  
600 Superior Ave. East, Suite 1800  
Cleveland, OH 44114

With a copy to (which shall not constitute notice);  
Dennis J. Kelly, Esquire  
Law Office of Dennis J. Kelly  
Post Office Box 41177  
Washington, DC 20018-0577

If to Buyer:

Mr. Wes Griffith, Manager  
Creek Media, LLC  
543 Cherry Street  
Macon, GA 31201

With a copy to (which shall not constitute notice):  
Joshua T. Hale, Esquire  
Lighthouse Law Firm, LLC  
3646 Vineville Ave.  
Macon, GA 31204

27. **Survival of Representations, Warranties and Covenants.** The parties agree that the representations, warranties and covenants made by them herein shall survive the Closing Date for a period of one (1) year subsequent to the Closing Date.

28. **Entire Agreement.** The foregoing constitutes the entire and whole agreement of the parties, and may not be modified, amended or changed in any way unless in writing signed by all parties hereto. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

29. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding Agreement when the parties shall have each executed one counterpart.

30. **Tower Due Diligence.**

(a) For a period of thirty (30) days after the date hereof, Purchaser may inspect, among other things, the Towers and verify compliance with applicable laws, ordinances and regulations. confirm whether the Towers are viewed as real estate by the Board of Tax Assessors of the County in which each Tower lies, that said Towers are not taxed separately from the real property as personal property; and that there is no personal property tax bill for any property included in this Agreement. If prior to the expiration of such thirty (30) day period, the Purchaser in its sole discretion determines the Towers are not suitable for its intended use, the Purchaser shall so notify the Seller in writing, the Earnest Money shall be

promptly refunded to the Purchaser and this Agreement and all obligations between the parties shall terminate, except for those provisions that specifically state that they survive the early termination of this Agreement.

(b) Within **five (5) business days** of the Effective Date of this Agreement, Seller shall deliver copies of the Cumulus Lease and the Sprint Lease and any and all assignments and/or modifications thereof as evidence of the Seller's right title and interest in and to said Cumulus Lease and Sprint Lease, together with a letter of good standing for said leases, and the following materials that Seller has readily available (the "Due Diligence Materials"): an exhaustive list of all requirements to bring the Tower into compliance; any and all notices, warnings, and/or official notifications, it has regarding the compliance, or lack thereof, of the Tower, a list of any and all leases touching and concerning any of the subject matter of this Agreement, a statement of all advertising accounts, including a statement of all payments made or owed, proof of payments and a letter of good standing for all such leases. In the event any of these items do not exist, or are not available, Seller shall give a written accounting of their non-existence or unavailability.

[THIS SPACE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE]

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.**

**SELLER**

**RADIO PERRY, INC.**

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

Gaurav Malhotra as Receiver

**RADIO PEACH, INC.**

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

Gaurav Malhotra as Receiver

**BUYER**

**CREEK MEDIA, LLC**

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

Wes Griffith, Manager

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.**

**SELLER**

**RADIO PERRY, INC.**

By: \_\_\_\_\_  
Gaurav Malhotra as Receiver

**RADIO PEACH, INC.**

By: \_\_\_\_\_  
Gaurav Malhotra as Receiver

**BUYER**

**CREEK MEDIA, LLC**

By:  \_\_\_\_\_  
Wes Griffith, Manager

**SCHEDULE A**

FCC Licenses

<b>Class</b>	<b>Call Sign</b>	<b>Facility ID</b>	<b>File #</b>	<b>Location</b>
AM	WNEX	54034	BL-20060307BUP	MACON, GA
AM	WPGA	54727	BL-20060307BUO	PERRY, GA
FM	WNEX-FM	54726	BLH-19980811KB	PERRY, GA

## **SCHEDULE B**

### **Tangible Personal Property**

The following property, as more fully shown in the below pictures:

- 2 office chairs
- 2 lg. speakers
- 1 Acer monitor
- 1 Asus Monitor
- 1 HannsG Monitor
- 3 keyboards
- 1 Philips TV
- 1 tower of TV equipment
- 1 sm. Sony TV
- 1 sm. storage unit
- 3 CPUs
- FM/AM Tower and all related equipment, fixtures and personal property affixed thereto located at 670 Aultman Rd, Fort Valley, GA (the "Peach County Tower")
- WNEX Tower and all related equipment, fixtures and personal property affixed thereto located at 2254 Rogers Place, Macon, GA (the "Macon Tower") (the Peach County Tower and the Macon Tower collectively herein referred to as the "Towers")
- 2 Trailers

## SCHEDULE C

### Station Contracts

- Affiliation Agreement – Westwood One
- Affiliation Agreement – SGN (term expired but agreement still being used)
- Affiliation Agreement – The Weather Channel
- ABC Radio – News coverage
- RadioTraffic.com Software License Agreement

**SCHEDULE D**

**Intangible Property**

None.