

**ASSET PURCHASE AGREEMENT**

**by and between**

**THE ERIE RADIO COMPANY, LLC**

**and**

**SJL OF PENNSYLVANIA, INC.**

**for the Purchase and Sale of**

**Radio Station**

**WEHP 92.7(FM)**

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this "Agreement") is made and entered effective as of this 24<sup>th</sup> day of July, 2019 by and between THE ERIE RADIO COMPANY, LLC, a Pennsylvania limited liability company ("Seller"); and SJL of PENNSYLVANIA, INC., a Pennsylvania corporation ("Buyer").

### **Recitals**

WHEREAS, Seller is the licensee or permittee of radio stations WEHP(FM), FCC Facility ID No. 189528, Erie, Pennsylvania (the "Station"), pursuant to authorizations (the "Station's License") issued by the Federal Communications Commission ("FCC" or "Commission"); and

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, assets relating to the Station, and seek the consent of the FCC for an assignment of the Station's License, subject to the prior approval of the FCC and the other terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and covenants set forth below, and intending to be legally bound hereby, the parties hereby agree as follows:

### **Section 1** **Purchase of Assets**

**1.1 Assets to be Sold.** On the Closing Date, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the following assets, free and clear of all liens and encumbrances (the "Station's Assets"):

- (a) All of Seller's rights and interests in and to the Station's License listed on **Schedule 1.1(a)** of this Agreement;
- (b) Intentionally blank;
- (c) The tangible assets listed on the "Tax Asset Detail" provided to Buyer (the "Tangible Personal Property"), including tower and 2013 Chevy Cargo Box Truck;
- (d) All contracts, agreements and leases (the "Contracts") used in the ordinary course of the Station's business, including all agreements for the sale of broadcast time and those listed in **Schedule 1.1(d)** of this Agreement;
- (e) The intangible assets (the "Intangible Assets") listed on **Schedule 1.1(e)**

of this Agreement; and

- (f) Books, files, and records specifically relating to the Station's Assets and used directly in connection with operations of the Station's Assets.

**1.2 Excluded Assets.** The Station's Assets shall not include cash, deposits, accounts receivable, unbilled airtime, marketable securities, security deposits, Seller's business records not used directly in connection with the operations of the Station's Assets, nor personal furniture and furnishings, art, mementos, awards, photographs and similar items, nor any assets owned by R Brilliant Media, LLC, and all other assets as listed on **Schedule 1.2**.

**1.3 Liabilities.** Buyer shall assume all liabilities and obligations arising on or subsequent to the Closing Date, including those Contracts on **Schedule 1.1(d)** requiring performance on or after the Closing Date. Other than such liabilities and obligations, Buyer expressly does not, and shall not, assume or be deemed to have assumed, under this Agreement or otherwise by reason of the transactions contemplated hereby, any other liabilities, obligations or commitments of Seller.

**1.4 Purchase Price.** At the Closing, Buyer shall pay Seller ONE MILLION THREE HUNDRED AND THIRTY THOUSAND DOLLARS (\$1,330,000.00) for the Station's Assets (the "Purchase Price") by authorizing the delivery of the Deposit and the delivery of a wire transfer in immediately available funds to an account or accounts designated by Seller.

**1.5 Downpayment.** Upon entering into this Agreement, Buyer shall deliver to Seller or Richard Rambaldo, the sum of TWO HUNDRED FORTY THOUSAND DOLLARS (\$240,000.00) in readily available funds to be held as deposit, pending the Closing of the transaction the Deposit shall be delivered to Seller. In the event that this Agreement is terminated by Seller due to a material default in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder by Buyer, and Seller is not materially in default or breach of this Agreement, the Deposit shall be retained by Seller as its exclusive remedy. If this Agreement is terminated for any other reason, the Deposit shall be immediately returned to Buyer.

**1.6 Allocation.** The Purchase Price shall be allocated to the Station's Assets in accord with a **Schedule 1.6**. Seller and Buyer shall use such allocation for tax, accounting, and all other purposes including the filing of their respective tax returns reflecting the allocation in accordance with requirements of Section 1060 of the Internal Revenue Code of 1986, as amended.

**1.7 Accounts Receivable.** Billed and unbilled airtime and accounts receivable in connection with the broadcasting operations of the Station arising from the broadcast of airtime prior to the Closing Date shall be for the account of the Seller. Accounts Receivable arising after the Closing shall be owned by Buyer.

## **Section 2**

### **Date of Closing**

**2.1 Closing Date.** The closing of the transactions contemplated in this Agreement (the "Closing") shall take place on the date (the "Closing Date") that is ten (10) business days after FCC public notice in its Daily Digest of the issuance of the FCC Consent; provided, however, if any petitions to deny or informal objections are filed against the Assignment Application, then Closing will occur no later than five (5) business days after the date that FCC Consent becomes a Final Order. The date of Final Order shall be defined as the date the upon which no complaint, petition, protest, appeal, request or other filing seeking to disturb the FCC Consent shall be pending, and the time for submitting any such filing and the additional time in which the FCC may, at its own motion, to rescind the FCC Consent, shall have expired pursuant to the Communications Act of 1934 and the rules, regulations and policies of the FCC.

**2.2 Closing Time and Location.** The Closing shall take place commencing at 8:00 a.m. local time at the business offices of Seller, or at such other time, location and/or manner (including exchange of closing documents by facsimile or electronic transmission) agreeable to the parties.

## **Section 3**

### **Seller's Representations and Warranties**

Seller hereby represents and warrants to Buyer as follows:

**3.1 Organization, Authorization and Binding Obligation.** Seller is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania. Seller has full power and authority to own and operate Station and to carry on the business of the Station as now being conducted, and as proposed to be conducted by it between the date hereof and the Closing Date. Seller has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary entity action on its part. This Agreement constitutes Seller's valid, legal and binding obligation, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**3.2 Absence of Conflicting Agreements or Required Consents.** Seller's execution, delivery and performance of this Agreement (a) does not require the consent of any third party, except for the FCC Consent; (b) to the best of Seller's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; (c) 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 agreement, instrument or permit; (d) will not result in the

creation of any lien, charge or encumbrance on any of the Station's Assets; and (e) will not in any way affect or violate the terms or conditions of, or result in the cancellation, modification, revocation or suspension of, any of the Station's Licenses.

**3.3 Liabilities.** Except for liens that will be satisfied on or prior to the Closing Date, there are no liens or encumbrances against the Station's Assets, other than the lien of taxes not yet due and payable (collectively, "Permitted Liens").

**3.4 Station's Licenses.** Seller is the authorized legal holder of the Station's Licenses. The Station's Licenses are in full force and effect. No material legal proceedings are now pending before any governmental authority with respect to the Station, other than proceedings of general applicability. Other than the shutdown of certain government agencies including the FCC which commenced on January 3, 2019 which affects FCC licensees generally (the "FCC Shutdown"), Seller knows of no facts relating to the Station that would cause the FCC to delay or deny its consent to the assignment of the Station's Licenses to Buyer hereunder, institute revocation proceedings against the Station Licenses, or otherwise subject the Station Licenses to expiration prior to its stated license renewal date. Subject to the Communications Act of 1934 and the FCC rules and regulations promulgated thereunder (the "FCC Rules and Regulations") and the issuance of FCC Consent, the Station's Licenses are assignable from Seller to Buyer.

**3.5 Tangible Personal Property.** Seller owns and has good title to each item of Tangible Personal Property to be transferred to Buyer, and none of this Tangible Personal Property is subject to any liens or encumbrances. The Tangible Personal Property is being sold in the condition existing as of the date of this Agreement, normal wear and tear excepted, without any further representations or warranties other than the transfer of good title on the Closing Date to such assets.

**3.6 Owned Real Property.** Seller does not own and has never owned any real property.

**3.7 Contracts.** Seller has delivered to Buyer true copies of the Contracts listed on **Schedule 1.1(d)**. **Schedule 1.1(d)** lists, but is not limited to, all material executory Contracts related to the operation of the Station or to the conduct of the Station's business to which Seller is a party or under which the Station has obligations or enjoys benefits, excluding contracts for the sale of on-air spot time, commercial time, programs and announcements.

**3.8 Litigation.** There is no litigation or proceeding pending or, to the best of its knowledge, threatened against Seller in any federal, state or local court, or before any administrative agency, which would have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

**3.9 Brokers.** There is no broker or finder or other person who would have any valid claim through Seller against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, Seller.

**3.10 Taxes.** Seller has, in respect of the Station's business, filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable.

**3.11 Environmental.** Except as set forth in any environmental report delivered by Seller to Buyer prior to the date of this Agreement, to Seller's knowledge as of the date of this Agreement, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the real property used by Seller in connection with the operation of the Station, nor shall any hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law be generated, stored, transported or released on, in, from or to any real property subsequent to the date of this Agreement. Except as set forth or in any environmental report delivered by Seller to Buyer prior to the date of this Agreement, to Seller's knowledge, Seller has complied in all material respects with all environmental, health and safety laws applicable to the Station.

**3.12 Intangible Assets.** Schedule 1.1(e) contains a description of the material Intangible Property included in the Station Assets. Except as set forth on Schedule 1.1(e): (i) to Seller's knowledge, Seller's use of the Intangible Assets does not infringe upon any third party rights in any material respect, (ii) no material Intangible Assets is the subject of any pending, or, to Seller's knowledge, threatened legal proceedings claiming infringement or unauthorized use, and (iii) Seller has not received any written notice that its use of any material Intangible Assets is unauthorized or infringes upon the rights of any other person. Except as set forth on Schedule 1.1(e), to Seller's knowledge, Seller owns or has the right to use the Intangible Assets free and clear of Liens other than Permitted Liens.

**3.13 Employees.** Seller has delivered to Buyer on or prior to the date of this Agreement a complete and correct list as of the date hereof of the names, positions and locations of all employees of a Seller who are employed at the Station and broadcast personnel not employees of a Seller (including, without limitation, independent contractors) performing services for a Station which sets forth the current salaries and any other compensation arrangements of all such personnel and indicates which of those personnel is a party to an employment or consulting or similar contract. Except as otherwise set forth in this Agreement: (i) Seller has complied in all material respects with all labor and employment laws, rules and regulations applicable to the Station's business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining, (ii) there is no unfair labor practice charge or complaint against Seller in respect of the Station's business

pending or, to Seller's knowledge, threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, and there is no strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Station business, and (iii) Seller is not party to any collective bargaining, union or similar agreement with respect to the employees of Seller at the Station, and to Seller's knowledge, no union represents or claims to represent or is attempting to organize such employees.

**3.14 Insurance.** Seller maintains insurance policies or other arrangements with respect to the Station and the Station Assets consistent with its practices for other stations, and will maintain such policies or arrangements until the Closing.

#### **Section 4**

#### **Buyer's Representations and Warranties**

Buyer hereby represents and warrants to Seller as follows:

**4.1 Organization, Authorization and Binding Obligation.** Buyer is duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania. Buyer has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary corporate action on its part. This Agreement constitutes Buyer's valid, legal and binding obligation, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**4.2 Absence of Conflicting Agreements or Required Consents.** Buyer's execution, delivery and performance of this Agreement: (a) does not require the consent of any third party, except for the FCC Consent; (b) will not violate any provision of Buyer's organizational or operating documents; (c) to the best of Buyer's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority; and (d) 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 agreement, instrument or permit.

**4.3 FCC Qualifications.** Buyer has no knowledge of any facts which would, under present law (including the Communications Act of 1934, as amended) and the FCC Rules and Regulations, disqualify Buyer as an assignee of the Station's Licenses or as an owner and/or operator of the Station's Assets, and Buyer will not take, or unreasonably fail to take, between now and the Closing Date any action which Buyer knows or has reason to know would cause such disqualification. Buyer is legally and otherwise qualified to be the licensee of, acquire, own and operate the Station under the Communications Act and the FCC Rules and Regulations.

**4.4 Financial Qualifications.** Buyer has the firm financial commitments necessary to proceed to a closing of the transaction on the Closing Date and to pay the Purchase Price.

**4.5 Litigation.** There is no litigation or proceeding pending or, to the best of its knowledge, threatened against Buyer in any federal, state or local court, or before any administrative agency, which would have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

**4.6 Brokers.** There is no broker or finder or other person who would have any valid claim through Buyer against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, Buyer.

## **Section 5**

### **Pre-Closing Covenants**

**5.1 Pre-Closing Covenants of Seller.** Between the date hereof and the Closing Date, except as contemplated by this Agreement or with the prior written consent of Buyer:

- (a) **Affirmative Covenants.** Seller shall:
  - (i) Maintain and preserve the Station's Licenses without material change, in accord with the Communications Act, the FCC Rules and Regulations, and any other applicable federal, state or local rules and regulations; and
  - (ii) Notify Buyer of any litigation or administrative proceeding pending or, to its knowledge, threatened against Seller which is likely to delay or otherwise interfere with Closing or otherwise adversely affect any of the Station's Licenses; any material damage or destruction of any of the Station's Assets; and any adverse change in the condition of the Station which is likely to delay or otherwise interfere with Closing, or otherwise adversely affect any of the Station's Licenses.
- (b) **Negative Covenants.** Seller shall not:
  - (i) Create, assume or permit to exist any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the Station's Assets that will not be extinguished on or prior to the Closing Date;



- (ii) Sell, assign, lease or otherwise transfer or dispose of any of the Station's Assets;
- (iii) Waive any material right relating to the Station or the Station's Assets;
- (iv) Take any other action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement; or
- (v) Either itself or through any of its officers, directors, shareholders, employees, agents or any other person or entity acting on Seller's behalf, directly or indirectly, solicit or initiate any offer from, or conduct any negotiations with, any person or entity other than Buyer or its assignee(s) concerning the direct or indirect acquisition of the Station.

#### **5.2 Pre-Closing Covenants of Buyer.**

- (a) Buyer shall deliver to Seller any reasonable documentation as may be requested by Seller prior to the Closing Date to demonstrate its financial commitments and ability to consummate the transaction and pay the Purchase Price on the Closing Date; and
- (b) Buyer shall not directly or indirectly control, supervise or direct the operations of the Station; such operations, including complete control and supervision of all Station programs, employees, policies and finances shall be the sole responsibility of Seller.

**5.3 Joint Pre-Closing Covenant.** Seller and Buyer will join together in seeking any required third-party consents to the assignment and assumption of the Contracts. Seller shall be required to use only commercially reasonable efforts to obtain required material consents or authorizations for an assignment of the Contracts, and the failure of Seller to obtain any third-party consents shall not be a failure of a condition to Closing.

**5.4 Employee Joint Covenant.** Seller shall be solely responsible for all liabilities relating to employees of the Station prior to the Closing and Buyer shall be solely responsible for all liabilities relating to employees of the Station after the Closing. The parties agree and understand the Buyer is under no obligation to hire any of Seller's current employees.

### **Section 6 FCC Consent**

The assignment of the Station's Licenses from Seller to Buyer as contemplated by this Agreement is subject to the prior consent and approval of the FCC (the "FCC Consent") pursuant

an application filed by Seller and Buyer with the FCC (the "Assignment Application"). The Buyer shall join with Seller to complete the Assignment Application which shall be filed by Seller within ten (10) business days of the date of this Agreement. Buyer and Seller shall each fully prosecute the Assignment Application with all diligence and shall otherwise use commercially reasonable efforts to obtain the grant of such application as expeditiously as practicable. The FCC filing fee for the Assignment Application shall be paid by Buyer. Buyer and Seller 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.

## **Section 7**

### **Instruments of Conveyance and Transfer.**

**7.1 Station's Assets.** At Closing, Seller shall deliver to Buyer instruments effecting the sale, transfer, assignment and conveyance of Seller's right, title and interest in and to the Station's Assets to Buyer pursuant to the terms of this Agreement, and Buyer shall deliver to Seller instruments effecting the assumption by Buyer of Seller's obligations under the Station's Assets pursuant to the terms of this Agreement, including without limitation the following:

- (a) **Assignment and Assumption of Licenses.** An assignment and assumption of all right, title and interest in and to the Station's Licenses to be assigned pursuant to Section 1.1(a) of this Agreement;
- (b) Intentionally Blank;
- (c) **Bill of Sale.** A bill of sale transferring and delivering to Buyer all right, title and interest in and to the Tangible Personal Property described in **Schedule 1.1(c)** of this Agreement, free and clear of all liens and encumbrances;
- (d) **Assignment and Assumption of Contracts.** An assignment and assumption of the Contracts described in Section 1.1(d) of this Agreement;
- (e) **Assignment and Assumption of Intangible Assets.** An assignment and assumption of the Intangible Assets described in Section 1.1(e) of this Agreement; and
- (f) **Further Instruments.** Further instruments and documents that may be reasonably necessary to effectuate the transactions contemplated under this Agreement.

## **Section 8**

### **Payment of Purchase Price**

At Closing, Buyer shall deliver to Seller:

- (a) the Purchase Price in accordance with Section 1.4 of this Agreement; and
- (b) payment for Seller's Accounts Receivable in accordance with Section 1.7 of this Agreement.

## **Section 9**

### **Expenses and Adjustments**

**9.1 Legal, Accounting and Other Transaction Expenses.** Each party shall pay all of its own legal, accounting and other expenses which it incurs in connection with the transactions contemplated herein, except as may be otherwise provided in Section 6 with regard to the FCC filing fee for the Assignment Application.

**9.2 Transfer Taxes, Fees and Expenses.** All federal, state and local sales and transfer taxes, if any, and any recording costs related to the transfer of the Assets, shall be paid by Buyer.

**9.3 Station's Income and Expenses.** The operation of the Station and the income and expenses attributable thereto up until 11:59 p.m. on the day preceding the Closing Date shall be for the account of Seller and thereafter for the account of Buyer. At Closing, the following shall be adjusted and apportioned between Seller and Buyer:

- (a) Deposits placed with telephone and utility companies, and any advance rents or deposits with service companies or suppliers which shall be for the credit of the Seller;
- (b) The annual FCC regulatory fees for the Station; and
- (c) All other taxes, charges, utility bills, and expenses attributable to the operation of the Station prior to Closing.

**9.4 Closing Adjustments.** In the event Closing adjustments are in favor of Seller, the same shall be paid at Closing by check of Buyer or added to the Purchase Price. In the event that Closing adjustments are in favor of Buyer, the same shall be paid by check of Seller or deducted from the Purchase Price. In the event it is impractical or impossible to compute the amounts of adjustments at Closing, the amount shall be computed and paid on a date no later than 120 days following the Closing Date, except for adjustments to the anticipated amount of FCC Regulatory Fees. Adjustments for differences between estimated and actual FCC Regulatory Fees shall be paid within 30 days of the annual FCC Public Notice establishing such Regulatory Fees for the period up to Closing for which such Regulatory Fees are due.

## **Section 10**

### **Risk of Loss**

The risk of any loss, damage or destruction to any of the Station's Assets from fire or other casualty or cause shall be borne by Seller at all times prior to Closing, and Buyer shall bear the risk of any such loss or damage thereafter.

## **Section 11**

### **Termination Rights and Remedies**

**11.1 Termination Rights.** This Agreement may be terminated prior to the Closing, upon written notice to the other, provided that the terminating party is not then in material breach or default of this Agreement, upon the occurrence of any of the following:

(a) By Seller:

- (i) for a material default by Buyer in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder, which is not cured by the earlier of the Closing Date or within twenty (20) days after written notice of the breach;
- (ii) if Buyer fails to timely deliver the Deposit pursuant to Section 1.5 of this Agreement; or
- (iii) if Buyer fails to appear and consummate the transaction on the Closing Date.

(b) By Buyer:

- (i) for a material default by Seller in the observance or performance of any term or covenant hereunder or a material breach of any material term, representation, warranty or covenant hereunder, which is not cured by the earlier of the Closing Date or within twenty (20) days after written notice of the breach; or
- (ii) if Seller fails to appear and consummate the transaction on the Closing Date.

(c) By either Buyer or Seller

- (i) if the FCC denies the Assignment Application and such denial is not the fault, directly or indirectly, of the terminating party; or
- (ii) if the Closing has not occurred on or prior to the date that is twelve (12) months subsequent to date of this Agreement.

The termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination.

**11.2 Specific Performance.** In the event of a default by Seller pursuant to Sections 11.1(b)(i) or 11.1(b)(ii) above, Buyer may bring an action to enforce the terms of this Agreement by decree of specific performance (subject to obtaining any necessary FCC consent), it being agreed that the Station's Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Seller agrees to waive the defense in any such action for decree of specific performance that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

**11.3 Deposit.** In the event of a default by Buyer pursuant to Section 11.1(a)(i) or Section 11.1(a)(iii) above, Seller shall be entitled to receive the Deposit as liquidated damages, it being agreed that the actual amount of damages would be difficult to determine and that this amount is a reasonable estimate thereof and receipt of such amount shall be Seller's sole remedy at law or in equity. If this Agreement is terminated for any other reason, the Deposit shall be returned to Buyer.

## **Section 12** **Indemnification**

**12.1 Seller's Indemnities.** Seller shall indemnify, defend and hold Buyer harmless from and against any and all losses, costs, liabilities, claims, actions, damages and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description, arising out of or in connection with: (a) the breach of any representation, warranty, covenant or agreement of Seller set forth in this Agreement (including the schedules hereto); (b) any claims arising as the result of the failure of Seller to comply with the provisions of any bulk sales or similar laws applicable to the transfer of the Station's Assets to Buyer; (c) any liability of Seller not assumed by Buyer at Closing; or (d) any claim relating to the conduct of the business and operations of the Station and the Station's Assets by Seller prior to the Closing Date.

**12.2 Buyer's Indemnities.** Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, costs, liabilities, claims, actions, damages and expenses (including reasonable legal fees and other expenses incident thereto) of every kind, nature or description arising out of, or in connection with: (a) the breach of any representation, warranty, covenant or agreement of Buyer set forth in this Agreement; (b) any liability of Buyer; or (c) any claim relating to the conduct of the business and the operation of the Station and the Station's Assets by Buyer on or after the Closing Date.

**12.3 Notice of Claim.** If any action, suit or proceeding shall be commenced by a third party against Buyer or Seller, as the case may be, in respect of which Buyer or Seller proposes to seek indemnification from the other under this Section 12 (a "Third-Party Claim"), then such

party shall promptly notify the party from whom indemnification is sought (hereinafter the "Indemnifying Party") to that effect. The Indemnifying Party shall have the right, at its own expense, to participate in or assume control of the defense of such Third-Party Claim, and the other party shall cooperate with all reasonable requests of the Indemnifying Party, subject to reimbursement for actual out-of-pocket expenses incurred as the result of a request by the Indemnifying Party. If the Indemnifying Party elects to assume control of the defense of a Third-Party Claim, then the other party shall have the right to participate in the defense of such claim at its own expense. If a Third-Party Claim requires immediate action, then the parties will make every effort to reach a decision with respect thereto as expeditiously as possible. If the Indemnifying Party does not elect to assume control or otherwise participate in the defense of any Third-Party Claim, then it shall be bound by the results obtained by the other party with respect to such Third-Party Claim, but no settlement of a Third-Party Claim may be made by the Indemnifying Party without the written consent of the party being indemnified.

### **Section 13** **Miscellaneous**

**13.1 Survival of Representations and Warranties.** The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date. If within such period the indemnified party gives the Indemnifying Party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

**13.2 Assignment.** Seller may not assign its rights and obligations hereunder. Buyer may not assign its rights and obligations hereunder without the express written consent of the Seller. The rights and obligations of the parties hereunder shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and permitted assigns.

**13.3 Construction.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania without regard to choice of laws principles. Each party submits to the jurisdiction of any court sitting in Erie County, Pennsylvania in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party waives any defense of inconvenient forum or lack of personal jurisdiction to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the other party with respect thereto.

**13.4 Attorney's Fees and Costs.** Should any party default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit or any action, the prevailing party in such lawsuit shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

**13.5 Notices.** All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be sent for next business day delivery by USPS Express Mail, Federal Express or similar recognized overnight courier service with all charges prepaid, and shall be deemed to have been duly delivered and received on the next business day after being sent. All such notices, demands, and requests shall be addressed as follows:

If to Seller:

The Erie Radio Company, LLC  
1229 State St  
Erie, PA 16501  
Attn: Richard Rambaldo, President

If to Buyer:

SJL of Pennsylvania Inc.  
3514 State Street  
Erie, PA 16508  
Attn: Brian Lilly, President

or at such other address as either party shall specify by written notice to the other.

**13.6 Multiple Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. All such counterpart signature pages shall be read as though all of the signers had signed a single signature page. This Agreement may be signed and exchanged by facsimile transmission or PDF scan, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

**13.7 Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all other and prior memoranda and agreements between the parties with respect to such subject matter and may not be modified or amended except by a written instrument signed by all of the parties hereto.

**13.8 Captions.** The section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**13.9 No Waiver.** Unless otherwise specifically agreed in writing to the contrary: (a) the failure of any party at any time to require performance by another party of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (b) no waiver by any party of any default by another party shall be taken or held to be a waiver by such party of

any other preceding or subsequent default; and (c) no extension of time granted by any party for the performance of any obligation or act by another party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**13.10 Further Assurances.** From time to time after Closing at another party's request and without further consideration, a party shall execute and deliver such further instruments of conveyance, assignment and transfer, and take such other actions as the requesting party may reasonably request, in order to more effectively convey and transfer any of the Station's Assets.

**13.11 Investigations.** No inspection or investigation made by or on behalf of Buyer, or Buyer's failure to make any inspection or investigation, shall affect Seller's representations, warranties, and covenants set forth in this Agreement, or be deemed to constitute a waiver of any of those representations, warranties, and covenants.

**13.12 Severability.** If any court or governmental authority holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, 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.

**[THE NEXT PAGE IS THE SIGNATURE PAGE]**



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

**SELLER:**

**The Erie Radio Company, LLC**

By: Richard Rambaldo

Richard Rambaldo,  
Duly Authorized Member

**BUYER:**

**SJL of Pennsylvania INC**

By: Brian Lilly

Brian Lilly  
President

8/30/19

**SCHEDULE 1.1(a)**  
**Station's Licenses**

**Station Search Details**

<b>Call Sign:</b>	WEHP
<b>Facility Id:</b>	189528
<b>Primary Station Call Sign:</b>	
<b>Community of License:</b>	Erie, PA
<b>Service:</b>	FM
<b>Fac Type:</b>	
<b>Status:</b>	LICENSED
<b>Status Date:</b>	
<b>Frequency:</b>	92.7
<b>Channel:</b>	
<b>Digital Status:</b>	
<b>Lic Expir:</b>	

**Associated Land Mobile  
Licenses**

**Associated Microwave  
Licenses**

**SCHEDULE 1.1(c)**  
**Tangible Personal Property**

Tax Asset Detail provided to Buyer by Seller.

**SCHEDULE 1.1(d)**  
**Contracts**

1. Tower Lease with Patterson Erie Corp.
2. Building Lease with Seville Realty/George Lyons.
3. Barter contracts for Station jingles and imaging.
4. Music License Contracts with BMI, ASCAP and SESAC.
5. Open trades with advertisers.
6. All other written agreements provided to Buyer.

**SCHEDULE 1.2(a)**  
**Excluded Assets**

1. All current contents in the R Brilliant Media space will remain property of R Brilliant Media.
  - a. Contents include, but are not limited to, 3 office desks, small meeting table, chairs, 4 computers and 6 computer monitors, 5 printers, 3 telephones, and 4 filing cabinets.
  - b. A door will be constructed before the Closing to separate the radio station from the advertising agency. This door will be on the mezzanine right at the end of the Lilly 2<sup>nd</sup> floor office. (On the mezzanine level, at the top of the steps, the on-air studios are on the left and to the right to the steps will be an office that Lilly can use for privacy for a corporate representative, or the station general manager or possibly the program director.)
2. Any and all rights, deposits etc. to the FCC Broadcast License 100.9.
3. Trademark and tradename for "HAPPI" on radio and digital use; provided, however, that Buyer shall have a royalty free, perpetual right to use the name for any of its broadcast properties.

**SCHEDULE 1.6**  
**Purchase Price Allocation**

1.	License	To Be Agreed
2.	Tangible Personal Property	Tax Book Value
3.	Goodwill	Balance