

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into on or as of this _____ day of March, 2018, by and between **the City of Ankeny, Iowa**, an Iowa municipality (the "Seller"), and **Midwest Radio, Inc**, an Iowa corporation (the "Purchaser").

Recitals

A. Seller is the owner of that certain parcel of real property, together with the improvements located thereon, legally described as: COMMENCING AT THE NW CORNER OF THE SW 1/4 NW 1/4 OF SECTION NINETEEN (19) TOWNSHIP 80 NORTH OF RANGE 23 WEST OF THE 5TH P.M. IN ANKENY, IOWA, THE POINT OF BEGINNING. THENCE N 89° 54' 02.89" W 144.40', THENCE N 3° 31' 25.07" W 137.25', THENCE N 10° 26' 54.53" E 297.84', THENCE S 88° 56' 47.03" E 291.77', THENCE S 0° 40' 39.00" E 625.05', THENCE N 89° 56' 24.00" W 100.01', THENCE N 0° 40' 39.00" W 200.02', THENCE N 89° 56' 24.00" W 100.01', TO THE POINT OF BEGINNING (the "Property"). The Property is 3.68 acres, or 160,300.8 square feet, and is to contain all of the property owned by the Seller in this area and adjoining the adjacent land owned by Purchaser.

B. Purchaser desires to purchase the Property and Seller desires to sell the Property pursuant to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the above Recitals and other good and valuable consideration, including the mutual covenants and promises herein contained, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Agreement to Sell. For the consideration set forth in paragraph 2 below, Seller hereby agrees to grant, bargain, sell, assign and convey to Purchaser, the Property, together with all leases, easements, rights of way, privileges, appurtenances and other rights pertaining thereto.

2. Purchase Price; Closing Date. The purchase price for the Property shall be \$2.70 per square foot, subject to survey, less the demolition cost of \$44,000 as set out below (the "Purchase Price"), to be paid as hereinafter provided. The closing of the sale and purchase of the Property (the "Closing") shall occur on the Closing Date, as defined in paragraph 8. Purchase Price shall be reduced by \$44,000 for the cost to remove all above or below ground improvements, structures, culverts, foundations, debris or other materials as well as any environmental remediation necessary to provide a clean site ready for redevelopment. Such demolition and remediation shall be performed by Purchaser. Seller and Purchaser agree that Purchaser is purchasing the Property "AS IS" and that the Seller shall have no further responsibility or liability for any demolition and/or environmental remediation.

3. Earnest Money. Purchaser will deliver to the City of Ankeny upon acceptance a check in the amount of \$5,000.00 (the "Earnest Money"), to be held and applied to

the closing by the City of Ankeny or its attorney. Should Purchaser fail to purchase the Property for any of the reasons set forth in paragraph 5 below, the Earnest Money, together with interest, if any, shall be refunded to Purchaser and this Agreement shall terminate.

4. Right of Inspection.

Upon full execution of this Agreement, Purchaser, its employees, agents or designees, at Purchaser's sole expense, shall have sixty (60) days (the "Inspection Period") to examine and test the Property, and shall further have the right of ingress and egress over and through the Property for the purpose of inspecting, appraising, soil and environmental testing, testing for drainage, surveying, preparing engineering or architectural drawings, and any other activities reasonably necessary to assess the Property, including the review of an updated Title Opinion, as hereafter defined (the "Inspections"). Purchaser shall indemnify and hold harmless Seller from and against any and all expenses, claims, or losses arising from or in connection with any activities of Purchaser, its officers, agents, employees, or contractors on the Property prior to Closing, including without limitation, any attorney's fees or court costs occasioned by such claims.

5. Application of Earnest Money or Refund. The Earnest Money shall be applied to the Purchase Price to be paid by Purchaser at Closing. Upon Purchaser's request, the Earnest Money shall be immediately refunded upon the occurrence of any of the following:

(a) Seller is unable to convey title or fails to cure a title defect or title objection as required under this Agreement; or

(b) Any other Inspection is deemed unacceptable by Purchaser in its sole discretion.

If either of the foregoing 5(a) - (b) shall occur, Purchaser shall give Seller written notice of the problem during the Inspection Period and, if the problem is capable of being cured, Seller shall have the right to remedy or cure it within thirty (30) days of receipt of Purchaser's notice; provided, however, that if the problem cannot be remedied or cured within said thirty (30) day period, and if Seller begins to diligently attempt to cure or remedy the problem and continues such efforts, Purchaser shall extend the cure period to up to ninety (90) days and, if necessary, the Closing Date, as defined in paragraph 8, shall automatically be extended by the appropriate number of days. If Seller cannot remedy or cure the problem to Purchaser's satisfaction within the appropriate period, or if the Purchaser elects to terminate this Agreement within the Inspection Period, the Earnest Money shall be refunded to Purchaser.

6. Cooperation. Prior to the Closing Date, Seller shall cooperate, in whatever manner is reasonably required by Purchaser or any independent inspector, surveyor, governmental authority or authorized agent of the Purchaser, in order to obtain any reports required by Purchaser to assess the Property. In such regard, the Seller will provide copies of all reports, studies, surveys, environmental assessments, appraiser or assessor comments, notices from governmental agencies or any other materials that may be helpful to Purchaser in evaluating the property.

7. Possession. Seller shall deliver possession of the Property to Purchaser on the Closing Date.

8. Place and Date of Closing. The Closing shall take place through the offices of Davis Brown Keohn Shors & Roberts, PC within ten (10) days after the end of the Inspection Period, or at such other location and date as may be agreed upon by the parties hereto in writing. The actual date of Closing is referred to herein as the "Closing Date." Time shall be of the essence with respect to the Closing Date.

9. Conveyance. Seller shall convey good and marketable fee simple title to the Property to Purchaser by Special warranty deed subject only to the restrictions, easements and other matters of record as approved by Purchaser.

10. Costs and Fees. Purchaser shall pay all costs and fees related to the title opinion, any additional survey, appraisal, environmental audits, and the recording of the deed. Seller shall pay any taxes attributable to the sale of the property and any mortgage outstanding. Seller and Purchaser shall pay the fees of their own attorneys for services related to the preparation and negotiation of this Agreement and the sale and purchase of the Property.

11. Apportionments. Ad valorem taxes and assessments, if any, for the tax year in which the Closing occurs are to be apportioned (on the basis of a 365-day year) as of the Closing Date prorata to date of closing.

12. Representations and Warranties of Seller; Disclaimer. To induce Purchaser to enter into this Agreement, Seller makes the following representations and warranties, all of which are true as of the date hereof (unless otherwise specified) and shall also be true as of the Closing Date:

(a) Seller has full power and authority to enter into this Agreement and to perform all of its obligations hereunder. Upon Seller's completion of the proceedings required for an Iowa municipality to sell real property, the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will have been duly authorized by all requisite action and no further action or approval is required in order to constitute this Agreement as a binding and enforceable obligation of Seller.

(b) No materials or services have been furnished or delivered on or to the Property which would create or otherwise encumber the Property with any mechanic's, materialman, laborer, or other similar type lien after the Closing Date.

(c) Seller represents that, it currently is not aware of, and to the best of its knowledge at closing, the property will be in full compliance with any environmental protection, pollution or land uses laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R. Part 261, or the disposal or existence, in or on the Property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.

13. Title Opinion.

(a) Seller will provide an updated abstract to Purchaser for review by Purchaser's attorney within ten (10) days of acceptance of this purchase agreement.

(b) If a search of the abstract discloses judgments, bankruptcies or other liens against any persons or of Seller, Seller, on request, shall deliver to Purchaser and Purchaser's attorney affidavits showing that such judgments, bankruptcies or other liens are not against Seller or a defect to the title.

(c) Prior to Closing, Seller shall deliver to Purchaser, an affidavit with respect to (i) mechanic's liens, certifying that as of the Closing Date there are no known unpaid bills rendered or to be rendered for services performed or materials furnished to the Property and (ii) parties in possession, certifying that on the Closing Date, there are no parties other than Seller in possession of the Property.

14. Conditions Precedent to Closing.

The obligations of Purchaser and Seller under this Agreement are subject to all covenants, agreements, actions, proceedings, instruments and documents required pursuant to this Agreement having been performed, complied with or delivered (as the case may be) in accordance with this Agreement.

15. Documents for Closing.

(a) Seller's attorney shall prepare the necessary instruments required by the Title Opinion in connection with transferring title to the Property to Purchaser. Seller, at Seller's sole cost and expense, shall also deliver or cause to be delivered to Purchaser the following documents:

(i) a certificate of non-foreign status to insure Seller's compliance with Foreign Investment in Real Property Tax Act ("FIRPTA") (Section 1445 of the Internal Revenue Code of 1986, as amended); and

(ii) such additional documents and instruments as the Title Opinion may reasonably require to transfer Seller's interest in the Property pursuant to the terms of this Agreement, each of which shall be in form and substance reasonably satisfactory to the Title attorney; and

(iii) a Declaration of Restrictions, to also be signed by the Purchaser, prohibiting the following uses on the Property:

Contractor's equipment storage yard or plant, or rental of equipment commonly used by contractors, storage and sale of livestock feed, and storage yards for vehicles or a delivery or draying service.

Carting, express hauling or storage yards.

Circus, carnival or similar transient enterprise.

Coal yard, coke yard or wood yard.

Concrete mixing, concrete products manufacture.

Livery stable or riding academy.

Lumberyards and materials sales yards.

Vulcanizing, retreading and recapping of tires.

Truck rental establishments.

Taverns and nightclubs, including private clubs.

Used car lots.

Pawnbrokers.

Buildings or structures designed and used solely for the purpose of leasing interior storage space for the storage of personal property owned by persons, firms, or corporations who are not owners of such buildings or structures, and who do not occupy by lease or otherwise more than 1,000 square feet of leasable space of such structure.

Any business which compounds, processes, packages or treats bakery goods, candy, spices, or other food products, and sells the same to the general public at the same location.

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Seller in accordance with the terms of this Agreement, the Purchase Price less the Earnest Money and prorations.

16. Default; Remedies. If Purchaser fails to perform its obligations under this Agreement within the time specified, Seller shall have the right to retain the Earnest Money plus interest as liquidated damages as its sole and exclusive remedy. If Seller fails to perform any of the covenants of this Agreement, then either: (i) the Earnest Money paid by the Purchaser, plus interest if any shall be returned to Purchaser plus Purchaser's due diligence costs and thereupon Seller shall be released from any and all liability under the terms of this Agreement, or (ii) the Purchaser may seek specific performance of this Agreement. The foregoing remedies of the Purchaser in the instance of a Seller default shall be the sole remedies of Purchaser and in no event shall Purchaser be entitled to sue Seller for damages. If either party fails to comply with all of the terms, covenants and conditions of this Agreement, the prevailing party in any lawsuit will be entitled to all expenses, including a reasonable attorney's fee, incurred as a result of such failure.

17. Condemnation and Destruction. If, on the Closing Date, all or any reasonably substantial portion of the Property is the subject of a pending or contemplated taking by eminent domain which has not been consummated or if the Property has been materially damaged or destroyed, Seller shall notify Purchaser of such fact and Purchaser shall have the option to terminate this Agreement and, in the event Purchaser shall elect to terminate this Agreement, Seller shall refund to Purchaser the Earnest Money together with all interest earned thereon. If this Agreement is terminated and the Earnest Money together with accrued interest is returned, as aforesaid, neither party shall have any further rights or obligations hereunder. If, after receipt of Seller's notice, as aforesaid, Purchaser does not exercise its option to terminate this Agreement, the parties hereto shall remain bound hereunder and Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent

domain described in said notice or all insurance proceeds payable as a result of such destruction or damage.

18. Final Agreement. This Agreement represents the final agreement of the parties and no agreements or representations, unless incorporated in this Agreement, shall be binding on any of the parties, and no portion hereof shall be amended or modified unless such change shall be in writing and signed by both parties thereto.

19. Notice. Any notice required hereunder shall be in writing and sent by certified mail, return receipt requested. Notice shall be deemed to be given when deposited in the United States mail, postage prepaid. Personal delivery may be substituted for certified mail. Notice shall be sent to the following individuals:

If to Purchaser: Midwest Radio, Inc.

 Attn; Rich Eychaner
 P. O. Box 1797
 Des Moines, Iowa 50305-1797

With a copy to: Robert Douglas, esq.

 Davis Brown Keohn Shors & Roberts PC
 4201 Westown Parkway, Suite 300
 West Des Moines, Iowa 50266

If to Seller: City of Ankeny, Iowa
 Attn; Derek Lord
 410 West First Street
 Ankeny, Iowa 50023

With a copy to: Amy S. Beattie

 Brick Gentry, P.C.
 6701 Westown Parkway, Suite 100
 West Des Moines, Iowa 50266

20. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, firm, partnership, joint venture, trust or estate.

21. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Iowa.

22. Assignment. This Agreement may be assigned by Purchaser at any time prior to closing.

23. Survival. The representations, warranties and indemnities contained herein shall be deemed to have been made again by the parties as of the Closing Date, and shall

survive the expiration or termination of this Agreement, the discharge of all other obligations owed by the parties to each other, and any transfer of title to the Property, and shall not be affected by any investigation by or on behalf of Purchaser, or by any information which Purchaser may have or obtain with respect thereto.

24. Severability. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

25. Waiver and Amendment. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by all of the parties hereto.

26. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against either party because that party or such party's legal representative drafted such provision.

27. Broker. Seller and Purchaser shall indemnify each other against any and all claims for broker's fees, costs or commissions which might arise in connection with the purchase and sale of the Property as a result of either's action. The provisions of this Paragraph shall survive closing. Each party hereby represents to the other that it has not utilized the services of any real estate agent or broker in connection with this Agreement other than those listed below.

28. Expiration of Offer. If this Agreement has not been executed by both the Seller and the Purchaser and the Earnest Money delivered to the Escrow Agent by April 30, 2018, this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized corporate officers as of the date set forth above.

PURCHASER: **Midwest Radio, Inc.**



Rich Eychaner, President

Date: February 13, 2018

SELLER:

City of Ankeny, Iowa

By _____

Its _____

Date: _____