

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "**Agreement**") is entered into this 23rd day of June 2004, by and between Yavapai Broadcasting Corporation, an Arizona corporation ("**Buyer**"), and Rocket Radio Corporation, an Arizona corporation ("**Seller**").

PREMISES:

A. Seller holds the license issued by the Federal Communications Commission (the "**FCC**") to operate FM broadcast station KQST(FM), Sedona, Arizona (the "**Station**").

B. Seller desires to sell and Buyer desires to acquire from Seller the assets which are owned, leased or controlled by Seller and used or intended for use in connection with the operation of the Station for the price and on the terms and conditions hereinafter set forth, subject to the prior approval of the FCC.

AGREEMENTS:

In consideration of the above premises and the covenants and agreements contained herein, Buyer and Seller, intending to be bound legally, agree as follows:

SECTION 1 **SALE AND PURCHASE OF ASSETS**

1.1 **Agreement to Sell and Buy.** Subject to the terms and conditions set forth in this Agreement, Seller shall convey and deliver to Buyer on the Closing Date the assets owned by Seller and used in the operation of the Station, free and clear of all claims, liabilities, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever, except for those permitted in accordance with this Agreement, and Buyer agrees to purchase all of the assets on the Closing Date. The assets to be conveyed and assigned to Buyer pursuant to this Agreement, referred to collectively as the "**Station Assets**", are the following:

(a) the licenses and authorizations issued by the FCC for the operation of the Station (the "**FCC Licenses**") and any other governmental authorizations relating to the operation of the Station that are listed on **Schedule 3.4**;

(b) the tangible Personal Property (the "**Personal Property**") listed on **Schedule 3.5**, including any additions thereto or replacements thereof between the date of this Agreement and the Closing Date;

(c) the leasehold interests in real property described on **Schedule 3.6** and used as the existing transmitter site(s) for the Station, including all of Seller's right, title and interests, to the extent transferable, in the special use permit issued by the U.S. Forest Service to Seller for the Mormon Mountain site ("**Special Use Permit**");

(d) the contracts and agreements listed on **Schedule 3.7**, including agreements for the sale of time on the Station (the "**Assumed Contracts**");

(e) all of Seller's trademarks, trade names, service marks and similar intangible assets relating to the Station, which are listed on **Schedule 3.8**, including the right to use FCC call sign KQST; and

(f) the accounts receivable for advertising and program time broadcast on the Station prior to the Closing for which payment has not been received as of the Closing, except with respect to certain accounts receivable for Westwood One programming as provided in Section 1.2(d); and

(g) all files and records of Seller relating to the business and operation of the Station, including all files and records required to be maintained in accordance with the FCC public file rules.

1.2 **Excluded Assets.** Notwithstanding the foregoing, the Station Assets to be conveyed to Buyer hereunder shall exclude the following:

(a) Seller's cash on hand; any utility deposits; any and all insurance policies, letters of credit, or other similar items and any cash surrender value in regard thereto; and any stocks, bonds, certificates of deposit and similar investments;

(b) all contracts, leases or agreements involving the operation of the Station and the Station Assets that are not listed on **Schedule 3.7**, including employment contracts and trade and barter contracts for the sale of time on the Station for consideration other than cash ("**Barter Contracts**");

(c) all pension, health insurance, and other employee benefit plans maintained by Seller for the benefit of the Seller's employees at the Station;

(d) accounts receivable for the sale of advertising from the Westwood One Network broadcast on the Station prior to the Closing for which payment has not been received prior to the Closing, provided that Seller shall only be entitled to any payments relating to such Westwood One advertising received within ninety (90) days of the Closing Date;

(e) the internal corporate books and records of Seller relating to the operation of the Station; and

(f) all equipment used exclusively for the operation of KLOD(FM), Flagstaff, Arizona, licensed to Seller ("**KLOD**").

1.3 **Assumption of Liabilities and Obligations.** As of the Closing Date, Buyer shall assume, pay, discharge and perform (i) all obligations and liabilities arising out of Buyer's ownership of the Station Assets or its operation of the Station on or after the Closing Date, (ii) all obligations

and liabilities of Seller under the Assumed Contracts insofar as they relate to the time period on and after the Closing Date and arise out of Buyer's ownership of the Station Assets or its operation of the Station occurring on or after the Closing Date; and (iii) all obligations and liabilities of Seller under the FCC Licenses and all other governmental authorizations transferred to Buyer insofar as they relate to the time period on or after the Closing Date. All other obligations and liabilities shall remain and be the obligations and liabilities solely of Seller, including but not limited to (iv) wages, salaries, accrued but unused vacation, and payroll taxes related to employees of the Station for periods ending on or before the Closing Date; (v) obligations under any contract or agreement not included in the Assumed Contracts; (vi) obligations under the Assumed Contracts and FCC Licenses relating to the time period prior to the Closing Date; (vii) any claims or pending or future litigation or proceedings relating to Seller's operation of the Station prior to the Closing Date; (viii) all obligations and liabilities arising under the Barter Agreements, and (ix) all other liabilities and obligations arising from Seller's operation of the Station prior to the Closing Date.

SECTION 2

PURCHASE PRICE AND TERMS

2.1 **Purchase Price.** As consideration for the assignment and transfer of the Station Assets, Buyer shall deliver to Seller at the Closing the total sum of Three Million Dollars (\$3,000,000.00) (the "**Purchase Price**"). The Purchase Price shall include the Escrow Deposit as defined in 2.2 below, and the balance to be sent by wire transfer of Federal funds to an account designated in writing by Seller three (3) business days prior to the Closing Date (as defined in Section 8.1 of this Agreement).

2.2 **Escrow Deposit.** As an essential part of this Agreement, Buyer and Seller have executed an Escrow Agreement as of the date of this Agreement (the "**Escrow Agreement**") the form of which is set forth on **Schedule 2.2**, whereby Buyer has deposited the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "**Escrow Deposit**") with Wells Fargo Bank, N.A. Cottonwood, Arizona ("Wells Fargo"), as security for Buyer's performance under this Agreement. Wells Fargo shall serve as the Escrow Agent (the "**Escrow Agent**"). The Escrow Deposit shall be held by the Escrow Agent and distributed pursuant to the terms of the Escrow Agreement. Among other things, the Escrow Agreement shall provide that Three Hundred Thousand Dollars (\$300,000.00) (the "**Initial Payment**") shall be delivered to Seller by wire transfer of Federal funds to an account designated in writing by Seller, thirty-five (35) days after the Assignment Application (as defined in Section 6.1) has been "accepted for filing" by the FCC.

2.3 **Proration of Income and Expenses.** Except as otherwise provided herein, all deposits, reserves and prepaid and deferred income and expenses relating to the Station Assets or the assumed liabilities and arising from the conduct of the business and operations of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 11:59 p.m., Mountain Standard Time, on the date immediately preceding the Closing Date. Such proration shall include, without limitation, all ad valorem property taxes (but excluding taxes arising by reason of the transfer of the Stations Assets as contemplated hereby which shall be paid as set forth in Section 6.3), business and license fees, music and other license fees, utility expenses, rents, lease payments and similar prepaid and deferred items. The prorations and adjustments shall be made on

the Closing Date to the extent practicable, with a final adjustment and proration to be made within ninety (90) days of the Closing Date.

2.4 **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Station Assets in accordance with **Schedule 2.4**. Such allocation shall be used by Buyer and Seller in all respective filings with federal, state and local taxing authorities.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF SELLER

As a material inducement to Buyer to enter into this Agreement, Seller represents and warrants to Buyer as follows:

3.1 **Organization, Standing and Authority.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona. Seller has all requisite corporate power and authority to execute and deliver this Agreement and the documents contemplated hereby, and to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Seller hereunder and thereunder.

3.2 **Authorization and Binding Obligation.** The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary corporate and, to the extent required, shareholder action. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against it in accordance with its terms.

3.3 **Absence of Conflicting Agreements.** Subject to obtaining the FCC Consent, other third party consents that may be required to assign any of the Assumed Contracts to Buyer and complying with the terms of that certain right of first refusal ("Right of First Refusal") between Seller and Red Rock Communications II, Ltd. (the "**Rights Holder**") as described more fully in Section 6.5, the execution, delivery, and performance of this Agreement and the documents contemplated hereby (with or without the giving of notice, the lapse of time, or both) (i) do not conflict with any provision of the Articles of Incorporation or Bylaws of Seller, (ii) do not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental unit, (iii) do not conflict with, constitute grounds for termination of, result in a breach of or constitute a default under any agreement, instrument, license or permit to which Seller is a party or by which Seller may be bound, and (iv) do not create any claim, liability, mortgage, lien, pledge, condition, charge, or encumbrance of any nature whatsoever upon the Station Assets.

3.4 **Licenses.** **Schedule 3.4** includes a true and complete list of and copies of all current FCC Licenses and other licenses issued by any governmental entity, to be transferred to Buyer hereunder to the extent such licenses are transferable. Except as otherwise set forth on Schedule 3.4, Seller is the authorized legal holder of such licenses which are in full force and effect for the remainder of their terms. Such licenses comprise all of the governmental-issued licenses, permits

and other authorizations necessary for the conduct of the business or operation of the Station as presently operated and conducted. The Station is operating in compliance with all material terms and conditions of the FCC Licenses, the rules and regulations of the FCC, and of all other governmental entities with jurisdiction over the operation of the Station.

3.5 Title to and Condition of Personal Property. Seller has good title, including Seller's building located on Mormon Mountain, to all Personal Property that shall be transferred to Buyer pursuant to this Agreement, all of which Personal Property is listed on **Schedule 3.5**. Except as noted on Schedule 3.5, none of the Personal Property is subject to any security interest, mortgage, pledge, conditional sales agreement, or other lien or encumbrance, except for liens for current taxes, to the extent applicable, other governmental charges not yet due and payable, and liens and security interests that shall be released at Seller's expense on or prior to Closing. The Personal Property is available for immediate use in the business or operation of the Station and such Personal Property as is currently in actual use in the operation of the Station has been maintained by Seller in good operating condition and repair (ordinary wear and tear excepted). All items of transmitting and studio equipment have been maintained in a manner consistent with generally accepted standards of good engineering practice, and will permit the Station to operate in compliance in all material respects with the terms of the FCC Licenses and the rules and regulations of the FCC.

3.6 Leasehold Interests in Real Property No owned real property is being transferred or conveyed to Buyer under this Agreement. **Schedule 3.6** contains a description of the leasehold interests in Real Property used by Seller in the operation of the Station that are to be assigned and transferred to Buyer to the extent such leases or permits are assignable or transferable pursuant to this Agreement, including the relay site on Schnebly Hill, the tower lease on Mormon Mountain with Dr. Michael Gelfand, and the Special Use Permit with the U.S. Forest Service for the Mormon Mountain transmitter building site. All appurtenances to and improvements on the leased Real Property and used in the operation of the Station, are in good operating condition and repair, ordinary wear and tear excepted, are constructed in material compliance with all local, state and federal regulations and laws, and have been maintained by Seller consistent with its past practices. There are not present at the leased Real Property or in the transmitter building on Mormon Mountain any (i) "hazardous substances" (as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. "9601 et seq., as amended), (ii) asbestos, (iii) radon gas, (iv) underground storage tanks, (v) items or equipment containing polychlorinated biphenyls ("PCBs") or (vi) stored, spilled or leaked petroleum products, nor is any such property the subject of governmental regulation or liability because of the past release, threat of release, discharge, storage, treatment, generation or disposal of such substances. No lien for environmental investigation or remediation has been filed against the leased Real Property, the transmitter building on Mormon Mountain, or, to the best knowledge of Seller, is proposed, threatened or anticipated, nor does any environmental condition exist with regard to such property which could result in liability for an owner or operator of the property, or to a lessee on the property.

3.7 Assumed Contracts. **Schedule 3.7** lists and describes all Assumed Contracts, except for advertising contracts for the sale of time on the Stations for cash, which may be canceled by Buyer after the Closing without penalty on not more than thirty (30) days notice (the "**Advertising**

Contracts"). Although not required to be listed on Schedule 3.7, the Advertising Contracts are included in the Assumed Contracts that are to be assigned to Buyer at Closing. The Assumed Contracts are in full force and effect, and are valid, binding and enforceable in accordance with their terms; there is not any material default by any party thereto. Except for any third party consents that may be required, Seller has full legal power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuation of any of the Assumed Contracts.

3.8 **Intellectual Property, Trademarks, Trade Names and Copyrights.** Schedule 3.8 is a true and complete list of all current copyrights, trademarks, trade names, licenses, patents, permits, jingles, privileges and other similar intangible property rights and interests (exclusive of those licenses listed on Schedule 3.4) issued to or owned by Seller, or under which Seller is licensed or franchised, which are used in the operation of the Station, including such right, title and interest in and to the FCC call sign KQST, and are to be assigned to Buyer in accordance with this Agreement. All such intangible interests are valid, in good standing and uncontested. Seller is not aware that it is infringing upon or otherwise acting adversely to any trademarks, trade names or copyrights owned by any other person or persons, and there is no claim or action pending, or to the knowledge of Seller threatened, with respect thereto.

3.9 **Insurance.** All of the tangible Personal Property is insured against loss or damage in amounts generally customary in the broadcast industry. **Schedule 3.9** is a true and complete list of all insurance policies of Seller which insure any part of the Assets. Each policy listed on Schedule 3.9 shall remain valid and in effect until the Closing. After the Closing, Buyer shall be responsible for obtaining its own insurance on the Station Assets or the operations of the Station.

3.10 **Employee Information.** Except as set forth on **Schedule 3.10**, Seller does not maintain, is not required to contribute to and has no liabilities with respect to any pension, annuity, retirement, stock option, stock purchase, savings, profit sharing or deferred compensation plan or agreement, or any retainer, consultant, bonus, group insurance, welfare, health and disability plans, fringe benefit or other incentive or benefit contract, plan or arrangement applicable to the employees, officers, directors or consultants (or former employees, officers, directors or consultants) of Seller or the Station ("**Employee Benefit Plans**"). No employee of the Station is a party to an employment contract or consulting agreement with or pertaining to the Station that will be effective on the Closing Date. There are no collective bargaining or other labor agreements with respect to employees of the Seller or the Station. Schedule 3.10 contains a description of vacation, severance pay, and sick leave policies (and the extent to which each employee has earned credit thereunder), bonus, incentive compensation and group insurance plans for the benefit of employees of Seller. The transactions contemplated by this Agreement will not cause or result in any extraordinary payments of any kind to any employee of the Station that could under any circumstances be assessed against Buyer. Seller shall retain all liabilities, responsibilities, obligations and commitments relating to compensation or employee benefits, including those under any Employee Benefit Plan, payable to or on account of any employee of the Station. To its knowledge, Seller has complied in all material respects with all applicable laws and rules relating to the employment of labor, including those relating to wages, hours, collective bargaining and the payment of social security and similar

taxes. Seller has not received any notice of deficiency or non-compliance or inquiry with respect to such laws and rules.

3.11 **Taxes.** Seller has filed or caused to be filed all federal, state, county, local or city tax returns which are required to be filed as a result of its ownership of the Station Assets and operation of the Station. Seller has paid or caused to be paid all taxes and assessments, including but not limited to income, sales, withholding and unemployment taxes, owed by it to the extent that such taxes have become due. If the amount of any tax to be prorated is not known on the Closing Date, such tax shall be apportioned on the basis of the most recent tax assessment. Upon the issuance of the pertinent tax bill, there shall be a reapportionment and adjustment with respect to such tax, even though such final proration and adjustment may take place more than ninety (90) days after the Closing Date.

3.12 **Claims, Legal Actions.** Except as set forth on **Schedule 3.12** and except for proceedings of a general nature that may affect the radio broadcast industry, there is no claim, legal action, arbitration, governmental investigation, application or rule making proceeding, in progress, pending, or, to the best knowledge of Seller, threatened, against or relating to Seller, the Station Assets, or the business or operation of the Station.

3.13 **Financial Records.** All financial records delivered to Buyer have been maintained consistent with Seller's past practices for the periods reflected thereon.

3.14 **No Brokers.** Seller has not employed any brokers or finders or incurred any liability for any brokerage fees, commissions, finders' fees or financial advisory fees in connection with the transactions contemplated hereby, and shall hold Buyer harmless from any claim relating to such a fee arising from Seller's conduct.

3.15 **Seller to Use Best Efforts to Obtain FCC Approval of Assignment Application.** Seller shall use its best efforts to obtain FCC approval of the Assignment Application and shall zealously take all actions consistent therewith. Seller shall not take any action to hinder, delay or impede FCC approval of the Assignment Application. Seller shall not by its inaction hinder, delay or impede FCC approval of the Assignment Application. This material representation by the Seller is an essential component of this Agreement, the breach of which shall be a material breach of this Agreement entitling Buyer to any and all remedies set forth herein.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF BUYER

As a material inducement for Seller to enter into this Agreement, Buyer represents and warrants to Seller as follows:

4.1 **Organization, Standing and Authority.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Arizona. Buyer has all requisite corporate power and authority to execute and deliver this Agreement and the documents

contemplated hereby, and to perform and comply with all of the terms, covenants and conditions to be performed and complied with by Buyer hereunder and thereunder.

4.2 **Authorization and Binding Obligation.** The execution, delivery, and performance of this Agreement by Buyer has been duly authorized by all necessary corporate and, to the extent required, shareholder action. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid, and binding obligation of Buyer enforceable against it in accordance with its terms.

4.3 **Eligibility of Buyer.** As of the Closing Date, Buyer will be legally, financially and otherwise qualified to acquire and operate the Station under applicable FCC multiple ownership rules as such rules currently are in effect. To Buyer's knowledge, no fact or circumstances exist relating to the FCC qualifications of Buyer that (a) could reasonably be expected to prevent or delay the FCC from granting the Assignment Application, or (b) would otherwise disqualify Buyer as the licensee or owner of the Station, provided, that such representation by Buyer acknowledges and recognizes that the FCC multiple ownership rules are currently on appeal and subject to the outcome of such judicial review. Between the date hereof and the Closing Date, Buyer shall not take any action that would result in its disqualification, and that it will take such action as necessary to comply with the FCC multiple ownership rules as such rules currently are in effect in order to consummate the transactions contemplated by this Agreement.

4.4 **Absence of Conflicting Agreements.** Subject to obtaining the FCC Consent, any required third party consents and compliance with the terms of the Right of First Refusal, the execution, delivery, and performance of this Agreement and the documents contemplated hereby (i) do not require the consent of any third party, (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, rule or regulation of any court or governmental instrumentality, or (iii) 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 the Assets.

4.5 **Litigation.** There is no outstanding judgment, award, decree, writ or litigation, action, suit, investigation or other proceeding pending or, to Buyer's knowledge, threatened, which would have a material adverse effect on Buyer's ability to perform in accordance with the terms of this Agreement.

4.6 **No Brokers.** Buyer has not employed any brokers or finders or incurred any liability for any brokerage fees, commissions, finders' fees or financial advisory fees in connection with the transactions contemplated hereby, and shall hold Seller harmless from any claim relating to such a fee arising from Buyer's conduct.

4.7 **Buyer to Use Best Efforts to Obtain FCC Approval of Assignment Application.** Buyer shall use its best efforts to obtain FCC approval of the Assignment Application and shall zealously take all actions consistent therewith. Buyer shall not take any action to hinder, delay or

impede FCC approval of the Assignment Application. Buyer shall not by its inaction hinder, delay or impede FCC approval of the Assignment Application. Notwithstanding the forgoing or the provisions of Section 4.3, the parties agree that any action by Buyer to acquire additional radio stations shall not be considered as an action to hinder, delay or impede the FCC approval of the Assignment Application, provided, that any such proposed acquisition(s) by Buyer is in compliance with the FCC multiple ownership rules and policies that are then in effect. This material representation by the Buyer is an essential component of this Agreement, the breach of which shall be a material breach of this Agreement entitling Seller to any and all remedies set forth herein.

SECTION 5

COVENANTS OF SELLER AND BUYER

5.1 Pre-Closing Covenants of Seller. Except as expressly authorized by this Agreement, or with the prior written consent of Buyer which consent shall not be unreasonably withheld, between the date hereof and the Closing Date, Seller shall:

(a) operate the Station in the ordinary course of business, consistent with and in accordance with its past practices and consistent with its representations and warranties set forth in this Agreement;

(b) use its best efforts to maintain its existing business relationships with advertisers and other users of the Station;

(c) operate the Station in compliance with the FCC Licenses and the rules and regulations of the FCC;

(d) not sell, convey or encumber any of the Station Assets;

(e) maintain, repair and replace the Personal Property consistent with its existing practices and operations;

(f) promptly notify Buyer in the event there is any material damage to the Station Assets or interruption to the normal broadcast operations of the Station;

(g) complete all existing Barter Contracts prior to the Closing and not enter into any new Barter Contracts that would be binding upon Buyer after the Closing;

(h) not enter into any new agreements that would be binding on Buyer after the Closing without the written consent of Buyer, which consent shall not be unreasonably withheld, except for Advertising Contracts that are entered into in the normal course of business and are consistent with the existing practices of the Station;

(i) comply with the terms and conditions of the Right of First Refusal;

(j) maintain the same practices and procedures with request to the billing and collection of accounts receivable for advertising and programming broadcast on the Station prior to the Closing; and

(k) with the exception of any material that cannot be disclosed pursuant to the terms of any existing agreement between Seller and the Rights Holder, provide copies of any correspondence, mail, electronic mail, facsimile messages, transcriptions sent between Seller and the Rights Holder beginning on the date the Offer Material is provided to Rights Holder (as defined in Section 6.5) and up to and including the date by which the Rights Holder exercises, or chooses not to exercise, the Right of First Refusal.

5.2 Pre-Closing Covenants of Buyer. Between the date hereof and the Closing Date, Buyer shall:

(a) take all actions required to maintain its qualifications to be the licensee of the Station on the Closing Date; and

(b) cooperate with Seller to the extent required in order to permit Seller to satisfy the terms and conditions of the Right of First Refusal.

SECTION 6

SPECIAL COVENANTS AND AGREEMENTS

6.1 FCC Consent. The assignment of the FCC Licenses as contemplated by this Agreement is subject to the prior consent and approval of the FCC. Within five (5) days of receiving written notification from Seller that the Refusal Right has not been exercised, (as defined in Section 6.5 hereof), Buyer and Seller shall file with the FCC an appropriate application for the FCC Consent (the "**Assignment Application**"). The Assignment Application shall include a Multiple Ownership Study demonstrating Buyer's compliance with the FCC's multiple ownership rules, in the form attached hereto as **Schedule 6.1**. The parties shall prosecute the Assignment Application with all reasonable diligence and use their best efforts to obtain the grant of the Assignment Application expeditiously, including payment of FCC filing fees by credit card, providing any response or additional information to the FCC within a reasonable period of time if so requested, opposing any petitions to deny and informal objections and requests for reconsideration or judicial review, and participation at any proceeding or hearing involving this Assignment Application if the FCC so designates. The transfer of the Station Assets hereunder is expressly conditioned upon the grant of the FCC Consent without any condition materially adverse to Buyer or Seller, and compliance by the parties with any other conditions imposed in the FCC Consent.

6.2 Control of the Station. Prior to the Closing Buyer shall not, directly or indirectly, control, supervise, direct, or attempt to control, supervise or direct, the operation of the Station. Such operation, including control and responsibility for the Station's programs, employees, and policies, shall be the responsibility of Seller until the Closing, subject to Buyer's rights under a joint sales agreement, if Buyer elects to exercise its option under Section 6.6.

6.3 **Taxes, Fees and Expenses.** Except as provided for in this Section 6.3, each party shall be solely responsible for all expenses incurred by it in the negotiation and Closing of this Agreement. All sales, use, transfer and purchase taxes and fees, if any, arising out of the transfer of the Station Assets and any FCC fees incurred to file the Assignment Application shall be paid one-half each by Seller and Buyer. As of the Closing Date, the FCC regulatory fees for the then current fiscal year shall be apportioned between Buyer and Seller.

6.4 **Risk of Loss.** The risk of any loss, damage or impairment, confiscation or condemnation (a "loss") of any of the Station Assets from any cause whatsoever shall be borne by Seller at all times prior to the Closing, and shall be borne by Buyer after the Closing. If the Station is off the air or operating with substantially reduced facilities on the Closing Date, Buyer shall have the option to: (i) terminate this Agreement in which case, Seller shall return the Initial Payment to Buyer promptly and the parties shall instruct the Escrow Agent to return the balance of the Escrow Deposit plus accumulated earnings to Buyer promptly; (ii) postpone the Closing until the Station resumes operating with its normally licensed facilities; or (iii) elect to close in which case Buyer shall be entitled to receive and retain all insurance payments and complete the restoration of the Station to its normally licensed facilities at its own expense.

6.5 **Right of First Refusal.** Seller shall deliver a copy of this Agreement, including all Schedules hereto and the Escrow Agreement (collectively, the "**Offer Material**") to the Rights Holder within two (2) business days of the date of this Agreement. Seller shall notify Buyer in writing as to both (i) when the Rights Holder has received the Offer Material and (ii) whether or not the Rights Holder has exercised its right of first refusal to acquire the Station Assets (the "**Refusal Right**") within five (5) business days of the earlier of (i) being advised of the Rights Holder's decision, or (ii) the expiration of the Refusal Right. In the event Buyer has not received a written notification from Seller in accordance with this Section 6.5 within forty (40) days of the date of this Agreement, Buyer shall have the right to terminate this Agreement effective upon delivery of written notice to Seller. In the event the Rights Holder timely exercises the Refusal Right, or Buyer elects to terminate this Agreement pursuant to this Section 6.5, the parties shall instruct the Escrow Agent to return the Escrow Deposit plus accumulated earnings to Buyer promptly.

6.6 **Joint Sales Agreement.** Upon mutual agreement between Buyer and Seller, Buyer shall enter into a Joint Sales Agreement ("**JSA**") with Seller, the form of which is attached hereto as **Schedule 6.6**, under which Buyer shall have the exclusive right to market and sell the commercial inventory of the Station. The term of the JSA shall be for one (1) year or upon termination of this Agreement, whichever comes first. The termination date may be extended for additional periods of various lengths as mutually agreed upon by both parties. Such extensions shall not exceed a collective total of more than three (3) years. The extended term shall be agreed on in writing ninety (90) days prior to the expiration of the then current term period.

6.7 **Relay Site Lease.** Following the Closing, Seller shall retain ownership of the Schnebly Hill Tower Relay Site which is used by Seller as a relay site for the Station, and agrees to lease the

use of this site to Buyer for the same purpose. At the Closing, the parties shall execute a lease for this purpose in the form attached hereto as **Schedule 6.7** (the “**Relay Site Lease**”).

6.8. **Transmitter Building Lease.** Buyer will own the transmitter building at the transmitter site on Mormon Mountain used by the Station as of the Closing Date, and agrees to lease the use of this building for the transmitter and related equipment of station KLOD after the Closing (the “**Transmitter Building Lease**”). At the Closing, the parties shall execute a lease for this purpose in the form attached hereto as **Schedule 6.8**.

6.9 **Gelfand Tower Lease.** Upon the filing of the Assignment Application, Buyer shall proceed with the cooperation of Seller to reach agreement on commercially reasonable terms with Dr. Michael Gelfand for the assignment of the Station’s existing tower lease on Mormon Mountain or for the execution of a new tower lease with Dr. Gelfand effective as of the Closing Date (the “**Gelfand Tower Lease**”).

6.10 **Diplex Arrangement.** Seller operates the Station using an antenna, transmission line and diplexing equipment (collectively, the “**Diplex Equipment**”), which is also used in the operation of station KLOD, which station is also licensed to Seller. At the Closing, the parties shall execute a Diplex Equipment Use Agreement in the form attached hereto as **Schedule 6.10**.

6.11 **KQST Class C Permit.** Seller holds a construction permit issued by the FCC to increase the antenna height of KQST on its existing tower in order to maintain the Station's Class C status (the “**KQST Permit**”). Seller also holds a construction permit to upgrade KLOD to Class C1 status (the “**KLOD Permit**”). Each of the KQST Permit and the KLOD Permit specifies the use of a directional antenna and due to the lack of any alternative tower locations for KQST or KLOD, Seller intends to operate both stations with diplex equipment at the higher tower location using a directional antenna. Buyer acknowledges Seller's intention and agrees that it shall take no action following the Closing to modify the KQST Permit or that would have the effect of modifying the KQST Permit in any manner whatsoever that would interfere with, hinder or prevent the operation of KLOD as a Class C1 station in accordance with the KLOD Permit on a directional basis using diplex equipment jointly with KQST. Buyer is aware that the failure to construct the KQST Permit will result in the downgrading of the classification of the Station to Class C.

SECTION 7

CONDITIONS TO OBLIGATIONS OF BUYER AND SELLER

7.1 **Conditions to Obligations of Buyer to Close.** All obligations of Buyer at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Seller shall be true and complete in all material respects as of the Closing Date.

(b) **Covenants and Conditions.** Seller shall have in all material respects performed and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) **Licenses.** Seller shall be the holder of the FCC Licenses, including all necessary STL licenses, and there shall not have been any modification of any of such license which has a material adverse effect on the Station or the Station Assets.

(d) **Consents.** The FCC Consent has been obtained and such consent has become a Final Order as defined in Section 8.1, and the parties shall have obtained the consent of any third party that may be required to assign to Buyer any Assumed Contract that is identified on Schedule 3.7 as a "**Material Contract**".

(e) **Right of First Refusal.** The time within which the Refusal Right could be exercised has passed without the exercise of the Refusal Right.

(f) **Gelfand Tower Lease.** Buyer shall have secured the Gelfand Tower Lease on Mormon Mountain to use space for the KQST and KLOD antenna at a height approximately 50 feet above the current location.

(g) **Special Use Permit.** Buyer shall have secured the Special Use Permit for the transmitter building site located on Mormon Mountain.

(h) **Schnebly Hill Relay Site Lease.** Buyer shall have secured the lease for the Schnebly Hill Relay Site.

(i) **Diplex Agreement.** Seller shall have executed the Diplex Equipment Use Agreement.

(j) **KQST Permit.** The KQST Permit shall remain and shall be in full force and effect as of Closing.

(k) **Deliveries.** Seller shall have made or stand willing and able to make all the deliveries to Buyer set forth in Section 8.2.

7.2 Conditions to Obligations of Seller to Close. All obligations of Seller at the Closing hereunder are subject to the fulfillment prior to and at the Closing of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Buyer shall be true and complete in all material respects as of the Closing Date.

(b) **Covenants and Conditions.** Buyer shall have in all material respects performed and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

(c) **Right of First Refusal.** The time within which the Refusal Right could be exercised has passed without the exercise of the Refusal Right.

(d) **Diplex Agreement.** Buyer shall have executed the Diplex Equipment Use Agreement.

(e) **Deliveries.** Buyer shall have made or stand willing and able to make all the deliveries set forth in Section 8.3.

SECTION 8

CLOSING AND CLOSING DELIVERIES

8.1 **Closing.** The Closing shall occur at the offices of counsel for Seller or at another mutually agreeable location on a date and time that is mutually agreeable to Seller and Buyer after all conditions set forth in Sections 7.1 and 7.2 have been satisfied or compliance with any such condition has been waived by the respective party, provided however that Closing shall not occur until the FCC Consent has become a Final Order. (the “**Closing Date**”). As used in this Agreement, Final Order is when the FCC Consent is no longer subject to further FCC or judicial review or reconsideration and the time for such review or reconsideration has expired (“**Final Order**”). If necessary, Buyer and Seller shall cooperate in filing with the FCC a request or requests to extend the Closing Date.

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

(a) **Transfer Documents.** Duly executed bills of sale, assignments, and other transfer documents, which shall be sufficient to vest good and marketable title to the Station Assets in the name of Buyer free and clear of any claims, liabilities, mortgages, liens, pledges, conditions, charges, or encumbrances of any nature whatsoever, including evidence of the absence of any recorded liens, encumbrances or security interests on the Station Assets.

(b) **Officer's Certificate.** A certificate, dated as of the Closing Date and executed by the President of Seller, certifying (i) that the representations and warranties of Seller contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date, and (ii) that Seller has, in all material respects, performed all of its obligations and complied with all of its covenants set forth in this Agreement to be performed and complied with prior to or on the Closing Date.

(c) **Corporate Resolution.** A certified resolution of Seller and of its Shareholders to the extent required, approving the execution of this Agreement and the delivery of the Closing documents provided for hereunder.

(d) **Good Standing Certificate.** A certificate of good standing from the Secretary of State of the State of Arizona dated not more than fifteen (15) days prior to the Closing Date.

(e) **Opinion of Counsel.** An opinion of counsel for Seller in the form of **Schedule 8.2(e)** hereto.

(f) **Relay Site Lease.** A lease for the use of the Schnebly Hill Tower Site as a relay site in accordance with Schedule 6.7.

(g) **Transmitter Building Lease.** A lease for the use of the Station's transmitter building for station KLOD in accordance with Schedule 6.8

8.3 **Deliveries by Buyer.** Prior to or on the Closing Date, Buyer shall deliver to Seller the following:

(a) **Purchase Price.** The Purchase Price pursuant to and in accordance with Section 2.1.

(b) **Assumption Agreements.** Appropriate assumption agreements pursuant to which Buyer shall assume and undertake to perform Seller's obligations under the FCC Licenses and any Assumed Contracts.

(c) **Buyer's Certificate.** A certificate, dated as of the Closing Date and executed by Buyer, certifying (i) that the representations and warranties of Buyer contained in this Agreement are true and complete in all material respects as of the Closing Date as though made on and as of that date, and (ii) that Buyer has, in all material respects, performed all of its obligations and complied with all of its covenants set forth in this Agreement to be performed or complied with on or prior to the Closing Date.

(d) **Corporate Resolution.** A certified resolution of Buyer, and of its Shareholders to the extent required, approving the execution of this Agreement and the delivery of the Closing documents provided for hereunder.

(e) **Good Standing Certificate.** A certificate of good standing from the State of Arizona dated not less than fifteen (15) days prior to the Closing Date.

(f) **Opinion of Counsel.** An opinion of counsel for Buyer in the form of **Schedule 8.3 (f)**.

(g) **Transmitter Building Lease.** A lease for the use of the Station's transmitter building for station KLOD in accordance with Schedule 6.8.

SECTION 9

RIGHTS OF BUYER AND SELLER

ON TERMINATION OR BREACH

9.1 **Termination Rights without Breach.** This Agreement may be terminated by either Buyer or Seller by written notice to the other party, if the terminating party is not then in breach of any material provision of this Agreement, upon the occurrence of any of the following:

(a) if there shall be in effect on the Closing Date any judgment, decree or order that would prevent or make unlawful the Closing of this Agreement;

(b) if the Assignment Application has not been granted within one(1) year following its acceptance for filing by the FCC (the "**Initial Waiting Period**"), on condition that the failure to obtain a grant of the Assignment Application within the Initial Waiting Period is not attributable to the party seeking to terminate under this Section 9.1(b). Upon mutual agreement between Buyer and Seller, the Initial Waiting Period may be extended for additional periods of various lengths (the "**Extended Waiting Period**"), not to exceed a collectively total of three (3) years. Such extensions shall be agreed on in writing ninety (90) days prior to the expiration of the then current waiting period.

(c) by Buyer only pursuant to Section 6.4; or

(d) by Buyer only pursuant to Section 6.5.

In the event Seller or Buyer elects to terminate this Agreement under this Section 9.1, Seller shall return the Initial Payment to Buyer promptly, and the parties shall direct the Escrow Agent to promptly return the portion of the Escrow Deposit held by it, and any accrued interest thereon, to Buyer.

9.2 **Termination for Material Breach.** Either Buyer or Seller may terminate this Agreement on thirty (30) days prior written notice if the other party is either in material breach of the provisions of this Agreement or of the provisions of the JSA, provided that the non-breaching party is ready and able to satisfy and perform all of its Closing conditions and obligations. The non-breaching party must give the breaching party written notice detailing the manner in which such party is in material breach and providing the breaching party with thirty (30) days within which to cure its breach.

9.3 **Termination by Exercise of Refusal Right.** This Agreement shall terminate automatically upon the exercise by the Rights Holder of its Refusal Right, and Buyer and Seller shall be fully and absolutely released from any further liability or responsibility under this Agreement, and Seller shall immediately execute joint instructions to the Escrow Agent to return the Escrow Deposit plus accumulated earnings to Buyer promptly. In the event that the purchase agreement between the Seller and the Rights Holder is terminated without a closing, Buyer shall have the first right of refusal to acquire the Station on the same terms and conditions as in this Agreement,

provided, however, that in order to be effective, Buyer must notify Seller in writing that it is exercising its right of refusal within thirty (30) days of the date Seller notifies Buyer that the Rights Holder's proposed purchase of the Station has terminated without a closing. In the event Buyer fails to notify Seller within such thirty (30) day period, Buyer's refusal right shall be deemed to have been irrevocably waived and extinguished.

9.4 **Liquidated Damages and Specific Performance.** Upon termination:

(a) if neither party hereto is in breach of any material provision of this Agreement, the parties hereto shall not have any further liability to each other Seller shall return the Initial Payment to Buyer promptly and Buyer shall be entitled to receive the balance of the Escrow Deposit plus all earnings thereon from the Escrow Agent; or

(b) if Buyer is in material breach of this Agreement, Seller shall be entitled to retain the Initial Payment and an additional Seven Hundred Thousand Dollars (\$700,000) from the Escrow Deposit; as liquidated damages in full and complete compensation for any damages to Seller as a result of Buyer's breach or default and Buyer shall be entitled to receive the balance of the Escrow Deposit plus all earnings thereon from the Escrow Agent; or

(c) if Seller is in material breach of this Agreement, Seller shall return the Initial Payment to Buyer and Buyer shall be entitled to receive the balance of the Escrow Deposit plus all earnings thereon from the Escrow Agent and Buyer shall also be entitled, at its option, to seek specific performance without providing or posting any bond to compel Seller to close on the sale of the Station Assets to Buyer pursuant to the terms and conditions of this Agreement, or to seek monetary damages. In the event Buyer elects specific performance as a remedy, Seller agrees that specific performance is an appropriate remedy due to the unique nature of the Station Assets and the business made possible thereby, and agrees that it will not contest any such action on the ground that an adequate remedy at law exists.

SECTION 10 **INDEMNIFICATION**

10.1 **Buyer's Right to Indemnification.** Seller shall indemnify and hold harmless Buyer, its affiliates, shareholders, employees, successors and assigns from and against and in respect of, and to reimburse them for, any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorneys' fees and expenses (together, "**Claims**"), included or suffered by any party arising from:

(a) the operation of the Station on or before the Closing Date;

(b) any breach, misrepresentation, or other violation of or failure to perform any of Seller's covenants, warranties or representations contained in this Agreement;

(c) all liabilities of Seller not expressly assumed by Buyer pursuant to this Agreement, including but not limited to all obligations under the Assumed Contracts arising prior to the Closing Date; and

(d) all Claims brought by the Rights Holder against Buyer arising directly or indirectly under or as a result of (i) the Rights Holder's Refusal Right, including Seller's compliance with the terms and conditions of the Rights Holder's Refusal Right, or (ii) the controversy and litigation leading to the Rights Holder's Refusal Right, provided however, that such indemnification obligation shall not cover any such Claims under this Subsection (d) that are caused solely by Buyer's gross negligence, intentional wrongdoing, breach of this Agreement or any related agreement between Buyer and Seller that is identified herein, or any action by Buyer that would oppose, interfere with or hinder the acquisition of the Station by the Rights Holder following the exercise of its Refusal Right or the exercise by the Rights Holder of its Refusal Right. In the event Buyer seeks indemnification against Seller for a Claim arising under the preceding sentence and Seller acknowledges that such Claim is covered by its indemnification, Buyer and Seller agree that Buyer shall be represented by Seller's legal counsel, in which case, Buyer expressly agrees that it waives any conflict of interest with respect to such dual representation with respect to any such Claim.

10.2 **Seller's Right to Indemnification.** Buyer shall indemnify and hold harmless Seller, its affiliates, shareholders, partners, employees, successors and assigns from and against and in respect of, and to reimburse them for, any and all Claims incurred or suffered by such parties arising from:

(a) the operation of the Station or ownership of the Station Assets by Buyer after the Closing Date;

(b) a breach, misrepresentation, or other violation of or failure to perform any of Buyer's covenants, warranties or representations contained in this Agreement; and

(c) all liabilities expressly assumed by Buyer pursuant to this Agreement, including without limitation all liabilities under the Assumed Contracts and the FCC Licenses arising after the Closing Date.

SECTION 11 **MISCELLANEOUS**

11.1 **Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of, and the forum for the judicial resolution of any dispute arising under this Agreement shall be in Maricopa County Superior Court, State of Arizona.

11.2 **Attorneys Fees.** In the event there is litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney's fees and costs.

11.3 **Entire Agreement.** This Agreement, the Escrow Agreement, all Schedules and Exhibits hereto, and all documents and certificates to be delivered by the parties pursuant hereto

collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. All Schedules and Exhibits referenced in and attached to this Agreement and all documents referenced in the Agreement as previously delivered to either party shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. This Agreement cannot be amended, supplemented or modified except by an agreement in writing which makes specific reference to this Agreement or an agreement delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment, supplement or modification is sought.

11.4 **Assignment.** Buyer and Seller shall not assign their interests or delegate their obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, this Agreement shall be binding upon the successors and assigns of the parties hereto.

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

To Seller: c/o Federal Express
John Low, President
Rocket Radio Corporation
3000 El Camino Real
Palo Alto, CA 94306
PHONE: 650- 520-6002
FAX: 650-494-8164

Copy to: Arthur Bourque, Esq.
Stewart & Bourque, P.C.
1643 East Bethany Home Road
Phoenix, Arizona 85016
FAX: 602-266-7744

Erwin Krasnow, Esquire
Garvey Schubert Barer
1000 Potomac Street, NW
5th Floor, Flour Mill Building
Washington, DC 20007
FAX: 202-965-1729

To Buyer: W. Grant Hafley, President
Yavapai Broadcasting Corporation
2405 East Highway 89A
Cottonwood, Arizona 86326
PHONE: 928-639-0033
FAX: 928-639-2233

Copy to: Alan C. Campbell, Esquire
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, D.C. 20036
FAX: 202-728-0354

or to such other persons and addresses as the parties may from time to time designate in a writing to the other party delivered in accordance with this Section 11.5.

11.6 **Survival of Representations, Warranties and Covenants.** The representations, warranties and covenants of the parties contained herein, and the parties respective indemnification rights pursuant to Section 10 with respect thereto shall survive the Closing for a period of one (1) year except for Buyer's indemnification rights pursuant to Section 10.1(d), which shall survive the Closing for the applicable statute of limitations. at which time the same shall expire (except for claims asserted during the applicable period). No claim may be brought under such representations and warranties unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the survival period. In the event such a notice is given, the right to indemnification with respect thereto shall survive until such claim is finally resolved and any obligations with respect thereto are fully satisfied.

11.7 **Counterparts and Facsimile Signatures.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument. This Agreement shall be effective and legally binding upon delivery of signatures by facsimile transmission.

11.8 **Timely Performance.** Time shall be of the essence in this Agreement and the performance of each and every provision hereof.

Signatures on following Signature Page

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT
FOR STATION KOST(FM), SEDONA, ARIZONA

IN WITNESS WHEREOF, this Agreement has been executed by Buyer and Seller as of the date first above written.

YAVAPAI BROADCASTING CORPORATION

By: W. Grant Hafley
W. Grant Hafley, President

ROCKET RADIO CORPORATION

By: John Low
John Low, President

List of Schedules to Asset Purchase Agreement

- 2.2 Form of Escrow Agreement
- 2.4 Allocation of Purchase Price
- 3.4 Licenses
- 3.5 Title to and Condition of Personal Property
- 3.6 Leasehold Interests in Real Property
- 3.7 Assumed Contracts
- 3.8 Trademarks, Trade Names and Copyrights
- 3.9 Insurance
- 3.10 Employee Information
- 3.12 Claims, Legal Actions
- 6.1 Multiple Ownership Study
- 6.6 Form of Joint Sales Agreement
- 6.7 Form of Relay Site Lease
- 6.8 Form of Transmitter Building Lease
- 6.10 Form of Diplex Equipment Use Agreement
- 8.2(e) Opinion of Seller's Counsel
- 8.3(f) Opinion of Buyer's Counsel