

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of \_\_\_\_\_, 2016 (this “Agreement”), by and between JER Licenses, LLC, a Delaware limited liability company (“Seller”), Bad Lands Broadcasting Company, Inc., a Delaware corporation (“Buyer”).

### Recitals

Seller is the licensee of FM broadcast station KXZT, Newell, South Dakota (FCC ID 164201) (“Station”).

Subject to the consent of the Federal Communications Commission (“FCC”), Buyer desires to acquire the Station from Seller, together with certain of Seller’s assets related thereto as described in the Schedules hereto and Seller desires to sell such assets to Buyer.

### Agreement

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assets.** Subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as defined below) only the following assets, properties, interests and rights of Seller used in connection with the Station (collectively, the “Assets”), which shall be transferred to Buyer free and clear of liens, claims and encumbrances:

(a) **Tower Lease.** All of Seller’s interests in and under the Leases (as defined in **Section 3**). Buyer acknowledges that Buyer owns the facilities at which Seller’s antenna, line and transmitter are located and that the current lease for such facilities will be terminated at Closing, provided that Seller has performed all of the terms and conditions of such lease as of Closing.

(b) **Licenses and Authorizations.** All licenses, authorizations, permits and approvals issued with respect to the Station by the FCC set forth on **Schedule 1(b)** attached hereto (the “FCC Authorizations” or “FCC Licenses”).

(c) **Books and Records.** All engineering and other books, papers, files, correspondence and records pertaining exclusively to the operations of the Station, including the log books, FCC-required local public inspection and political files, and copies of all filings and correspondence with the FCC relating exclusively to the Station which are in the possession of Seller; provided that Seller may retain copies thereof.

(d) **Tangible Personal Property.** All tangible property used exclusively in the operation of the Station as listed on **Schedule 1(d)**.

(e) **Call Letters.** Call letters "KXZT"

2. **Excluded Assets.** The Assets to be transferred hereunder shall not include any of Seller's intellectual property (other than the KXZT call letters), any studios/offices of Seller used for the Station, any of Seller's cash, bank accounts, accounts receivable, cash deposits with landlord, utilities, etc., tax refunds, investments, deposits, books and records pertaining to Seller's corporate organization, contracts of insurance (including the cash surrender value thereof, and all insurance proceeds or claims made by Seller relating to property or equipment repaired, replaced or restored by Seller prior to the Closing Date), duplicate copies of such records as are necessary to enable Seller to file its tax returns and reports, as well as any other records or materials relating to Seller generally and not involving the Station specifically, and any and all liabilities with respect thereto all of which shall remain the property of Seller (the "Excluded Assets").

3. **Intentionally Omitted.**

4. **Purchase Price.** In consideration for all of the Assets to be sold and bought hereunder pursuant to **Section 1**, the Purchase Price for the Assets shall be One Hundred Twenty-Five Thousand and NO/100 DOLLARS (\$125,000.00), to be paid as follows:

(a) Contemporaneously with the execution of this Agreement, Buyer shall deposit the Twelve Thousand Five Hundred Dollars (\$12,500.00) in cash to Seller's account at the Bank of America as a refundable escrow deposit and applied to the Purchase Price at Closing.

(b) One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00) to be paid to Seller by wire transfer at Closing

5. **Allocation of Purchase Price.** Buyer and Seller have agreed to allocate the Purchase Price and other consideration received by Seller from Buyer as set forth on **Schedule 5**. Buyer and Seller each further agrees to file its federal income tax returns and its other tax returns reflecting such allocation.

6. **No Assumption of Liabilities.** Buyer shall not assume and shall not be obligated to pay any liabilities or obligations of Seller except for those liabilities and obligations set forth on **Schedule 6**.

7. **Inspection.** Buyer is buying the Assets "As-is, Where is" and has completed any necessary inspections and due diligence on the Assets.

8. **Seller's Representations and Warranties.** The following representations and warranties shall survive for one year from the Closing Date. Seller represents and warrants to Buyer as of the date hereof and as of the Closing Date, with respect to Seller and the Station, as follows:

(a) **Formation, Standing and Power.** Seller is a Delaware limited liability company, validly existing and in good standing under the laws of the jurisdiction of its

organization. Seller has all necessary power and authority to own and operate the Station, to carry on the Station's business as now conducted by it and to execute and deliver this Agreement and to consummate the transactions contemplated hereby and represents and warrants that Seller is the owner of all of the Assets described in this Agreement, free and clear of any liens, claims, or encumbrances.

(b) **Authority for Transaction.** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

(c) **Licenses and Permits.** Seller is, and on the Closing Date will be, the holder of the FCC Licenses issued by the FCC for the operation of the Station and all pertinent auxiliary stations, if any, which licenses shall not be subject to any reporting conditions outside of those normal reporting requirements required by the FCC. Seller has all permits, licenses, franchises and other authorizations necessary to, and has materially complied with all laws and policies applicable to, the conduct of the Station's business in the manner and in the areas in which such business is presently being conducted and all such permits, licenses, franchises and authorizations are valid and in full force and effect. Seller has not engaged in any activity or failed to perform any required act which would cause revocation or suspension of any such permits, licenses, franchises or authorizations, and no complaint, action or proceeding looking to or contemplating the revocation or suspension of any thereof is pending or, to the knowledge of Seller, threatened. Further, on the Closing Date, the FCC Licenses will be in good standing, without adverse condition, the Station will have full operating authority under its licenses and permits, all FCC requirements for such authority will have been materially met, and there will be no unpaid FCC or other regulatory fees. Seller has advised Buyer that the Station is presently silent and that Seller will take all actions necessary to ensure that the Station complies with the continuation of broadcasting requirement contained in 47 U.S.C. 312(g).

(d) **Assumed Contracts.** None

(e) **Taxes.** All tax returns have been timely filed with the appropriate governmental agencies in all jurisdictions in which such tax returns are required to be filed and all taxes shown on such tax returns have been properly accrued or timely paid in full to the extent such taxes have become due. There are no liens on any of the Assets in connection with any failure (or alleged failure) to pay any tax related to the Station.

(f) **Bankruptcy.** No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or any of the Assets, are pending or, to the best of Seller's knowledge, threatened, and Seller has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

(g) **Legal Proceedings.** No litigation, court or administrative proceeding is pending or, so far as is known to the Seller, threatened against Seller relating to the Station or any of the Assets which would affect Buyer's enjoyment of the Assets, or which would hinder or prevent the consummation of the transactions contemplated by this Agreement, and Seller does not know, or have reasonable grounds to know, of any basis for any such possible action.

(h) **Compliance with Licenses, Laws, Regulations and Orders.** Seller, at Closing, will be in compliance with all material terms and conditions of all Licenses, laws, regulations and orders applicable to its business and operations including, without limitation, compliance with the Communications Act of 1934, as amended (the "Federal Communications Act") and all regulations issued by the FCC, and Seller is not charged with violating or, to the knowledge of Seller, threatened with a charge of violating or under investigation with respect to a possible violation of, any provision of any License, or any federal, state or local law or administrative ruling or regulations relating to any aspect to the Station.

(i) **No Conflict.** Neither the execution and delivery of this Agreement by Seller, nor compliance by Seller with any of the provisions hereof, nor the consummation of the transactions contemplated hereby, will:

(i) result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any contract, encumbrance or other instrument or obligation to which Seller is a party or by which Seller or any of Seller's Assets may be bound; or

(ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller, or any of its Assets.

Except for the approval of the FCC and such consents and/or notices as are necessary for assignment of the Assigned Contracts, no consent, waiver or approval by, notice to or filing with any person or entity is required in connection with the execution and delivery of this Agreement by Seller, compliance by Seller with any of the provisions hereof or the consummation of the transactions contemplated hereby.

(j) **Liabilities.** After payment from the proceeds disbursed on the Closing Date, all of Seller's liabilities, except for those liabilities arising on or after the Closing Date relating to the Assigned Contracts, shall have been fully paid and discharged and no creditors of Seller, including barter creditors, if any, shall have any claim on the Assets for payment of such liabilities. There are no contingent or undisclosed liabilities in connection with any and all of the assets to be sold and conveyed hereunder.

(k) **No Misleading Statements.** The representations and warranties of Seller herein, or in any Schedule hereto, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading.

(l) **Disclaimer.** Except for the representations and warranties of Seller expressly set forth in this Agreement or any document delivered pursuant to the provisions hereof, Buyer and Seller acknowledge that Seller is making no representation or warranty to Buyer as to the condition of the Assets all of which will be conveyed to Buyer in an AS IS/WHERE IS WITH

ALL FAULTS condition with no representations or warranties of any nature whatsoever, including warranties of marketability or implied use for a particular purpose, all of which are expressly disclaimed by Seller.

9. **Buyer's Representations and Warranties.** The following representations and warranties shall survive for one year (1) from the Closing Date. The Buyer represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

(a) **Buyer's Qualifications.** Buyer knows of no fact or circumstance which would, under the federal antitrust laws, the Communications Act of 1934, as amended, or the rules, regulations, and policies of the FCC, disqualify or preclude Buyer from being consented to as an assignee of the Licenses. Should Buyer become aware of any such fact or circumstance, it will promptly so inform Seller and Buyer will use its best efforts to remove any such disqualification or preclusion. Buyer will not take any action that Buyer knows, or has reason to believe, would result in such disqualification. There are no facts which, under the Communications Act of 1934, as amended, or the rules, regulations and policies of the FCC, or the antitrust policies as applied to the broadcasting industry by the Federal Trade Commission and the U.S. Department of Justice, would delay the consummation of the transactions contemplated by this Agreement. Buyer has no reason to believe that the Assignment Application contemplated by this Agreement might be challenged by any governmental agency or third party or might not be granted by the FCC in due ordinary course. To Buyer's knowledge, there are no proceedings, complaints, notices of forfeiture, claims, or investigations pending or threatened against Buyer or any principal, officer, director, or owner of Buyer that would materially impair the qualification of Buyer to assume the FCC Licenses or which would materially impede Buyer's ability to prosecute FCC applications or seek the issuance of the consent of the FCC.

(b) **Formation, Standing and Power.** Buyer is a corporation duly formed, validly existing and in good standing under the laws of the State of Delaware. Buyer has all necessary power and authority to execute and deliver this Agreement, to comply with the provisions hereof and to consummate the transactions contemplated hereby.

(c) **Authority for Transaction.** Buyer's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of Buyer, and this Agreement is valid and binding upon Buyer in accordance with its terms.

(d) **No Conflict.** Neither the execution and delivery of this Agreement by Buyer, nor compliance by Buyer with any of the provisions hereof, nor the consummation of the transactions contemplated hereby will:

(i) conflict with or result in a breach of any provision of the governing documents of any entity named as Buyer herein;

(ii) result in a default, or give rise to any right of termination, cancellation or acceleration, under any term, condition or provision of any contract, encumbrance or other instrument or obligation to which Buyer is a party or by which it or any of its properties or assets may be bound; or

(iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer or any of its properties or assets.

Except for the consent of the FCC, no consent, waiver or approval by, notice to or filing with any person or entity is required in connection with the execution and delivery of this Agreement by Buyer, compliance by Buyer with any of the provisions hereof or the consummation of the transactions contemplated hereby.

(e) **Legal Proceedings.** There is no legal, equitable, administrative or arbitration action, suit, proceeding or known investigation pending or, to Buyer's knowledge, threatened against or affecting Buyer or any of its assets which, if adversely determined, would adversely affect the ability of Buyer to consummate the transactions contemplated hereby.

(f) **No Misleading Statements.** The representations and warranties of Buyer herein do not contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained herein or therein not materially misleading.

(g) **Financial Qualifications.** Buyer is financially qualified to consummate this transaction and has funds available to consummate the sale.

10. **Seller's Covenants.**

(a) **Indemnification.**

(i) The sole and exclusive remedy which Buyer shall have against Seller under this Agreement after the Closing Date shall be the right to proceed for indemnification in the manner and only to the extent provided by this **Section 10**. Seller hereby indemnifies Buyer and holds it and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Buyer within one (1) year after the Closing Date from, against and in respect of the Station and/or this Agreement

(A) all liabilities, obligations, claims against and contracts of Seller of every kind and nature whatsoever, at any time existing or asserted, whether or not accrued, whether fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Seller, arising out of or by reason of this or any other transaction or event occurring prior to the Closing related to the Station, which have not been assumed by Buyer; and

(B) all losses, damages and deficiencies resulting from any failure or breach of any representation or warranty, or any breach or nonfulfillment of any covenant or agreement, of Seller made in this Agreement.

(ii) If a demand for indemnification arises out of a claim made against Buyer by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Third Party Claim"), Buyer shall give prompt notice thereof to Seller, stating in reasonable detail the nature of the Third Party Claim, the identity of the Third Party Claimant and the specific representations, warranties or covenants which Buyer and/or the third party claimant contends Seller has breached. Such notice shall also indicate whether Buyer intends to defend against the Third Party Claim. If Buyer shall defend against the Third Party Claim, Seller shall cooperate in

all reasonable respects with Buyer in such defense, shall make available to Buyer all records and other materials reasonably required by Buyer in such defense, and shall have the right to participate in such defense. If Buyer does not intend to defend against the Third Party Claim, then Seller may assume defense of the Third Party Claim through legal counsel of its choice reasonably satisfactory to Buyer, in which event Buyer shall cooperate in all reasonable respects with Seller in such defense, and shall make available to Seller and its counsel all records and other materials reasonably required by them in such defense, but Seller shall at all times control such defense. So long as a Third Party Claim is pending and is not resolved, Buyer shall hold in abeyance its demand for indemnification. If Seller reaches a settlement with the Third Party Claimant which results in any liability to Buyer, or if a judgment is rendered against Buyer which judgment is not properly appealed or appealable, then Buyer shall be entitled to indemnification in an amount sufficient to discharge the Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in defending a Third Party Claim except that Seller shall pay Buyer's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to Seller and which shall be found to have constituted a breach of Seller's representations, warranties and covenants hereunder.

(iii) If Buyer asserts a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, Buyer shall notify Seller thereof in writing, stating in reasonable detail the nature of Buyer's claim and the specific representations, warranties and covenants which Buyer contends Seller has breached. Seller shall have fifteen (15) days after the effective date of such notice to accept or reject Buyer's demand for indemnification. If Seller accepts such demand for indemnification, Seller shall pay the amount of indemnification claimed by Buyer. If no acceptance is received by Buyer within such fifteen (15) day period, Seller shall be deemed to have rejected the demand. In the event Seller rejects Buyer's demand for indemnification or fail to accept such demand within such fifteen (15) day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions of **Section 10(a)(iv)**.

(iv) Seller's liability for all Claims under this **Section 10** shall be subject to the following limitations: Seller shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds Ten Thousand Dollars (\$10,000.00) (the "Minimum Loss"); after the Minimum Loss is exceeded, Buyer shall be entitled to be paid the entire amount of the Claims, including the Minimum Loss, subject to the limitations on recovery and recourse set forth in this **Section 10**.

(b) **Access and Information.** Seller shall give Buyer reasonable access to FCC documentation.

(c) **Conduct of Station Business.** Prior to Closing, Seller will promptly deliver to Buyer copies of any application filed with the FCC with respect to the Station after the filing of the same with the FCC.

(d) **Risk of Loss or Damage.** Seller shall bear all risk of loss or damage to any of the Assets to be transferred to Buyer hereunder occurring prior to the Closing. In the event any loss or damage occurs, the proceeds of any insurance policy covering such loss shall be used by Seller to repair, replace or restore any such loss prior to the Closing; provided, however, that, if

the proceeds of such insurance would not be sufficient to repair, replace or restore the loss, and Seller does not wish to provide additional funds for such purpose upon request by Buyer, Buyer if not then in default may terminate this Agreement or may elect to proceed with Closing with a credit toward the Purchase Price in the amount of the cost to repair, replace or restore. In the event of any such termination pursuant to this **Section 10** neither party shall have any further right or liability hereunder.

11. **Indemnification.**

(a) The sole and exclusive remedy which Seller shall have against Buyer under this Agreement after the Closing Date shall be the right to proceed for indemnification in the manner and only to the extent provided by this **Section 11**. Buyer shall be responsible for and hereby indemnifies Seller and holds Seller and its agents, successors and assigns harmless, with respect to demands for indemnification asserted by Seller, as provided by this **Section 11**, within one (1) year after the Closing Date from, against and in respect of and in respect of the Station and/or this Agreement

(i) The operation of the Station subsequent to the Closing, including, but not limited to any and all claims, liabilities and obligations arising or required to be performed under the Assigned Contracts assumed by Buyer;

(ii) All losses, damages and deficiencies resulting from any failure or breach of any representation or warranty, or any breach or non-fulfillment of any covenant or agreement, of Buyer made in this Agreement; and

(iii) All actions, suits, proceedings, claims, demands, assessments, judgments, fines, penalties, amounts paid in settlement, costs and expenses (including reasonable attorneys' fees and expenses) incident to any of the foregoing.

(b) If subsequent to the Closing a demand for indemnification arises out of a claim made against Seller by a person not a party to this Agreement or affiliated with a party to this Agreement (a "Third Party Claim" with respect to any circumstances specified in **Section 10(a)(i)**), Seller shall give prompt notice thereof to Buyer, stating in reasonable detail the nature of the Third Party Claim and the specific representations, warranties or covenants which Seller and/or the Third Party Claimant contends Buyer has breached. Such notice shall also indicate whether Seller intends to defend against the Third Party Claim. If Seller shall defend against the Third Party Claim, Buyer shall cooperate in all reasonable respects with Seller in such defense, shall make available to Seller all records and other materials reasonably required by Seller in such defense, and shall have the right to participate in such defense. If Seller does not intend to defend against the Third Party Claim, then Buyer may assume defense of the Third Party Claim through legal counsel of its choice, reasonably satisfactory to Seller, in which event Seller shall cooperate in all reasonable respects with Buyer in such defense and shall make available to Buyer and its counsel all records and other materials reasonably required by them in such defense, but Buyer shall at all times control such defense. If Buyer reaches a settlement with the Third Party Claimant which results in any liability to Seller, or if a judgment is rendered against Seller which judgment is not properly appealed or appealable, then Seller shall be entitled to indemnification in an amount sufficient to discharge the Third Party Claim. Each party shall be responsible for its own costs and expenses, including legal fees, incurred in



defending a Third Party Claim except that Buyer shall pay (i) Seller's actual costs and expenses (including legal fees) incurred in connection with defending a claim which is determined adversely to Buyer and which shall be found to have constituted a breach of Buyer's representations, warranties and covenants hereunder.

(c) If Seller asserts a demand for indemnification hereunder, but such demand is not based upon a Third Party Claim, Seller shall notify Buyer thereof in writing, stating in reasonable detail the nature of Seller's claim and the specific representations, warranties and covenants which Seller contend Buyer has breached. Buyer shall have fifteen (15) days after the effective date of such notice to accept or reject Seller's demand for indemnification. If Buyer accepts such demand for indemnification, it shall pay the amount of indemnification claimed by Seller. If no acceptance is received by Seller within such fifteen (15) day period, Buyer shall be deemed to have rejected the demand. In the event Buyer rejects Seller's demand for indemnification or fails to accept such demand within such fifteen (15) day period, the parties shall immediately submit the controversy to arbitration in accordance with the provisions of **Section 10(d)(iv)**. If the arbitrator(s) render an award in the arbitration proceeding in favor of Seller, Seller shall be entitled to indemnification to the extent provided in such award. If the arbitrator(s) render an award in favor of Buyer, Buyer shall have no further liability on Seller's claim.

(d) Buyer's liability for all Claims under this **Section 10** shall be subject to the following limitations: (i) Buyer shall have no liability for Claims until the aggregate amount of the Claims incurred exceeds Ten Thousand Dollars (\$10,000.00) (the "Minimum Loss"); after the Minimum Loss is exceeded, Sellers shall be entitled to be paid the entire amount of the Claims, including the Minimum Loss, subject to the limitations on recovery and recourse set forth in this **Section 11**.

## 12. **Application for FCC Consent.**

(a) **Filing and Prosecution of Application.** Buyer and Seller shall, not later than ten (10) business days from the date hereof, file with the FCC an application requesting its written consent to the assignment of the Licenses of the Station from Seller to Buyer. Buyer and Seller shall take all steps necessary to the expeditious prosecution of such application to a favorable conclusion, using their best efforts throughout.

(b) **Expenses.** Each party shall pay its own expenses in connection with the preparation of the applicable sections of the FCC application and in connection with the prosecution of such application. Buyer and Seller shall equally pay any FCC application processing fee due upon submission of the Assignment Application.

(c) **Designation for Hearing.** If, for any reason, with respect to the application for assignment of the Licenses any objection to the sale is filed by a third party, or the staff of the FCC advises that designation for hearing will be required, either party, if not then in default, shall have the right, by written notice within sixty (60) days of such notification, to terminate this Agreement, in which event neither party shall have any rights or liabilities hereunder.

(d) **Time of FCC Consent.** If approval of the assignment of the Licenses has not become final (all protests and appeals having been decided or dismissed, or barred by the

expiration of time and the period for review by the FCC on its own motion of a grant by the FCC staff on delegated authority having expired without the initiation of such review or else such review having been undertaken and an affirmance of the grant of consent having become final) within twelve (12) months from the date of filing the applications for assignment with the FCC, either party, if not then in default, may terminate this Agreement by giving written notice to the other. Upon such termination, neither party shall have any further right or liability hereunder. Either party may likewise terminate, if said party is not in default, if Closing has not occurred within twelve (12) months from the date of filing the application for assignment with the FCC.

(e) **Control of Station.** This Agreement shall not be consummated until the FCC has given its written consent to the assignment of the Station Licenses of the Station to the Buyer and operation of the Station prior to Closing shall remain the responsibility of Seller as holder of the FCC Licenses. The risk of any interruption in the Station's normal broadcast transmission, shall remain with Seller at all times until 12:01 a.m. local time on the day of Closing, and prior to Closing Seller shall repair and replace any lost or damaged Assets and restore any interrupted transmission.

### 13. **Conditions to Parties' Obligations.**

(a) **Conditions to Buyer's Obligations.** The obligations of Buyer to complete the transactions provided for herein shall be subject, at its election, to satisfaction on or before the Closing Date of each of the following conditions:

(i) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the Closing Date (except as may be otherwise provided in this Agreement), and Buyer shall have received a certificate to that effect, dated the Closing Date, signed by an officer of Seller;

(ii) Seller shall have performed all obligations required to be performed by Seller hereunder, the performance of which has not been waived by Buyer, and Buyer shall have received a certificate to that effect, dated the Closing Date, signed by an officer of Seller;

(iii) Seller's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby shall have been duly and validly authorized by all necessary company action on the part of Seller, including due authorization and approval thereof by its managing member, and Buyer shall have received a duly certified copy of all actions taken affecting the same;

(iv) There shall not be in effect any judgment, decree or order of, or position taken by, any court or administrative body of competent jurisdiction, nor shall there have been any action, suit, proceeding or known investigation instituted or threatened, nor shall any law or regulation have been enacted or any action taken thereunder, which would, in Buyer's reasonable judgment, restrain or prohibit, make illegal, or subject Buyer to material damage as a result of, the consummation of the transactions contemplated hereby.

(v) The FCC shall have given the consent contemplated by **Section 12** which consent has become final and non-appealable; As used herein, the term "final and non-appealable" means an action by the FCC or other regulatory authority having jurisdiction (i) with respect to which action no timely request for stay, motion or petition for reconsideration or

rehearing, application or request for review or notice of appeal or other judicial petition for review is pending and (ii) as to which the time for filing any such request, motion, petition, application, appeal or notice and for the entry of orders staying, reconsidering or reviewing on the FCC's or such other regulatory authority's own motion has expired.

(vi) Seller shall have delivered to Buyer the following documents and instruments in form reasonably satisfactory to counsel to Buyer:

(A) Bill of Sale transferring to Buyer title to the Assets and an assignment of the Station Licenses;

(B) An Assignment from Seller to Buyer of the FCC Licenses; and

(C) A certificate executed by an officer of Buyer's stating that (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects;

(D) A certified copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein, attested to by an officer of Buyer and

(E) Any and all other documents reasonably requested by Buyer.

(vii) Except as otherwise expressly provided herein, all taxes, assessments, prepaid expenses and utilities shall have been prorated between Buyer and Seller to the Closing Date.

(viii) Seller shall have delivered to Buyer actual possession of the Assets.

(b) **Conditions to Seller's Obligations.** The obligations of Seller to complete the transactions provided for herein shall be subject, at its election, to satisfaction on or before the Closing Date of each of the following conditions:

(i) All representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except as may be otherwise provided in this Agreement), and Seller shall have received a certificate to that effect, dated the Closing Date, signed by an officer of Buyer;

(ii) Buyer shall have performed all obligations required to be performed by it hereunder, the performance of which has not been waived by Seller, and Seller shall have received a certificate to that effect, dated the Closing Date, signed by an officer of Buyer;

(iii) Buyer's execution and delivery of this Agreement, its compliance with the provisions hereof and the consummation of all of the transactions contemplated hereby shall have been duly and validly authorized by all necessary action on the part of Buyer, and Seller shall have received a duly certified copy of all required consents effecting the same;

(iv) There shall not be in effect any judgment, decree or order of, or position taken by, any court or administrative body of competent jurisdiction, nor shall there have been any action, suit, proceeding or known investigation instituted or threatened, nor shall any law or regulation have been enacted or any action taken thereunder, which would, in Seller's reasonable judgment, restrain or prohibit, make illegal, or subject Seller to material damage as a result of, the consummation of the transactions contemplated hereby;

(v) The FCC shall have given the consent contemplated by **Section 12**;

(vi) Buyer shall have delivered to Seller the following documents and instruments:

(A) Assignment and Assumption Agreements by which Buyer assumes the Licenses, Contracts, Intangible Assets.

(B) A certificate executed by an officer of Buyer's stating that (a) all of the representations and warranties of Buyer set forth in this Agreement are in all material respects true, correct, and accurate as of the Closing Date, and (b) all covenants set forth in this Agreement to be performed by Buyer on or prior to the Closing Date have been performed in all material respects;

(C) A certified copy of the resolutions of Buyer authorizing the execution, delivery and performance of this Agreement by Buyer and the consummation of the transactions provided for herein, attested to by an officer of Buyer and

(D) Any and all other documents reasonably requested by Seller.

14. **Closing.** Subject to the terms and conditions herein stated, the parties agree as follows:

(a) **Closing Date.** The Closing of the transaction provided for in this Agreement shall be held not later than ten (10) business days following the date upon which the order of the FCC approving the assignment of the Licenses for the Station from Seller to Buyer has become final and non-appealable (the "Closing Date"). Such Closing shall take place by mail or other means, not requiring the physical presence of the parties, on the Closing Date, as mutually agreed to.

(b) **Failure to Close; Termination.** This Agreement may be terminated at any time prior to the Closing Date, as follows:

(i) by the mutual consent of Seller and Buyer; or

(ii) by Seller, upon notice to Buyer, if on the Closing Date, without any breach by Seller of its obligations hereunder, Buyer has not complied with one or more of the conditions set forth in **Section 13(b)** (and such compliance is not waived by Seller) and/or Buyer is in default hereunder; or

(iii) by Buyer, upon notice to Seller, if on the Closing Date, without any breach by Buyer of its obligations hereunder, Seller has not complied with one or more of the conditions

set forth in **Section 13(a)** (and such compliance is not waived by Buyer) and/or Seller is in default hereunder;

In the event of any termination as provided by this **Section 13(b)(i)**, this Agreement shall thereupon become void and of no effect, without any further liability on the part of any party. In the event that there is a termination pursuant to this **Section 13(b)(ii) or (iii)**, the parties shall have the remedies provided for in **Section 15**.

(c) A party shall “default” under this Agreement if it knowingly makes any material misrepresentation to the other party in connection with this Agreement, or materially breaches or fails to perform any of its representations, warranties, or covenants contained in this Agreement. Non-material breaches or failures shall not be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

(d) If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default is not curable or has not been cured within ten (10) days after delivery of that notice (or such additional reasonable time as the circumstances may warrant provided the party in default undertakes diligent, good faith efforts to cure the default within such ten (10) day period and continues such efforts thereafter), then the party giving such notice may exercise the remedies available to such party pursuant to this Agreement, subject to the right of the other party to contest such action through appropriate proceedings.

(e) Seller’s sole and exclusive remedy at law and equity for material breach by the Buyer pursuant to Section 14(b)(ii) shall be retention of the Escrow Deposit. Buyer shall be entitled, as its remedies for Seller’s breach pursuant to Section 14(b)(iii), to elect to have: (i) the return of the Escrow Deposit or (ii) specific performance. In regard to Buyer’s entitlement to specific performance, the parties recognize and agree that the Assets are unique and that if, prior to Closing, Seller breaches this Agreement and refuses to perform under the provisions hereof, Buyer would be damaged irreparably and the award of monetary damages alone would not be adequate to compensate Buyer for its injury. If any action for specific performance is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is adequate remedy at law.

## 15. **Further Covenants.**

(a) **Taxes.** All taxes originating from this transaction shall be paid by the party responsible by law to pay such tax.

(b) **Expenses of the Parties.** Except as otherwise expressly provided in this Agreement, all expenses involved in the preparation, negotiation, authorization and consummation of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel and accountants, shall be borne solely by the party who shall have incurred the same, and no other party shall have any responsibility with respect thereto.

(c) **Confidentiality.** Except for necessary disclosure to such party’s directors, officers, members, immediate family, employees, counsel, accountants, lenders and other agents, and except for the disclosure contemplated by Section 8 and such disclosure as may be required

by law, each party shall keep the provisions of this Agreement which are not public record confidential both prior and subsequent to the Closing Date. Without limiting the generality of the foregoing, no party shall make any press release or advertisement with respect to the transactions contemplated hereby without the prior consent of the other party, unless the disclosing party determines, upon the advice of counsel, that such action is required by law, and then the disclosing party shall promptly notify the other party of such disclosure.

(d) **Further Assurances.** Each party shall cooperate with the other, take such further action, and execute and deliver such further documents, as may be reasonably requested by any other party in order to carry out the terms and purposes of this Agreement. Without limiting the generality of the foregoing, from and after the Closing Date:

(i) each party shall file all tax returns consistent with the allocation of the Purchase Price set forth on **Schedule 5**, and no party shall take any position on audit or in litigation which is inconsistent with such allocation if such position would result in the payment of any additional tax by, or the disallowance of any deduction or credit to, any other party; and

(ii) upon request, each party shall take such action and deliver to the requesting party such further instruments of assignment, conveyance or transfer and other documents of further assurance as in the opinion of counsel to the requesting party may be reasonably desirable to assure, complete and evidence the full and effective transfer, conveyance and assignment of the Assets and possession thereof to Buyer, its successors and assigns, and the performance of this Agreement by Seller and Buyer in all respects.

16. **Survival of Representations, Warranties and Covenants.** The several representations, warranties and covenants of the parties herein contained, and the provisions hereof which by their terms are to be performed after the Closing Date, shall survive the Closing Date for the periods set forth herein, and shall be effective regardless of any investigation which may have been or may be made at the time by or on behalf of the party to whom such representations, warranties, covenants and agreements are made. Seller's representations and warranties shall survive no more than one year after Closing.

17. **Amendment and Waiver.** This Agreement may be amended only by a writing executed by each of the parties hereto. No waiver of compliance with any provision or condition hereof, and no consent provided for herein, shall be effective unless evidenced by an instrument in writing duly executed by the party sought to be charged therewith. No failure on the part of any party to exercise, and no delay in exercising, any of its rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any party of any right preclude any other or future exercise thereof or the exercise of any other right.

18. **Assignment.** No party shall assign or attempt to assign any of its rights or obligations under this Agreement without the prior written consent of the other party hereto.

19. **Notices.** All notices, requests, demands or other communications hereunder shall be in writing and deemed given when delivered personally, when deposited to be sent via a nationally-recognized overnight courier keeping receipts of delivery, service prepaid or billed to sender, or on the day said communication is deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller, to:

JER Licenses, LLC  
Attn: Jon E. Robinson  
2307 Princess Ann Street  
Greensboro, NC 27408

with a copy (which shall not constitute notice) to:

Blanco Tackabery & Matamoros, P.A.  
Attn: George E. Hollodick  
110 South Stratford Road, Suite 500  
Winston-Salem, NC 27104

If to Buyer, to:

Mr. Steven A. Silberberg  
288 South River Road  
Bedford, NH 03110

with a copy (which shall not constitute notice) to:

Barry A. Friedman, Esq.  
Thompson Hine LLP  
Suite 700  
1919 M Street, N.W.  
Washington, D.C. 20036

or to such other address as the parties may from time to time designate by notice in writing to the other parties. While notice given by courier service or mail shall be effective when deposited with the courier service or in the mails, properly addressed and postage paid or shipping charges paid or billed to the sender, all as aforesaid, the period in which a response to such a notice must be given or taken shall run from the date of receipt by the addressee. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

20. **Adjustment Time.** The “Adjustment Time” as used herein shall be 12:01 A.M. current local time on the Closing Date.

21. **Adjustment Items.** The following items (the “Adjustment Items”) shall be prorated as of the Adjustment Time, assuming a 365-day year or a 30-day or 31-day month, as appropriate, and monies shall be paid or prorated at Closing with respect to any of the Assets and/or Real Property:

(a) Real and personal property taxes and assessments (including sewerage assessments and fees), levied or assessed against or otherwise paid or payable.

(b) Charges for utilities, if any.

(c) Security deposits, if any.

(d) If the amount of any real or personal property 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.

22. **Adjustments After Closing Date.** If the amount of any items to be adjusted cannot be readily ascertained or agreed upon on the Closing Date, proration of such items shall be determined within thirty (30) days after the Closing Date and payment therefor shall be made to the party entitled thereto within five (5) days after notice of such determination thereof has been given to Buyer or Seller, as the case may be. In the event of any disputes between the parties as to adjustments, the amounts not in dispute shall nonetheless be paid at the time provided in this Section and such disputes shall be determined by an independent certified public accountant mutually acceptable to the parties. The accountant's resolution of the dispute shall be final and binding on the parties, and a judgment may be entered thereon in any court of competent jurisdiction. The fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

23. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement creates no rights of any nature in any person not a party hereto.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota

25. **Effect of Agreement.** This Agreement sets forth the entire understanding of the parties, and supersedes any and all prior agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.

26. **Headings; Counterparts.** The Article and Section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the parties. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement. Any party who delivers such a signature page by facsimile agrees to deliver later an original counterpart to any party that requests it.

27. **Recovery of Attorneys' Fees.** In any litigation instituted by either party alleging that the other party has committed a breach of this Agreement, the prevailing party shall be entitled to recover, its reasonable attorneys' fees and other costs incurred in connection with the conduct or defense of such litigation.

28. **Brokers.** Each party represents and warrants to the other that neither has employed, retained or consulted a broker, agent or finder in carrying on the negotiations in connection with this Agreement or the purchase and sale referred to herein. Seller and Buyer each hereby indemnifies and agrees to defend and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including, without



limitation, court costs and attorneys' fees, inclusive of fees incurred in connection with enforcement of this indemnity and fees on appeal) that may be asserted or recovered against the indemnified party on account of any brokerage fee, commission or other compensation arising by reason of the indemnitor's breach of these representations and warranties (the foregoing indemnities being herein referred to as the "Brokerage Indemnities"). The Brokerage Indemnities shall survive Closing or any sooner termination of this Agreement, notwithstanding any contrary provision of this Agreement.

29. **Miscellaneous.**

(a) **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Dakota.

(b) **Waiver.** Failure of either Buyer or Seller to exercise any right given hereunder or to insist upon strict compliance with regard to any term, condition or covenant specified herein, shall not constitute a waiver of Buyer's or Seller's right to exercise such right or to demand strict compliance with any term, condition or covenant under this Agreement.

(c) **Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

(d) **Captions.** All captions, headings, paragraph and subparagraph numbers and letters are solely for reference purposes and shall not be deemed to be supplementing, limiting, or otherwise varying the text of this Agreement.

(e) **Severability.** The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

(f) **Time of the Essence.** Time is of the essence of this Agreement.

(g) **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

(h) **Exhibits and Schedules.** The exhibits and schedules attached hereto are hereby incorporated herein by this reference.

(i) **Amendment to this Agreement.** Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

(j) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto (as permitted pursuant to the provisions of this Agreement).

(k) **Construction.** The parties hereto hereby acknowledge and agree that (i) each party hereto is of equal bargaining strength, (ii) each such party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with its own independent counsel, and such other professional advisors as it has deemed appropriate, relating to any and all matters contemplated under this Agreement, (iv) each such party and its counsel and advisors have reviewed this Agreement, (v) each such party has agreed to enter into this Agreement following such review and the rendering of such advice and (vi) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

**[SEPARATE SIGNATURE PAGES FOLLOW]**

**SEPARATE SIGNATURE PAGE**  
**ASSET PURCHASE AGREEMENT**

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

SELLER:

**JER LICENSES, LLC**, a Delaware limited  
liability company

By: \_\_\_\_\_  
Name: Jon E. Robinson  
Title: Manager

**SEPARATE SIGNATURE PAGE**  
**ASSET PURCHASE AGREEMENT**

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

BUYER:

**BAD LANDS BROADCASTING COMPANY,  
INC.,** a Delaware corporation

By: \_\_\_\_\_  
Name: Steven A. Silberberg  
Title: President

Exhibit A

Escrow Agreement

N/A- Deposit is being paid to Seller directly

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**Schedule 1(b)**

**FCC Authorizations**

**Station KXZT(FM), Newell, South Dakota (FCC FIN: 164201)**

**Schedule 1(c)**

**Leases for Transmitter Sites**

**Not Applicable**

**Schedule 1(d)**

**Tangible Personal Property**



**Schedule 5**

**Allocation of Purchase Price**

**License- \$125,000.00**