



003547-MNCT-1500

STEPHENS COLLEGE

ASSET PURCHASE OF KWWC

**ASSET PURCHASE AGREEMENT**

ASSET PURCHASE AGREEMENT, dated as of July 21, 2015 ("Agreement"), by and between The Curators of the University of Missouri, a Missouri public corporation ("Buyer"), and Stephens College, a Missouri pro forma decree corporation ("Seller").

**WITNESSETH:**

WHEREAS, Seller is the licensee of non-commercial educational radio station KWWC-FM, Columbia, Missouri (Facility ID: 63328), (the "Station"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to acquire certain of the assets owned or leased by Seller and used or useful in connection with the operation of the Station; and

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

1. **Sale of Assets.**

(a) **Assets.** On the Closing Date (as hereinafter defined), subject to the provisions hereof, Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase and assume from Seller, the assets, properties, interests and rights of Seller that are owned or leased by Seller and which are used in connection with the operation of the Station (the "Assets") and which are specifically listed on the Schedules referenced in items (i) and (iii) below as follows (but excluding the Excluded Assets described in subparagraph (d) below):

(i) **Tangible Assets.** Those items that are specifically set forth in Schedule 1(a)(i) (the "Tangible Personal Property") together with such improvements and additions thereto and replacements thereof between the date hereof and the Closing Date (the "Tangible Assets");

(ii) **Access.** If requested by Buyer, Seller shall provide Buyer, for a period of 60 days after the Closing Date, access to the Station's facilities located at the real property described in Schedule 1(a)(ii) and use of all necessary equipment (and related premises, easements and rights of way) to continue operation of the Station from the time of Closing until Buyer is able to commence operation of the Station from facilities on Buyer's property constructed at Buyer's expense pursuant to the FCC Construction Permit issued to the Station (BPED-20150126AAM ("Access")) provided Buyer shall be responsible and liable for all damages and injuries caused by Buyer in connection with Buyer's post Closing Date Access;

(iii) **Licenses and Authorizations.** All of the licenses, permits, construction permits, and other authorizations issued by the FCC ("FCC Authorizations"), the Federal Aviation Administration (the "FAA"), and any other federal, state or local

governmental authorities to Seller in connection with the conduct of the business and the operation of the Station, together with renewals or modifications thereof and any pending applications relating to the Station, all of which are set forth on Schedule 1(a)(iii) hereto (collectively, the "Licenses");

(iv) Books and Records. All of Seller's logs, books, files, data, software, FCC and other governmental applications, equipment manuals and warranties, and other records relating to the operations of the Station including FCC filings and all records required by the FCC to be kept by the Station, provided, however Buyer acknowledges and understands that as Seller has not undertaken fundraising like a typical radio station or operated independently from Seller's instructional programs, the Station's financial operations information is not maintained separately and there will not be separate books and records provided for it ; provided, however, that Buyer shall afford Seller post-Closing access to such books and records upon reasonable advance written notice if Seller in its reasonable discretion determines that access to such books and records is required to enable Seller to comply with any tax, financial or other legal obligations after the Closing Date.

(b) Retained Liabilities. The Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, liens, encumbrances and conditional sales agreements, other than taxes and assessments not yet due and payable, if any ("Liens"). Buyer is not agreeing to, and shall not, assume any liability, obligation, undertaking, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, undertaking, expense or agreement. All of such liabilities and obligations shall be referred to herein as the "Retained Liabilities."

(c) Employees. Buyer shall have no obligation to offer employment to any employee of Seller or the Station, and any and all liabilities and obligations with respect to such employees shall be Retained Liabilities.

(d) Excluded Assets. The following assets and obligations relating to the business of the Station shall be retained by Seller and shall not be sold, assigned or transferred to or assumed by Buyer (the "Excluded Assets");

(i) All cash, cash equivalents or similar type investments of Seller such as certificates of deposits, Treasury bills or other marketable securities on hand and in banks (or their equivalents);

(ii) All accounts receivable due to Seller on or before the date  
hereof;

(iii) All deposits and all prepaid expenses and taxes;

(iv) Seller's corporate records;

(v) All contracts of insurance or insurance proceeds and claims made by Seller relating to the property or equipment repaired, replaced or restored by Seller prior to the Closing Date;

(vi) The Station's studio equipment not listed in Schedule 1(a)(i) and any assets of Seller not used in the operation of the Station;

(vii) All rights to the use of the call sign "KWWC".

2. **Purchase Price.**

(a) **Payments.** Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets to Buyer, on the Closing Date, Buyer shall provide Seller the following (the "**Purchase Price**"):

(i) Up to Fifty Thousand Dollars (\$50,000) in underwriting announcements over a five (5) year period (based on Buyer's rates in place for similar announcements at the time of such announcements), to be broadcast on Buyer's radio station KBIA(FM) and the Station, as set forth on **Schedule 2(a)(i).**

(ii) Fifty Thousand Dollars (\$50,000), to be paid by wire transfer of immediately available funds to an account designated by Seller, which account shall be designated by Seller not less than two (2) Business Days prior to the Closing Date.

3. **FCC Consent; Assignment Application.** At a date not later than ten (10) business days after the date of this Agreement, Buyer and Seller shall execute, file and prosecute an application with the FCC (the "**Assignment Application**") requesting its consent to the assignment, from Seller to Buyer, of all FCC Authorizations pertaining to the Station, without conditions materially adverse to Buyer or Seller (the "**FCC Consent**"). Buyer and Seller shall take all commercially reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay (but neither party shall have any obligation to satisfy complainants or the FCC by taking any steps which would have a material adverse effect on the Station or on the results of operations of a party or any affiliated entity). If the FCC Consent imposes any condition on a party hereto, no party shall be required hereunder to comply with any condition that would have a material adverse effect on the results of operations of such party or any affiliated entity or on the Station itself.

4. **Closing Date; Closing Place.** The closing (the "**Closing**") of the transactions contemplated by this Agreement shall occur on a date (the "**Closing Date**") mutually agreed by Buyer and Seller which shall be no later than ten (10) business days following the date on which the FCC Consent appears as granted pursuant to Public Notice of the FCC and the other conditions to closing set forth herein have either been waived or satisfied; provided that, if there has been any petition to deny or other objection filed with the FCC to the proposed sale and assignment contemplated hereunder, Buyer may elect to delay the Closing until the FCC Approval has become a Final Order. In such event, the Closing Date shall be a date determined by Buyer, upon at least ten (10) business days prior written notice to Seller, within thirty (30) days of the date upon which the FCC Approval has become a Final Order. Buyer shall keep Seller informed of material developments regarding the status of the FCC approval. For purposes of this Agreement, the term "**Final Order**" means action by the FCC consenting to an application which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and

as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The Closing shall take place by the exchange of documents by email or by such other method as Buyer and Seller may select by mutual agreement.

5. **Representations, Warranties and Covenants of Seller.** Seller hereby makes the following representations, warranties and covenants to Buyer:

(a) **Status.** Seller is a legally formed and constituted pro forma decree corporation, in good standing under the laws of the State of Missouri, possesses all corporate power necessary to own and operate Station and to carry out the provisions of this Agreement.

(b) **Authorization of Agreement.** Seller has obtained all necessary approvals, including the approval of its Board of Trustees, required for authorization and performance of the Agreement. The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary actions on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

(c) **No Conflict.** The execution, delivery and performance of this Agreement by Seller will not (i) conflict with or result in any breach of any provision of the organizational documents of Seller, or (ii) result in a material default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation, relating to its own business, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Buyer, (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller, or (iv) require the consent or approval of any governmental authority, lending institution or other third party other than the FCC Consent.

(d) **Tangible Assets.** Seller (i) is the lawful owner of all of the Tangible Assets it purports to own, and is the lawful owner of, or has a valid leasehold interest in, all other assets and properties which are used in the operation of the Station (collectively, the "**Other Assets**"). To Seller's actual knowledge, each item of Tangible Assets, and of the Other Assets, (i) is in commercially reasonable condition and repair, (ii) has been maintained in a manner consistent with generally accepted standards of good engineering practice, (iii) is operating in material compliance with all applicable laws, including in compliance with the Licenses and rules and regulations of the FCC, the FAA and any other applicable government agencies, (iv) to Seller's actual knowledge does not contain any PCBs; and (iv) is free and clear of all Liens.

(e) **Licenses; FCC Matters.** Schedule 1(a)(iii) hereto contains a true and complete list of the Licenses and all other licenses, permits or other authorizations from governmental or regulatory authorities that are required for the lawful conduct of the business and operation of the Station in the manner and to the full extent it is presently operated. Seller lawfully holds each of the Licenses and other licenses, permits and authorizations listed on

Schedule 1(a)(iii), none of which is subject to any restrictions or conditions that would limit in any material respect the operation of the Station. Seller is operating the Station in all material respects in accordance with (i) the FCC Authorizations, and (ii) the Communications Act of 1934, as amended, and all rules, regulations and policies of the FCC (the “Communications Laws”). There is not now pending or, to Seller’s actual knowledge, threatened, any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such Licenses, and Seller has not received any notice of and has no actual knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or complaint against the Station or Seller. All material reports and filings required to be filed with the FCC by Seller with respect to the operation of the Station have been timely filed, and all such reports and filings are accurate and complete in all material respects. Seller and Station are in material compliance with all Communications Laws and Federal Aviation Administration requirements. The Station is currently, and at the Closing Date will be, operating at its full authorized effective radiated power. All antenna towers used in connection with the Station, whether or not owned by Seller, have been registered with the FCC, if required to be registered, in accordance with the FCC’s rules, regulations, and policies.

(f) Intangible Property. To Seller’s actual knowledge, Seller has obtained all licenses and other rights necessary for the use of all slogans, positioning statements, program material, logos, titles and other intangibles used by Station. To Seller’s actual knowledge, copies of any licensing agreements for the use of such intangible property have been delivered to Buyer and there are no complaints pending and, to Seller’s knowledge, there are none threatened and there is no basis for any claim in connection with the use of any intangible property in connection with the operation of the Station.

(g) Property. Schedule 1(a)(ii) includes a complete and accurate list of the real estate owned or leased by Seller on which the Assets are located (all of which is included in the definition of “Real Estate”). Seller will provide Access as described in and limited by Section 1(a)(ii) hereof.

(h) Marketable Title. Seller has, and on the Closing Date will have, good and marketable title to all Assets, free and clear of all liens, and the Assets to be sold hereunder are transferable by Seller by its sole act and deed and no consent on the part of any other party is necessary for the transfer thereof to Buyer other than FCC Consent.

(i) Brokers. There is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller.

(j) Legal Proceedings: Compliance with Law. Seller is not subject to any order, writ, injunction, judgment, arbitration decision, settlement or consent agreement, or decree having binding effect and affecting the business of the Station, the Assets or the Other Assets or that restrains or enjoins or could otherwise adversely affect the transactions contemplated hereby, and no such proceeding is pending. There is no litigation pending by or against or, to Seller’s actual knowledge, threatened against Seller that relates to Seller or the Station or that could materially affect any of the Assets or the Other Assets. Seller, with respect to the Station,

has complied in all material respects with all laws, regulations, orders or decrees applicable to Seller. The present uses by Seller of the Assets and the Other Assets do not violate any such laws, regulations, orders or decrees in any material respect. To Seller's actual knowledge, there is not (i) any threatened litigation regarding the potential sale of the Station or the business of the Station; or (ii) any basis for any claim that any of the transactions contemplated under this Agreement violates the terms of any of the instruments listed above, or would be otherwise impermissible.

(k) Environmental Matters. To Seller's actual knowledge, the operation of the Station does not exceed permissible levels of exposure to RF radiation specified in either the FCC's rules, regulations and policies concerning RF radiation or any other applicable Environmental Laws (as defined below). To Seller's actual knowledge, Seller has complied and currently is in material compliance with all applicable laws, statutes, rules, regulations, codes and ordinances of all U.S. federal, state and local government agencies and authorities relating to the discharge of air pollutants, water pollutants or process waste water, or hazardous materials, or otherwise relating to the environment, including without limitation the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Commission, and regulations of any state department of natural resources or state environmental protection agency now in effect in connection with the operation of the Assets or the Other Assets ("Environmental Laws").

There are no pending or, to the best of Seller's actual knowledge, threatened (i) requests for information, actions, or proceedings from or by any Governmental Body or any other person or entity against Seller with respect to the Station, the Assets or the Other Assets regarding any Environmental Law, or (ii) Liens or governmental actions, notices of violation, notices of noncompliance or other proceedings against Seller with respect to the Assets regarding any Environmental Law. Seller has provided to Buyer true and complete copies of any environmental reports with respect to the Assets and the Other Assets which are in the possession or control of Seller. From the date hereof through the Closing Date upon reasonable advance notice at mutually acceptable times and subject to Buyer and its consultants' compliance with Seller's insurance requirements and Buyer's agreement to be responsible for repairing at its expense any damage caused by same, Buyer shall have the right to conduct non-invasive environmental audits of the Assets, the Other Assets and Real Property by a consultant of Buyer's choice.

(l) Payment of Taxes. With respect to the Station and the Assets and Other Assets if applicable, Seller has duly and timely filed all federal, state, local or foreign income, franchise, sales, use, property, excise, payroll, FICA, withholding and other tax returns and forms required to be filed (if any), and has timely paid in full or discharged or will pay in full or discharge as of the Closing all taxes, assessments, excises, interest, penalties, deficiencies and levies (if any) required to be paid and pertaining to the Assets to be transferred hereunder.

(m) Insurance. Seller has in effect policies of insurance covering loss or damage to the Assets and Other Assets, and liability and other casualty insurance in amounts customary in the industry. All premiums have been paid, and there has otherwise been no default under any such policy.

(n) Accuracy of Statements. No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains any untrue statement of a material fact or omits to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer. Actual knowledge means only the actual knowledge of Lindi F Overton, Vice President/Finance and Administration, after having made reasonable investigation.

6. Representations and Warranties of Buyer. Buyer hereby makes the following representations and warranties to Seller:

(a) Status. Buyer is a legally formed and constituted institution of higher education, in good standing under the laws of the State of Missouri, possesses all corporate power necessary to own and operate Station and to carry out the provisions of this Agreement and has or will have the authority and financial capability to acquire the Assets.

(b) Authorization of Agreement. Buyer has obtained the approval of its Board of Curators or other entities required for authorization of the Agreement and any other approvals required by statute, regulation or as otherwise required by law. The execution, delivery, and performance of this Agreement by Buyer have been duly authorized by all necessary actions on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

(c) No Conflict. The execution, delivery and performance of this Agreement by Buyer will not (i) conflict with or result in any breach of any provision of the organizational documents of Buyer, (ii) result in a material default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation, relating to its own business, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Seller, (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Buyer, or (iv) require the consent or approval of any governmental authority, lending institution or other third party other than the FCC Consent.

(d) Legal Proceedings. There is no litigation, proceeding or governmental investigation pending or, to Buyer's knowledge, threatened, in any court, arbitration board, administrative agency, or tribunal against or relating to Buyer, including without limitation, any voluntary or involuntary petition under Federal bankruptcy law or any state receivership or

similar proceedings, that would prevent or materially impede the consummation by Buyer of the transactions contemplated by this Agreement, nor does Buyer know of, or have any reasonable ground to know of, in view of its present situation or action it now contemplates taking, any basis for such litigation, proceeding or investigation.

(e) Brokers. There is no broker or finder or other person who would have any valid claim against Buyer for a commission or brokerage in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Buyer.

(f) Qualification. To Buyer's knowledge, there are no facts which, under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC, would disqualify Buyer as an assignee of the Licenses. Buyer is legally and financially qualified to become the FCC licensee of the Station.

(g) Accuracy of Statements. No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller.

7. Covenants of Seller. Seller covenants and agrees with Buyer as follows:

(a) Conduct of Business During Interim Period. Seller covenants and agrees with respect to the Station that between the date hereof and the Closing Date (the "Interim Period"), except as expressly permitted by this Agreement or with the prior written consent of Buyer, it shall act in accordance with the following:

(i) Except as specifically set forth herein, Seller shall conduct the business and operations of the Station in Seller's ordinary course of business, consistent with past practices and with the intent of preserving the Assets and the Other Assets.

(ii) Seller shall not: (i) sell or transfer any of the Assets or Other Assets outside of the ordinary course of Seller's business, consistent with past practices and which Assets or Other Assets shall be replaced with assets of equal or greater value or (ii) place or allowed to be placed on any of the Assets or Other Assets relating to the Station any Lien.

(iii) Seller shall not enter into any new underwriting agreements with respect to material to be aired after the Closing Date without the prior written consent of Buyer.

(iv) Seller shall operate the Station in accordance with FCC rules and regulations and the Licenses and with all other applicable laws, regulations, rules and orders, and shall not cause or permit by any act, or failure to act, any of the Licenses to expire, be surrendered, adversely modified or otherwise terminated, or the FCC to institute



any proceedings for the suspension, revocation or adverse modification of any of the Licenses or fail to prosecute with due diligence any pending applications to the FCC.

(v) Seller shall not, nor will it permit any affiliate, officer, employee, attorney, accountant, financial advisor or other representative or agent of Seller to negotiate with, solicit or engage in negotiations with, or provide any non-public information to, or otherwise cooperate with, any third party (other than Buyer) which seeks to or expresses an interest in acquiring all or any substantial part of the business or assets of the Station, or for the purpose of otherwise effecting a transaction inconsistent with the transactions contemplated by this Agreement. Seller will not enter into any agreement with or grant any option to any third party in connection with a transaction inconsistent with the transactions contemplated by this Agreement

(vi) Seller shall maintain in force and effect the existing insurance policies for the Station and the Assets and Other Assets or reasonably comparable insurance coverage.

(vii) Seller shall upon prior request give Buyer and Buyer's counsel, accountants, engineers and other representatives, reasonable access during normal business hours to all of Seller's properties, books, financial records, contracts, reports and other records, agreements, tangible assets and licenses relating to the Station, and will furnish Buyer with all information that Buyer may reasonably request. The rights of Buyer under this Section shall not be exercised in such a manner as to interfere unreasonably with the business of the Seller or the Station. Seller shall permit Buyer and Buyer's consulting engineers, at Buyer's expense and the mutual convenience of Buyer and Seller, to conduct engineering and other inspections of the Assets and Other Assets. All access shall be upon advance notice, shall be subject to the requirement that Buyer shall be responsible for any damage caused as a result of same.

(b) Interim Period Events. During the Interim Period, Seller shall inform Buyer of any material adverse change to the Assets or Other Assets, and any potential litigation or notice of violation affecting the Station or the transactions contemplated by this Agreement, and of any events which would reasonably be expected to result in such a material adverse change, litigation or notice of violation, within five (5) business days after it becomes aware of such events. Seller shall also promptly inform Buyer of any changes in Seller's representations and warranties under this Agreement. In addition, Seller shall promptly notify Buyer if any of the normal broadcast transmissions of the Station are interrupted, interfered with or in any way impaired for more than 36 hours with notice of the problem and the measures being taken to correct such problem.

(c) Further Assurances. Prior to the Closing Date, Seller shall co-operate with Buyer, at Buyer's request, to effect a change in the Station's call sign, such change to become effective upon Closing. From and after the Closing, at the request of Buyer and without further cost or expense to Seller, Seller shall execute and deliver such other instruments of conveyance and transfer and take such other actions as Buyer may reasonably request in order to carry out this Agreement and the other agreements specified in this Agreement and to vest in the Buyer good and marketable title to the Assets, free and clear of all Liens. This Section 7(c) shall

survive Closing.

8. **Covenants of Buyer.** Buyer covenants and agrees with Seller as follows:

(a) **No Control of Station.** Prior to the Closing Date, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Station and such control, supervision and direction shall remain and shall be the sole responsibility of Seller.

(b) During the Interim Period, Buyer shall inform Seller of any litigation affecting the transactions contemplated by this Agreement, and of any events which would reasonably be expected to result in such litigation, within five (5) business days after it becomes aware of such events. Buyer shall also promptly inform Seller of any material changes in Buyer's representations and warranties under this Agreement.

(c) From and after the Closing, at the request of Seller and without further cost or expense to Buyer, Buyer shall execute and deliver such other instruments and take such other actions as Seller may reasonably request in order to carry out this Agreement and the other agreements specified in this Agreement. This Section 8(c) shall survive Closing.

9. **Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by Seller:

(i) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date;

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) Public notice of the FCC Consent contemplated by this Agreement shall have been released, and in the event Buyer has elected to delay Closing as provided in Section 4, the FCC Consent shall have become a Final Order;;

(iv) Buyer shall not be subject to any voluntary or involuntary petition under Federal bankruptcy law, or any state receivership or similarly proceeding;

(v) Buyer shall have delivered to Seller, on the Closing Date, the documents required to be delivered pursuant to Section 10(b); and

(vi) Approval of this Agreement by Buyer's Board of Curators and Seller's Board of Trustees (or other appropriately designated officials or governmental entities).

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent:

(i) Seller shall have performed and complied in all material respects with all the agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date;

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) None of the events or conditions referenced in Section 11 below shall have occurred and not been remedied as set forth in Section 11;

(iv) The Station's application for FCC Consent contemplated by this Agreement shall have been granted without the imposition of any conditions materially adverse to Buyer or the Station and, where required pursuant to Section 4 hereof, have become Final Order(s);

(v) There shall not be any Liens on the Assets or any financing statements of record. Buyer may, at its discretion, and Buyer's sole cost and expense, commission lien search reports, in form and substance satisfactory to Buyer and prior to the Closing, reflecting the results of UCC, tax and judgment lien searches conducted at Secretary of State offices of the State of Missouri and in the County Clerk's Office of the county in which Seller's principal place of business is located and of each county in which the Assets are located. If Buyer discovers any such Liens, Seller shall promptly take steps necessary to discharge and remove all such Liens;

(vi) There has been no material adverse change in the Assets;

(vii) Seller shall have delivered to Buyer, on the Closing Date, the documents required to be delivered pursuant to Section 10(a);

(viii) The Construction Permit (BPED-20150126AAM) issued for the Station by the FCC shall be in full force and effect; and

(ix) Approval of this Agreement by Buyer's Board of Curators and Seller's Board of Trustees (or other appropriately designated officials or governmental entities).

10. **Closing Deliveries.**

(a) At the Closing, Seller will deliver to Buyer the following, each of which shall be in form and substance satisfactory to Buyer and its counsel:

(i) A bill of sale, and other instruments of transfer and conveyance, dated the Closing Date, in form and substance so as to effectively and legally transfer and assign to Buyer the personal property Assets and effectively vest in Buyer good and marketable title to the personal property Assets;

(ii) Written consents from any party that is a secured party identified on any UCC-1 Financing Statement of record with respect to Seller, the Station or Assets as shown on the lien search, agreeing to amendment or termination of the Liens evidenced thereby upon conditions set forth in such consent and such instruments of amendment, termination or release of Liens, all in form and substance reasonably satisfactory to counsel for Buyer, as are necessary to vest in Buyer good and marketable title in and to the Assets;

(iii) An assignment of the Station's Licenses; and

(iv) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Buyer shall reasonably request, each in form and substance satisfactory to Buyer and its counsel.

(b) At the Closing, Buyer will deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

(i) The cash portion of the Purchase Price pursuant to Section 2(a)(ii) hereof;

(ii) An assumption of the Station's Licenses

(ii) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Seller shall reasonably request, each in form and substance satisfactory to Seller and their counsel.

11. **Risk of Loss.** The risk of any loss, or damage or destruction to any of the Assets to be transferred to Buyer hereunder from fire or other casualty or cause, shall be borne by Seller at all times prior to the Closing hereunder. It shall be the responsibility of Seller to take all commercially reasonable steps to repair or cause to be repaired and to restore the Assets to substantially the condition they were in prior to any such loss, damage or destruction. Seller agrees to continue to maintain until the Closing Date such policies of insurance as are currently in force and which pertain to the Assets, or other policies providing substantially equivalent coverage. The proceeds of or any claim for any loss, payable under any insurance policy with respect thereto, shall be used to repair, replace, or restore any such Assets to their former condition. Seller shall notify Buyer within five (5) business days of any loss or damage to any of the Assets to be transferred hereunder from fire, casualty or other causes. If Seller cannot restore the facilities so that normal and usual transmission can be resumed before the Closing, the Closing shall be postponed, the exact date and time of such postponed Closing to be agreed to by Buyer and Seller within five (5) days of the above notice. In the event of any loss, damage or destruction that impairs the ability of the Station to operate with its full licensed facilities, Buyer may terminate this agreement in any of the following instances: (i) if the Station does not

operate for a period of twenty-four (24) hours; or (ii) if the Station does not operate with full licensed facilities for any period in excess of seven (7) days. Should Buyer elect not to terminate in these circumstances, in the event the facilities cannot be restored within thirty (30) days after the FCC Consent has become a Final Order, Buyer shall have the option to terminate this Agreement, without any further obligation, by written notice to Seller.

12. **Indemnification.**

(a) To the extent permitted by Missouri law, Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations or warranties, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station and that occurred, arose, or relate to the period, prior to the Closing, including the Retained Liabilities. To the extent permitted by Missouri law and without waiving sovereign immunity with respect to Buyer, Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations, warranties, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the Assets and that occurred, arose, or relate to the period, subsequent to the Closing, or are related to the ownership and operation of the Station as conducted by Buyer subsequent to the Closing.

(b) If either party hereto (the "Indemnatee") receives notice or otherwise obtains knowledge of any matter with respect to which another party hereto (the "Indemnifying Party") may be obligated to indemnify the Indemnatee under this Section 12(b), then the Indemnatee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnatee in connection therewith. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(c) Except as otherwise specifically provided in this Agreement, and except for the covenants and agreements contained in Section 2(a)(i) and Schedule 2(a)(i) which shall survive until fully performed, and the representations and warranties contained in Sections 5(a), 5(b), 5(c) and 5(h) which shall survive indefinitely, the representations and warranties, covenants and indemnities of the parties herein contained shall survive the execution and delivery of this Agreement and the Closing for eighteen (18) months; provided, however, that any representation or warranty that is specifically identified in a written claim of breach delivered within the period herein provided shall survive until it is either settled or adjudicated.

13. **Termination.**

(a) This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in default or breach of any of its material obligations under this Agreement, upon written notice to the other upon the occurrence of any of the following: (a) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or ten (10) days after receipt of the notice of breach from the non-breaching party; (b) if the Assignment Application is denied by Final Order; (c) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing of this Agreement; or (d) if the Closing has not occurred within twelve (12) months after the date hereof (the "Initial Term"); provided that in the event that the Closing has not occurred due to the action or inaction of either Buyer or Seller, then the other party may elect in its sole discretion to extend the Initial Term for an additional six (6) month term upon written notice to the other party prior to the expiration of the Initial Term.

(b) Upon a termination of this Agreement for any reason other than as a result of a breach by either party of any of its material obligations under this Agreement, neither party shall have any further obligation to the other under this Agreement.

14. **Specific Performance.** Seller acknowledges that the Station is a unique asset not readily obtainable or easily sold on the open market and that, in the event that Seller fails to perform its obligation to consummate the transactions contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of its failure to perform its obligation to consummate the transactions contemplated hereby, Buyer shall be entitled, upon compliance with all of its obligations hereunder, in addition to any other rights and remedies on account of such failure, to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transactions contemplated hereby. If any action is brought by Buyer to enforce specific performance under this Agreement, Seller shall waive the defense that there is an adequate remedy at law and agrees that Buyer shall be entitled to obtain specific performance of Seller's obligations under this Agreement without Buyer being required to prove actual damages, certainty of contract terms, adequacy of consideration, substantial performance or the inadequacy of money damages or other remedies at law as a remedy or to post bond or furnish other security. Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

15. **Public Announcements.** Prior to the Closing, each of the parties agrees that it shall not make any public announcement or issue any press release regarding this Agreement or the transaction without prior consultation with, and the written consent of, the other party, including without limiting the foregoing, the airing of any remarks about the Agreement or the transaction on the Station (except for on-air announcements required by the FCC). Both parties affirm that they or their appointed agents shall work jointly and cooperatively in preparing all public announcements and press releases regarding the Agreement. For purposes of this Agreement, "public announcement" is defined as an official announcement authorized by the respective school.

16. **Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or refusal thereof), or twenty-four (24) hours after delivery to a nationally

recognized courier service that guarantees overnight delivery, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller, to:

Stephens College  
Attn: Lindi F. Overton  
Vice President, Finance and Administration  
Stephens College  
1200 E Broadway  
Columbia, MO 65215  
Tel: 573-876-2364  
Email: [loverton@stephens.edu](mailto:loverton@stephens.edu)

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

Stephens College  
Attn: Dianne Lynch  
President  
1200 E Broadway  
Columbia, MO 65215  
Tel: 573-876-2410  
Email: [dlynch@stephens.edu](mailto:dlynch@stephens.edu)

If to Buyer, to:

Nancie D. Hawke  
Office of the General Counsel  
University of Missouri System  
227 University Hall  
Columbia, MO 65211  
Tel: (573) 882-3211  
Email: [hawken@umsystem.edu](mailto:hawken@umsystem.edu)

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

Scott R. Flick  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW  
Washington, DC 20037-1128  
Tel: 202-663-8167  
Email: [scott.flick@pillsburylaw.com](mailto:scott.flick@pillsburylaw.com)

17. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri without giving effect to the choice of law principles thereof. Exclusive venue and jurisdiction with respect to each lawsuit or court action, if any, arising under or relating to this Agreement shall be in the state or federal courts of the State of Missouri.

18. **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein shall, for any reason, be held to be invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions hereof, unless such a construction would be unreasonable.

19. **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by facsimile or electronic transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

20. **Expenses.** Each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. All state, local and other transfer and sales taxes arising out of the transfer to Buyer of the Assets as contemplated hereby shall be paid by the Seller.

21. **Attorneys' Fees.** In the event that a law suit is commenced in which it is alleged that any party to this Agreement has breached any of the terms hereof, the prevailing party, as determined by the court, shall be entitled to reimbursement from the other party of its reasonable costs and expenses incurred in such law suit, including but not limited to it reasonable attorneys' fees.

22. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party shall assign its interest or delegate all or part of its obligations, by assignment, change of control or otherwise, under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

23. **Entire Agreement.** This Agreement, and the exhibits attached hereto, supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.



SELLER:

STEPHENS COLLEGE

By: 

Name: Dianne Lynch

Title: President

BUYER:

THE CURATORS OF THE  
UNIVERSITY OF MISSOURI

By: 

Name: Lisa J. Wimmer

Title: Assoc. Director, Business Svcs

APPROVED  
AS TO  
LEGAL FORM



**Schedule 1(a)(i)**

**Tangible Assets**

1. Sage EAS Unit
2. 4 port RF coax switch

**Schedule 1(a)(ii)**

**Real Estate**

Hugh Stephens Library  
Helis Communication Center

**Schedule 1(a)(iii)**

**Licenses**

KWWC-FM, Columbia, Missouri  
Facility Identification Number 63328  
FCC License Expires February 1, 2021

Technical License File No.

BLED-19820715AE

Renewal File No.

BRED-20120928AEH

Modification Construction Permit

BPED-20150126AAM

## **Schedule 2(a)(i)**

### **Underwriting Announcements**

As part of the Purchase Price, Buyer shall provide underwriting announcements for Seller as follows:

**Underwriting Announcements.** Subject to the following terms and conditions, for a period beginning on the Closing Date and ending on the date five (5) years thereafter, Buyer shall air, at no additional cost, up to Fifty Thousand Dollars (\$50,000) of on-air underwriting announcements on the Station and on Buyer's radio Station KBIA(FM) (valued at Buyer's then-current rates) provided by Seller to raise public awareness of its mission and its arts and cultural activities (the "Messages"). The parties shall mutually agree upon the scheduling of the Messages and Seller shall provide the Messages to Buyer in a timely manner. The Messages shall comply with all applicable laws and conform to the regulations and policies of noncommercial educational broadcasting and of Buyer, including public broadcasting industry standards and Buyer's own underwriting policies, and Buyer shall have the right to preempt or reject any Message(s); provided, however, that any Message which is preempted or rejected by Buyer shall not be counted in determining the value of Messages aired under Section 2(a)(i) of this Agreement and under this Schedule 2(a)(i). In the event Buyer assigns or transfers control of the FCC authorization for the Station or station KBIA(FM) during such 5 year period, Buyer may air such underwriting announcements on another FM radio station or stations owned or programmed by it selected in Buyer's sole discretion.