

## Agreements

A copy of the Asset Purchase Agreement (“APA”) associated with the proposed assignment of license is attached hereto. The APA exhibits have not been included. The excluded exhibits are as follows:

- 1.1 FCC Authorizations
- 1.2 Tangible Personal Property
- 1.3 Station Contracts
- 1.4 Real Property
- 1.6 Intellectual Property
- 3.2 Excluded Contracts
- 4 Escrow Agreement
- 6.6 Litigation
- 11.8 Form of Studio Lease

The exhibits identified above contain proprietary information, information already of Commission record, and/or are not germane to the Commission’s consideration of this application. *See Luj, Inc. and Long Nine, Inc.*, Memorandum Opinion and Order, 17 FCC RCD 16980 (2002). The excluded documents will be provided to the Commission upon request.

## **ASSET PURCHASE AGREEMENT**

**THIS AGREEMENT** (hereinafter “Agreement” or “APA”), is made and entered into this 14<sup>th</sup> day of March, 2023, by and among Lake Area Educational Broadcasting Foundation, a Charitable Trust (“Seller”) and University of Northwestern-St. Paul, a Minnesota non-profit corporation (“Buyer”).

### **WITNESSETH**

**WHEREAS**, Seller, under authority of licenses issued by the Federal Communication Commission (the "FCC"), is the licensee or permittee of the following noncommercial FM full power and translator stations:

<i>Station</i>	<i>Svc</i>	<i>Fac. Id.</i>	<i>Cmty of License</i>
KCKE	NCE FM	173707	Chillicothe, MO
KCKF	NCE FM	91489	Cuba, MO
KCKH	NCE FM	14065	Mansfield, MO
KCKP	NCE FM	184972	Laurie, MO
KCKV	NCE FM	87796	Kirksville, MO
KCKZ	NCE FM	184974	Huntsville, MO
KCVJ	NCE FM	69666	Osceola, MO
KCVK	NCE FM	83870	Otterville, MO
KCVO-FM	NCE FM	36258	Camdenton, MO
KCVQ	NCE FM	78932	Knob Noster, MO
KCVX	NCE FM	92246	Salem, MO
KCVY	NCE FM	90453	Cabool, MO
KCVZ	NCE FM	86960	Dixon, MO
KSJI	NCE FM	81962	St. Joseph, MO
KVSR	NCE FM	78923	Kirksville, MO
K207AY	FMT	36256	St. Robert, MO
K208BO	FMT	36247	Warsaw, MO
K211FV	FMT	36257	Sedalia, MO
K254BU	FMT	140750	Marshall, MO
K274CD	FMT	36254	Rolla, MO
K281AT	FMT	152452	Lebanon, MO
K285FC	FMT	1400026	Jefferson City, MO
K293AX	FMT	154612	Jefferson City, MO
KBMA*	NCE-FM	768990	Albany, MO
KCKG*	NCE-FM	768817	Richland, MO
KCKI*	NCE-FM	768813	Marshall, MO
KCKQ*	NCE-FM	768987	Ravenwood, MO
KCKU*	NCE-FM	768982	Rosebud, MO
KCVA*	NCE-FM	768810	College Springs, MO

*\*Unbuilt Construction Permit*

each a “Station” and collectively, the “Stations;” and with respect to the unbuilt but issued construction permits for new NCE-FM stations denoted with an asterisk, each a “Permit” and collectively, the “Permits”).

**WHEREAS**, Seller desires to sell and Buyer desires to purchase the assets and rights belonging to or used or held for use in the business and operation of the Stations pursuant to the terms and conditions stated herein; and

**WHEREAS**, assignment of the Stations' FCC authorizations as part of the sale is subject to and conditioned upon the consent of the FCC to the terms and conditions stated herein and the assignment of the FCC Authorizations (as defined herein).

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements stated herein, the parties hereto agree as follows:

1. **Assets Sold and Purchased.** On the date of the consummation of the sale and purchase contemplated hereunder (the "Closing") as defined in Section 5.1(a) below (the "Closing Date"), Seller will cause to be sold, transferred, assigned and conveyed to Buyer, by appropriate instruments, and Buyer will purchase and assume, subject to the terms and conditions set forth herein, all of Seller's right, title and interest in all the assets, real, personal, tangible and intangible, good will, contract rights, leases and licenses of Seller used and/or held for use in the operation of the Stations as same exist on the date of Closing (collectively the "Assets"), free and clear of all liens, claims, security interests, instruments or encumbrances ("Liens") as follows:

1.1 **License and Authorizations.** The Station FCC licenses, the Permits, and all other FCC authorizations issued to Seller, and all applications or proceedings filed by Seller that are pending at the FCC, related to the operation of the Stations, all as set forth in Exhibit 1.1 hereto ("FCC Authorizations"), and any and all other licenses, rights, permits and authorizations issued to Seller by any other governmental or regulatory agency which are used or useful in connection with the operation of or rights to construct the Stations.

1.2 **Personal Property.** All the fixed and tangible personal property assets, along with any unexpired warranties, owned by Seller and used or held for use in the operation of the Stations, including without limitation the physical assets and equipment, spare and replacement parts, leasehold improvements, furniture, fixtures, computers and related equipment, communications equipment, broadcast equipment, towers, transmitting or receive antennae, receivers, transmitters, switches and related equipment, all as listed and described in Exhibit 1.2 hereto, together with replacements thereof and improvements and additions thereto made between the date hereof and the Closing Date ("Tangible Personal Property").

1.3 **Contracts.** All of the contracts or contractual rights of Seller used in or necessary to the operation of the Stations, including without limitation tower or antenna structure lease or license agreements necessary for the operation of the Stations ("Tower Leases"), leases by Seller to third parties for the use of tower/site space on Seller's owned towers/sites ("Income Leases"), and the real property leases for certain Station transmitter/tower sites ("Real Property Leases"), all as listed and described in Exhibit 1.3 hereto (collectively, the "Station Contracts").

1.4 **Real Property.** The real property parcels owned by Seller used or useful in connection with the operation of the Stations, including any buildings, towers or structures located thereon, legal descriptions of which are provided in Exhibit 1.4 hereto, and the leasehold interest in Seller's excluded studio/office building/land on the terms described in Exhibit 11.8 to be finalized into a lease prior to the Closing Date and executed at Closing (collectively, and including the Real Property Leases, the "Real Property").

1.5 **Records.** All of Seller's records relating to the operation of the Stations through the Closing Date, including, but not limited to, all program, operating and maintenance logs maintained in connection with the Stations, whether or not required by the FCC; engineering or consultant reports, data or analyses pertaining to the Stations' facilities; the Stations' online public inspection file contents; copies of any accounts receivable and accounts payable ledgers which are kept by or for Seller in connection with the business of the Stations; and copies of any other bookkeeping or accounting data in the possession of Seller relating to the business of the Stations through the Closing Date, but excluding records relating to the Excluded Assets (defined below). Seller shall be entitled to retain the original or copies of all bookkeeping accounts, including ledgers, account cards and all written information on accounts receivable and accounts payable.

1.6 **Intellectual Property.** All of Seller's rights in and to the Stations' call letters and logos, websites and domain names, Facebook pages and accounts, Twitter handles and accounts, and all other social media handles or accounts that refer to or include the Stations' call letters or otherwise refer to the Stations; all news, shows, talk radio or markets podcasts or programs; all donor lists, contact, credit-card, and pledge status information, including for all Station donor pledges that remain outstanding as of the Closing; all Station underwriter contact, payment and commitment information, including for all Station underwriters that are active on the Stations as of the closing; any state or registered service or trademarks; and all registered or unregistered copyrights associated with the Stations; including, without limitation, the property described in Exhibit 1.6 (the "Intellectual Property"), together with the goodwill of the business associated with the foregoing, and the right to bring claims for past, present, or future infringement or misappropriation of any of the foregoing.

2. **Excluded Assets.** Seller's studio/office building and land located in Camden County, Missouri (except for the included leasehold interest referred to in Section 11.8 hereof); Seller's cash or cash equivalents and accounts receivable (except for pledged donations or underwriting payments outstanding as of and assigned to Buyer at the Closing); a Toyota RAV4 used by Seller, certain office furniture and equipment at the KCVO studio building referred to in Exhibit 1.2; and any property of Seller not defined as an Asset herein or included on an exhibit to Section 1 hereof, shall be and are excluded from the assets to be sold hereunder (the "Excluded Assets").

3. **Purchase Price.** The total purchase price for all of the Assets sold and purchased hereunder shall be ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000) (the "Purchase Price"), subject to agreed-upon pro-rations or other adjustments set forth in this Agreement, which shall be paid by Buyer to Seller by electronic funds transfer in immediately payable U.S. funds on the Closing Date.

3.1 **Assumed Liabilities.** The Buyer shall assume only those liabilities accruing after the Closing Date under the Station Contracts assigned by Seller and assumed by Buyer at the Closing.

3.2 **Excluded Liabilities.** Buyer does not assume and shall not be obligated to pay, perform, or discharge any of Seller's obligations, liabilities, agreements, or commitments not specifically assumed by Buyer (the "Excluded Liabilities"), and the indemnification obligations set forth in Section 8 hereof shall apply in the event of any loss, liability, damage or expense (including reasonable attorney's fees) incurred by Buyer arising out of Seller's failure to pay, perform or discharge any of the Excluded Liabilities. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, and Buyer shall not assume or be liable for (i) any liability, claim or obligation, contingent or otherwise, of or against Buyer arising out of the business or operation of the Stations or the Assets prior to the Closing Date; (ii) any liability or obligation under any contracts not specifically assumed by Buyer under the terms of this Agreement or relating to a breach prior to the Closing Date under any such contracts, including without limitation those listed on Exhibit 3.2 ("Excluded Contracts") which shall be terminated by Seller as of the Closing, or if not terminated remain Seller's responsibility after Closing; (iii) any liability, claim or obligation under the Station Contracts assumed by Buyer hereunder accruing before the Closing Date; (iv) any liability or obligation for any federal, state, or local income or other taxes or fees; (v) any liability or obligation with respect to the Excluded Assets; (vi) any liability or obligation to any employee or former employee of Seller or Stations attributable to any period of time on or through the Closing Date (including accrued vacation and holiday pay and allowances); (vii) any severance or other liability arising out of the termination of any employee of Seller or Stations; (viii) any duty, obligation or liability related to any employee benefit, pension, 401(k) or other similar plan, agreement or arrangement provided to employees of Seller or Stations, and none of such plans shall be assumed by Buyer; (vix) any liability or obligation of Seller arising out of any litigation, proceeding or claim by any person or entity relating to the business or operation of the Stations prior to the Closing Date, whether or not such litigation, proceeding, or claim is pending, threatened or asserted before, on, or after the Closing Date; and (x) frequency discounts, rebates or allowances to underwriters which are based on broadcasts prior to the Closing Date.

3.3 **Payment of Liabilities by Seller.** Seller shall pay, perform, discharge and settle (i) all of the material liabilities at Closing which at such time, or with the passage of time, would result in an encumbrance on any of the Assets; and (ii) all other liabilities in the ordinary course of business and on a timely basis (except for liabilities being disputed by Seller in good faith and by appropriate proceedings and identified to Buyer), and Seller shall deliver the Assets to Buyer at Closing free and clear of all Liens. Seller shall pay the final salaries of each of the employees of Seller for monies due them from Seller to and including the Closing Date.

4. **Escrow Deposit.** Within two (2) business days of the execution and delivery of this Agreement, Buyer shall deposit the amount of SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500) (the "Escrow Deposit") with Hardy, Carey, Chautin & Balkin, LLP ("Escrow Agent") pursuant to the terms of a written escrow agreement in the form attached hereto as Exhibit 4 (the "Escrow Agreement"). The Escrow Agreement shall be signed by Seller, Buyer, and Escrow Agent simultaneously with the execution of this Agreement. At

Closing, Seller and Buyer shall join in causing the Escrow Deposit to be applied to the Purchase Price and remitted to Seller. Any interest accrued on the Escrow Deposit shall be disbursed to Buyer. If this Agreement is not consummated because of Buyer's default, the Escrow Deposit and any interest accrued thereon shall be disbursed in accordance with this agreement. If this Agreement is terminated for any other reason, the Escrow Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Escrow Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement. Any failure by Buyer to make the Escrow Deposit constitutes a material default as to which no cure period applies, entitling Seller to immediately terminate this Agreement as its sole and exclusive remedy.

5. **Closing of the Agreement.**

5.1 **Closing Date**

(a) The Closing shall take place by the exchange of signed documents via facsimile, electronic mail or overnight courier, on July 3, 2023 subject to the FCC grant of the Assignment Application having become Final (as defined in Section 5.1(c)) as of such date (the "Closing Date"), unless Buyer, in its sole discretion, elects to close on the Closing Date despite the Grant not yet being Final, but in any event subject to satisfaction or waiver of all other conditions to Closing set forth herein.

(b) If Closing occurs prior to such FCC approval becoming Final (defined below), and prior to becoming Final such FCC approval is reversed or otherwise set aside, and there is a Final order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the FCC Authorizations to Seller, then the purchase and sale of the Assets shall be rescinded. In such event, Buyer shall re-convey to Seller the Assets, and Seller shall repay to Buyer the Purchase Price (less the value of any Buyer capital improvements made between the Closing and reconveyance) and reassume the contracts and leases assigned and assumed at Closing. Any such rescission shall be consummated on a mutually agreeable date within thirty days of such Final order (or, if earlier, within the time required by such order). In connection therewith, Buyer and Seller shall each execute such documents (including execution by Buyer of instruments of conveyance of the Assets to Seller and execution by Seller of instruments of assumption of the contracts and leases assigned and assumed at Closing) and make such payments (including repayment by Seller to Buyer of the Purchase Price) as are necessary to give effect to such rescission. During the period from Closing until reconveyance is complete, Buyer shall be entitled to receive and retain all income or donations from the Stations, and be responsible for all Station operating expenses. Station income and expenses will be pro-rated for the month of reconveyance.

(c) For purposes of this Agreement, the word "Final" shall mean action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending, and

as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

6. **Seller's Representations, Warranties and Covenants.** Seller makes the following representations, warranties, and covenants, each of which shall be deemed to be a separate representation, warranty, and covenant, all of which have been made for the purpose of inducing Buyer to join in and execute this Agreement, and in reliance on which Buyer has entered into this Agreement:

6.1 **Organization.** Seller is now and will be on the Closing Date in good standing under the laws of the State of Missouri. The execution, delivery and consummation of this Agreement and the transactions contemplated herein have been duly authorized by the trustees of Seller, and no further authorization, approval or consent is required except for any Station Contract assignment consents, and the FCC's consent. The execution, delivery and consummation of this Agreement will not conflict with any provision of Seller's Declaration of Trust, and the sale of the Assets is permissible under the terms thereof. This Agreement is a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

6.2 **FCC Authorizations.** Seller holds the FCC Authorizations, and all other FCC licenses, authorizations or approvals necessary for the Permits or used in connection with the operation of the Stations. The FCC Authorizations are valid and existing and in full force and effect in every material respect for the purpose of operating the Stations or constructing the Permits, and expire on the dates shown in Exhibit 1.1. Except for proceedings of general applicability or specific applicability to this market (i) no application, action or proceeding is pending for the modification of any FCC Authorization and (ii) no application, action or proceeding is pending or threatened that may result in the revocation, modification, non-renewal or suspension of the FCC Authorizations. Except where omissions or delays are *de minimis* or immaterial, Seller has timely filed all reports or other materials with the FCC as required by the FCC's rules, regulations and policies. Seller has not received from the FCC any notice of inquiry, violation, apparent liability, audit or investigation related to the Stations. There are no pending complaints or proceedings at the FCC related to interference caused to or received by any of the Stations' authorized transmissions. Each of the Permits were issued as singletons to Seller, without any preferences or points system determinations, and therefore have no conditions or limitations on their transfer as contemplated herein. With respect to the FCC Authorizations for KSJI, KCKV, KCKP and KCKZ, the 47 CFR §73.7005(a) holding period requiring continuous on-air operation for four years has been fully satisfied. In addition, with respect to the KCKP and KCKZ FCC Authorizations, the 47 CFR §202(a)(1)(ii) requirement for construction and operation with substantially similar technical facilities under which the allotment qualified for noncommercial reserved use, and the required levels of first and second NCE service with such technical facilities, has and continues to be fully satisfied.

6.3 **Personal Property.** Seller holds and will convey at Closing good and marketable title to all the Tangible Personal Property, free and clear of all Liens. The assets listed on Exhibit 1.2, together with all improvements, replacements and additions thereto from the date hereof to the Closing Date, (i) constitute all the tangible personal property owned by Seller used or held for use in the operation of the Stations and necessary to operate the Stations in accordance with the Station FCC Authorizations, and (ii) are being sold in good operating condition, normal wear and tear excepted. The Tangible Personal Property is transferrable by Seller by its sole act and deed and no consent on the part of any other person is necessary to validate the transfer thereof to Buyer, except as otherwise expressly contemplated by this Agreement.

6.4 **Real Property.** Complete legal descriptions of the Real Property are attached hereto at Exhibit 1.4. The Real Property dimensions encompass all of the area necessary for transmitter site structures, the owned towers thereon and any guy wires/anchors appended thereto for KCKF, KCVJ, KCVZ and the Old KTRI Site, and no right of access, easements, or other legal or lease rights on neighboring property is necessary for the operation of those Stations. The leased premises specified in the Real Property Leases specified on Exhibit 1.3 for the KCKH, KCVQ and KCVK transmitter sites include all of the area necessary for those Stations' respective transmitter site structures, the towers thereon and any guy wires/anchors appended thereto. There are no pending or, to the best of Seller's knowledge, contemplated condemnation or eminent domain proceedings that may affect the Real Property. To Seller's knowledge, Seller's use and occupancy of the Stations' towers on the Real Property parcels complies in all material respects with all regulations, codes, ordinances, and statutes of all applicable governmental authorities. Any third-party leases of space on Seller's owned towers or the Real Property are identified on Exhibit 1.3.

6.5 **Contracts.** True and complete copies of all Station Contracts listed on Exhibit 1.3 have been furnished to Buyer. All provisions of the Station Contracts have been complied with in all material respects by Seller and no material default in respect to any duties or obligations required to be performed thereunder has occurred. Seller has obtained and provided Buyer with written waivers of any rights of first refusal to purchase the Assets, and there are not any current agreements, contracts, understandings or commitments which restrict or inhibit the right of Seller to enter into this Agreement, to make the representations and warranties provided herein, or to consummate any of the transactions contemplated hereby, except for the need to obtain the FCC consent and any third-party consents to assign certain of the Station Contracts. For any contracts or agreements not listed on Exhibit 1.3, or excluded in Exhibit 3.2, Seller shall be responsible for taking all actions, before or after Closing, to terminate same, including without limitation any costs and payments associated therewith.

6.6 **Litigation.** No judgment is presently pending against Seller with respect to the Stations or the Assets and, except for proceedings of general applicability or specific applicability to this market, or as identified in Exhibit 6.6 attached hereto, there is no litigation, proceeding or investigation by or before the FCC or by or before any other person, firm or governmental agency pending, or, to the knowledge of Seller, threatened with respect to the Stations or the Assets which might result in any material adverse change in the operation of the Stations or would have a material adverse effect on the right, title or interest of Seller in the



Assets or the ownership, use or possession of the Stations or the Assets by Buyer, or which may question the validity of any action taken or to be taken pursuant to or in connection with any of the provisions of this Agreement.

6.7 **Insurance.** Seller maintains in force fire, casualty and liability insurance in respect to the Assets and the business and operations of the Stations, and will maintain or cause to be maintained such presently existing insurance in force until the Closing.

6.8 **Disposal of Assets.** Between the date hereof and the Closing Date, Seller will not sell or agree to sell or otherwise dispose of the Assets other than in the ordinary course of business and only as such Assets are replaced, prior to the Closing Date, by other assets of substantially equal or greater value and utility. Any such disposition of the Assets shall only be after consultation with and approval of Buyer, which shall not be unreasonably withheld.

6.9 **No Infringement.** To Seller's knowledge, the operations of the Stations do not infringe, and no one has asserted that such operations infringe, upon any copyright, patent, trademark, trade name, service mark, intellectual property, publicity or other similar right of any other party.

6.10 **Employees.** Seller has, in the conduct of the affairs of the Stations, complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor, including those related to wages, hours, equal employment opportunity, collective bargaining, pension, welfare benefit plans, and the payment of social security and similar taxes. No employee of the Stations is represented by a union or other collective bargaining unit, no application for recognition as a collective bargaining unit has been filed with the Nation Labor Relations Board, and, to Seller's knowledge, there has been no concerted effort to unionize any of the Stations' employees. To Seller's knowledge, there are no material controversies pending or threatened between Seller and any of the Stations' employees, and Seller is not aware of any facts that could reasonably result in any such controversy. Seller has never maintained or contributed to any pension plan (including, but not limited to, any single or multi-employer pension plan within the meaning of ERISA, as amended) with respect to any of the Stations' current or former employees. No complaint has been filed and none are pending against Seller by a Seller employee with the Equal Employment Opportunity Commission or other governmental authority.

6.11 **No Breach.** The execution and performance of this Agreement will not violate any order, rule, judgment, or decree to which Seller is subject or breach any contract, agreement, or other commitment to which Seller is a party or by which Seller is bound, except for the need to obtain the FCC consent and any third-party consents to assign certain of the Station Contracts.

6.12 **Administrative Violations or Notices.** Between the date hereof and the Closing Date, if Seller receives an administrative notice or other order relating to any violation of the rules and regulations of the FCC, or of any other federal, state or local regulatory or administrative body, including rules regarding the employment of labor and equal employment opportunity, it will promptly notify Buyer of such order and use reasonable efforts to remove or

correct such violations in the ordinary course of business and will be responsible for the cost of removing same, including the payment of any fines or back pay that may be assessed for any such violation, and Seller will indemnify and hold Buyer harmless with respect to any and all such violations occurring prior to the Closing Date.

6.13 **Taxes, Regulatory and Other Fees.** Unless exempt therefrom, Seller has, in respect of the Stations' business, paid and discharged all taxes, assessments, excises and other levies relative to the Assets being sold, including FCC regulatory fees which have become payable. Seller is not delinquent on any debt owed to the FCC, and its status in the FCC's Red Light Display System is "Green."

6.14 **Operations Pending Closing.** Between the date hereof and the Closing Date, Seller shall ensure that the Stations are operated in the normal and usual manner in accordance in all material respects with the rules, regulations and policies of the FCC. No increase shall be made in the compensation payable or to become payable to any employee or agent of the Stations other than in the ordinary course of business consistent with Seller's past practice. No employment contract shall be entered into by Seller or on behalf of the Stations which would legally bind the Buyer following the Closing, unless the same is terminable at will. No other contract, lease or agreement which have a term extending beyond the Closing Date shall be entered into by Seller or on behalf of the Stations, without the prior written consent of Buyer. Seller shall promptly provide a copy to Buyer of any filing by Seller with the FCC, or the receipt of any correspondence or notice from the FCC, with respect to the Stations.

6.15 **Adverse Developments.** Prior to the Closing Date, Seller shall promptly notify Buyer, in writing, of any materially adverse developments with respect to the business or operations of the Stations.

6.16 **Access.** Between the date hereof and the Closing Date, upon reasonable notice, Seller will give Buyer or representatives of Buyer reasonable access during normal business hours to the Assets and furnish Buyer with all documents and copies of documents and information concerning the Assets and the business and affairs of the Stations as Buyer may reasonably request; provided, however, that no investigation made by or on behalf of Buyer shall affect Seller's representations, warranties and covenants hereunder.

6.17 **Environmental.** To Seller's knowledge: (i) except as consistent with applicable Environmental Laws, no Hazardous Substances are present on or below the surface of the Real Property or any of the leased or licensed Station tower sites, and such property has not previously been used for the manufacture, refining, treatment, storage, or disposal of any Hazardous Substances; (ii) none of the soil, ground water, or surface water of the Real Property or any of the leased or licensed Station tower sites is contaminated by any Hazardous Substance and there is no reasonable potential for such contamination from neighboring real estate; and (iii) no Hazardous Substances have been omitted, discharged or released by Seller from the Real Property or any of the leased or licensed Station tower sites, directly or indirectly, into the atmosphere or any body of ground water. To Seller's knowledge, neither Seller nor any present or former owner or user of the Real Property is liable for clean up or response costs with respect to the admission, discharge or release of any Hazardous Substance or for any other matter arising

under the Environmental Laws due to its use of the Real Property. To Seller's knowledge, no "underground storage tanks" as that term is defined in regulations promulgated by the EPA are used in the operation of the Stations or are located, to Seller's knowledge, on the Real Property. As used herein, the term "Environmental Laws" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.) the Hazardous Materials Transportation Act (42 U.S.C. §1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §260-1 et seq.), the Clean Air Act (42 U.S.C. §7901 et seq.), the National Environmental Policy Act (42 U.S.C. §4231, et seq.), the Refuse Act (33 U.S.C. §407, et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), and all rules, regulations, codes, ordinances and guidance documents promulgated or published thereunder, and the provisions of any licenses, permits, orders and decrees issued pursuant to any of the foregoing. The term "Hazardous Substance" as used herein means any pollutant, contaminant, or hazardous or toxic substance, waste or material as those or similar terms are defined in the Environmental Laws or listed as such by the EPA.

6.18 **Station Towers.** Seller's owned towers identified in Exhibit 1.1, and to Seller's knowledge, any leased or licensed tower currently used by the Stations (collectively, the "Station Towers") (i) are properly registered, painted, lighted, and fenced in compliance with FCC and FAA applicable guidelines, (ii) do not cause human exposure to levels of radiofrequency radiation in excess of the limits set by the FCC, based upon the current placement and operation of the towers or equipment mounted thereon, (iii) are not located in an officially designated wilderness area or wildlife preserve, do not affect threatened or endangered species or designated critical habitats listed on the U.S. Government's list of endangered and threatened species or identified by the U.S. Fish and Wildlife Service, are not located on or is itself an Historic Property listed in or eligible for listing in the National Register of Historic Places, including properties of religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the National Register of Historic Places' criteria, do not affect districts, sites, buildings, structures or objects significant in American history, architecture, archeology, engineering or culture that are listed in the National Register of Historic Places, do not affect Indian religious sites, and are not located in a flood plain, (iv) are not now and have not been in the past the subject of a pending environmental review or related proceeding before the FCC involving compliance with Section 106 of the National Historic Preservation Act ("Section 106"), or otherwise undergone or been the subject of a Section 106 review, and (v) have not previously been determined by the FCC to have an effect on one or more historic properties. Seller is not now in receipt of and has not previously received a written or electronic notification that the FCC is in receipt of a complaint from a member of the public, a Missouri Historical Preservation Officer, Tribal Historical Preservation Officer, or the Advisory Council on Historic Preservation, that the Station Towers or any antenna for an FCC-licensed operation affixed to the Station Towers has an adverse effect on one or more historic properties.

7. **Buyer's Representations and Warranties.** Buyer hereby makes the following representations, warranties and covenants each of which shall be deemed to be a separate representation, warranty and covenant, all of which have been made for the purpose of inducing

Seller to join in and execute this Agreement, and in reliance on which Seller has entered into this Agreement:

7.1 **Corporate Existence.** Buyer is a non-profit corporation duly organized, existing, and in good standing under the laws of the State of Minnesota, and is or will by the Closing be qualified to do business in Missouri.

7.2 **Corporate Authorization.** The execution, delivery and consummation of this Agreement and the transactions contemplated herein has been duly authorized by the members of Buyer and no further authorization, approval or consent of Buyer's board of trustees is required. This Agreement is a legal, valid and binding agreement of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.3 **No Breach.** The execution, delivery and consummation of this Agreement will not conflict with any provision of the articles of incorporation or bylaws of Buyer, or with any contract to which Buyer is a party or is bound.

7.4 **Buyer Qualified.** Buyer is legally, financially and otherwise qualified to acquire and operate the Assets. This qualification is consistent with the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission ("FCC"). To Buyer's knowledge, no circumstances exist which reasonably could support a conclusion by the FCC that Buyer lacks the requisite qualifications to acquire and operate the Stations.

7.5 **No Conflict.** Neither the execution or delivery of this Agreement nor compliance with the terms of this Agreement will (i) conflict with any order, judgment, injunction, award or decree of any governmental body, administrative agency or court, or any agreement, lease or commitment, to which Buyer is a party or by which Buyer is bound, or (ii) constitute a violation by Buyer of any law or regulation applicable to it, except for the need to obtain the FCC consent.

7.6 **Litigation.** There is no claim, litigation, proceeding or governmental investigation pending or threatened, or any judgment, order, injunction or decree outstanding, against Buyer and Buyer does not know of any valid basis for future claims, litigations, proceedings or investigations against Buyer that might materially and adversely affect its ability to consummate the transactions contemplated by this Agreement.

7.7 **Insolvency Proceedings.** No insolvency proceedings of any kind including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement of creditors, voluntary or involuntary, affecting the Buyer or any of its assets or properties are pending or, to Buyer's knowledge, threatened, and Buyer has made no assignment

for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings.

## **8. Indemnification.**

8.1 **Buyer's Right to Indemnification.** Seller undertakes and agrees to indemnify and hold Buyer harmless against any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorney's fees, incurred or assumed by Buyer arising from the breach, misrepresentation, or other violation by Seller of any of the covenants, warranties or representations contained in this Agreement, and for and against (i) all liabilities of Seller not assumed by Buyer pursuant to this Agreement, (ii) all liens, charges, or encumbrances on the Assets transferred hereunder not specifically excepted herein, and (iii) all liabilities of Seller accruing prior to Closing under the Station Contracts assigned to Buyer hereunder. The foregoing indemnity is intended by the Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, costs, and expenses with respect to any and all of the specific matters in this indemnity set forth which exceed in the aggregate \$25,000. Notwithstanding the above, Seller's liability to Buyer for indemnification shall not include any indirect, consequential, punitive or exemplary damages to Buyer, specifically including any "lost profits" or business interruption damages incurred by Buyer.

8.2 **Seller's Right to Indemnification.** Buyer undertakes and agrees to indemnify and hold Seller harmless against any and all losses, costs, liabilities, claims, obligations and expenses, including reasonable attorney's fees, incurred or assumed by Seller arising from breach, misrepresentation, or other violation by Buyer of any of the covenants, warranties or representations contained in this Agreement, and for and against (i) all liabilities of Buyer, (ii) any and all liabilities or obligations accruing after the Closing Date under the Station Contracts assumed by Buyer hereunder and (iii) any actions by Buyer after Closing. The foregoing indemnity is intended by the Buyer to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, costs, and expenses with respect to any and all of the specific matters in this indemnity set forth which exceed in the aggregate \$25,000. Notwithstanding the above, Buyer's liability to Seller for indemnification shall not include any indirect, consequential, punitive or exemplary damages to Seller, specifically including any "lost profits" or business interruption damages incurred by Seller.

## **8.3 Procedure.**

(a) If any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless shall arise, the party who seeks indemnification shall give written notice thereof to the other party promptly describing in reasonable detail the nature and basis of the claim and the party from whom indemnification is sought shall have the right to employ counsel to defend against any such claim or proceeding or to compromise, settle or otherwise dispose of the same, if the indemnifying party deems it advisable to do so, all at the expense of the indemnifying party. The parties will fully cooperate in any such action, making available to each other books or records for the defense of any such claim or proceeding. If a party from whom indemnification is sought does not furnish a written acknowledgment of its undertaking to defend or settle such claim or proceeding in a timely manner, the party seeking indemnification

shall be free to dispose of the matter, at the expense of the indemnifying party, in any reasonable way which it deems in its best interest (subject to the right of the indemnifying party to assume the defense of or opposition to such claim at any time prior to settlement, compromise or final determination thereof).

(b) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such claim; and

(iii) in the event that the indemnifying party undertakes defense of or opposition to any claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such claim.

9. **Survival of Representations and Warranties.** The several representations and warranties of the parties contained herein shall survive the Closing for a period of twelve (12) months, at which point they shall be of no further force and effect; provided, however, that all warranties as to corporate or company authority and any related to the ownership of real property shall survive for such maximum period as permitted by law.

10. **Actions Pending Closing.** Pending the Closing of this Agreement, Seller will:

10.1 **Access:** Give Buyer and its representatives access in accordance with Section 6.16 of this Agreement. Buyer agrees to take no action which would interfere with the normal business or operation of the Stations, and to comply with the requirements of any landlord applicable to the area being accessed.

10.2 **Compliance with Laws.** Comply in all material respects with all applicable federal, state and local laws, ordinances and regulations including, but not limited to, the Communications Act of 1934 and the rules and regulations of the FCC.

10.3 **Contract Assignment Consent/Estoppel.** With Buyer's assistance and cooperation, use commercially reasonable efforts to obtain any required consents necessary for the assignment of the Station Contracts requiring such approval, and estoppel certificates as requested by Buyer (see notations on Exhibit 1.3). If any such consent is not obtained prior to the Closing Date, Seller shall use commercially reasonable efforts to (a) obtain such consent as soon as possible after the Closing Date, (b) provide to Buyer the financial and business benefits of any such Contract and (c) enforce, at the request of and for the account of Buyer, any rights of such Seller arising from any such Station Contract. In the event Buyer receives the business

benefit of a Station Contract, then Buyer agrees to assume the obligations under such Station Contract in accordance with this Agreement.

10.4 **New Leases; Termination of Lease.** With Buyer's assistance and cooperation, use commercially reasonable efforts to obtain new lease agreements, and/or give notice(s) of termination as required on Exhibit 1.3.

11. **Conditions Precedent to Buyer's Obligations to Close.** The obligation of Buyer to consummate the Closing under this Agreement is subject to the satisfaction, or to Buyer's written waiver, on or before the Closing, of each of the following conditions:

11.1 **Representations and Warranties True and Correct.** The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for changes permitted or contemplated by the terms of this Agreement, and all of the agreements of Seller to be performed on or prior to the Closing pursuant to the terms of this Agreement shall have been duly performed in all material respects. Such facts shall be evidenced by a certificate to that effect, delivered at Closing, and signed by an authorized officer of Seller.

11.2 **FCC Consent.** The FCC shall have consented to the assignment of the Station FCC Licenses from Seller to Buyer without any conditions materially adverse to Buyer, and such consent shall have become Final.

11.3 **No Injunction.** There shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in any action or proceeding against the consummation of the sale of the Assets contemplated by this Agreement.

11.4 **Closing Documents.** Seller shall deliver to Buyer at the Closing all the closing documents specified in Section 14.1, which documents shall be duly executed.

11.5 **Third-Party Consents & Estoppels; New Leases; Terminations.** Seller shall have obtained written consent to the assignment of the Station Contracts, estoppel certificates, executed new leases, or provide written notice of termination of certain leases as specified and required on Exhibit 1.3.

11.6 **Title Insurance Commitment.** At or prior to the Closing, at Buyer's expense, Buyer may obtain: (a) the commitment of a title insurance company reasonably satisfactory to Buyer ("Title Company") agreeing to issue to Buyer, a customary owner's title insurance policy insuring Buyer's title to the Real Property; and (b) a customary affidavit or indemnification agreement that shall be reasonably sufficient to cause the Title Company to affirmatively insure against the existence of outstanding rights that could form the basis for mechanic's, materialman's or similar liens, unrecorded documents, claims of parties in possession, and judgments or bankruptcies. Seller shall reasonably cooperate with Buyer in obtaining such items. If a survey is required in order to obtain a title insurance commitment without a survey exception and Buyer wants to purchase title insurance without such an exception, the cost of such survey shall be borne by Buyer. If a Title Company will not agree to

issue an owner's title insurance policy on any Real Property parcel, Buyer shall have the option to exclude such Real Property parcel from the transaction and enter into a lease with Seller for the use thereof on mutually agreeable terms. For any such excluded Real Property parcel, the parties agree that an appraisal by a mutually agreeable appraiser shall establish the value thereof, and the Purchase Price shall be reduced by the appraised value of such Real Property parcel.

11.7 **Environmental Assessment.** Prior to Closing, Buyer shall have the opportunity to obtain an environmental assessment of the Real Property, provided that within twenty (20) days of the date of this Agreement, Buyer retains the services of a qualified environmental professional to perform the assessment, the scope of which shall: (i) be consistent with all appropriate inquiry into the previous ownership and uses of the Real Property consistent with good commercial and customary practice and (ii) expressly require the environmental professional to issue, no later than 10 days prior to Closing, a report certified by the environmental professional (the "Report") to include findings and conclusions of whether the environmental assessment has revealed any recognized environmental conditions on or affecting any of the Real Property that would either (i) materially impair the use of the Real Property for the operation of the Stations, or (ii) require remedial action. If Buyer retains the environmental professional as described in the preceding sentence, Buyer shall, upon receipt and prior to Closing, provide a copy of the Report to Seller, which shall include conclusions stating in substance that the environmental assessment did not reveal any recognized environmental conditions on or affecting the Real Property that would either: (i) materially impair the use of that Real Property for the operation of the Stations, or (ii) require remedial action; *provided, however*, if the conclusions of the Report state in substance that the environmental assessment has identified a recognized environmental condition on or affecting the Real Property that would require remedial action, then Seller shall have the option to satisfy the condition of this Section 11.7 by electing, pursuant to written notice to Seller prior to Closing, to retain responsibility for and to cure such environmental condition before Closing by performing all remedial action required by applicable Environmental Laws consistent with the commercial use of such real property to operate the Stations, at Seller's expense and with Buyer's reasonable cooperation. Absent such written election, Buyer may terminate this Agreement.

11.8 **Studio/Office Lease.** Seller and Buyer shall have finalized the studio/office lease to be executed at the Closing in the form attached at Exhibit 11.8 hereto.

11.9 **KVSR/KCKV Right of First Refusal.** If not completed by the date hereof, Seller shall have obtained by the Closing an executed written waiver of certain rights of refusal for the purchase of KVSR and KCKV as set forth in that certain Lease Agreement identified on Exhibit 1.3 (No. 11) and in connection therewith, Buyer shall have secured new lease rights for the KSKV and KCKV tower/transmitter sites.

12. **Conditions Precedent to Seller's Obligations to Close.** The obligation of Seller to consummate the Closing under this Agreement is subject to the satisfaction, or to Seller's written waiver, on or before the Closing, of each of the following conditions:

12.1 **Payments.** All payments which are due and payable by Buyer under this Agreement on or before the Closing Date shall have been paid in accordance with the terms of this Agreement.



12.2 **Representations and Warranties True and Correct.** The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for changes permitted or contemplated by the terms of this Agreement, and all of the agreements of Buyer to be performed on or prior to the Closing pursuant to the terms of this Agreement shall have been duly performed in all material respects. Such facts shall be evidenced by a certificate to that effect, delivered at Closing, and signed by an authorized officer of Buyer.

12.3 **FCC Consent.** The FCC shall have consented to the assignment of the Station FCC Licenses from Seller to Buyer.

12.4 **No Injunction.** There shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in any action or proceeding against the consummation of the sale of the Assets contemplated by this Agreement.

12.5 **Closing Documents.** Buyer shall deliver to Seller at the Closing all the closing documents specified in Section 14.2, which documents shall be duly executed.

### 13. **FCC Applications**

13.1 **Condition of FCC Consent.** Consummation of the Closing is subject to and conditioned upon receipt from the FCC of its consent in writing to the assignment to Buyer of the Station FCC Licenses to be transferred to Buyer hereunder.

13.2 **Applications for Consent.** The parties to this Agreement agree to proceed as expeditiously as practicable to file or cause to be filed one or more applications requesting FCC consent to the assignment of the Station FCC Licenses, as contemplated by this Agreement (the "Assignment Application"). The parties agree that the Assignment Application shall be duly filed with the FCC not later than five (5) business days after the date of this Agreement, and that such application shall be prosecuted in good faith and with due diligence. The failure of either party to timely file or diligently prosecute its portion of the Assignment Application shall be deemed a material breach of this Agreement. Buyer and Seller shall notify each other of all documents filed with or received from the FCC with respect to the Assignment Application. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of the Assignment Application.

13.3 **Absence of Commission Consent.** If the initial FCC consent granting the Assignment Application is not secured within nine (9) months after acceptance for filing by the FCC of the Assignment Application, then this Agreement may be terminated at the option of either party upon written notice to the other; provided, however, that neither party may terminate this Agreement if (a) such party is in default hereunder, (b) if a delay in any decision or determination by the Commission respecting the Assignment Application has been caused or materially contributed to by any failure of such party to furnish, file or make available information within its control or caused by the willful furnishing by such party of incorrect,

inaccurate or incomplete information to the Commission, or caused by any action taken by such party for the purposes of delaying any decision or determination respecting the Assignment Application. Upon termination pursuant to this Paragraph, the parties shall be released and discharged of all obligations hereunder and the Escrow Deposit, together with accrued interest, shall be returned to the Buyer.

13.4 **Designation for Hearing.** The time for FCC consent provided in Section 13.3 notwithstanding, either party may terminate this Agreement upon written notice to the other, if, for any reason, the Assignment Application is designated for hearing by the FCC, provided, however, that such termination shall not negate the provisions of this Agreement permitting legal recourse by one party against the other related to the reason cited by the FCC for hearing designation.

13.5 **Control of Stations Pending Closing.** This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operation of the Stations. Such operation shall be the sole responsibility of Seller.

14. **Closing Documents.** On the Closing Date:

14.1 Seller shall deliver to Buyer:

(a) An assignment transferring all of the interests of Seller in and to the FCC Licenses, Station call letters, pending applications and all other licenses, permits, and authorizations issued by any other regulatory bodies which are used or held for use in the operation of the Stations;

(b) A bill of sale conveying to Buyer all of the Tangible Personal Property and Intellectual Property;

(c) One or more assignments, together with all obtained consents, assigning the Station Contracts to Buyer;

(d) The certificate, dated as of the Closing Date, described in Section 11.1;

(e) A Certificate, dated as of the Closing Date, of a duly authorized officer certifying that all necessary corporate or other action by Seller has been taken to approve this Agreement and to authorize the consummation of the transactions described herein;

(f) Warranty Deeds for the Real Property;

(g) The records and files referred to in Section 1.4 hereof;

(h) A settlement statement setting forth the amounts due after adjustments and pro-rations, and wire instructions for disbursement of funds to Seller;

(i) Joint written instructions to be provided to Escrow Agent for the release of the Escrow Deposit;

(j) Executed studio/office lease in the form attached at Exhibit 11.8;

(k) The signature of an officer of Seller on a joint notice or other correspondence to Station donors advising of the Station sale and transfer of any outstanding pledges; and

(l) Any other documents and instruments of that may be reasonably necessary to purchase and acquire the Assets or otherwise document the transaction contemplated herein.

14.2 Buyer shall deliver to Seller:

(a) The Purchase Price, in the form and subject to the setoffs and adjustments provided for in Section 3 hereof;

(b) The certificate, dated as of the Closing date, described in Section 12.2;

(c) A certificate, dated as of the Closing date, of a duly authorized officer of Buyer certifying that all necessary corporate or other action by Buyer has been taken to approve this Agreement and to authorize the consummation of the transactions described herein

(d) A certificate of good standing with respect to Buyer issued by the Secretary of State of Minnesota;

(e) Joint written instructions to be provided to Escrow Agent for the release of the Escrow Deposit;

(f) A countersigned settlement statement;

(g) As necessary, countersigned assignment and assumption documents for the assignment of the Station Contracts to Buyer, and countersigned studio/office lease; and

(h) Any other documents and instruments of that may be reasonably necessary to purchase and acquire the Assets or otherwise document the transaction contemplated herein.

15. **Pro-rations.**

15.1 **Apportionment of Income and Expense.** Seller shall be entitled to all income received, payable or arising from pre-Closing, and shall be responsible for all expenses arising out of, the operations of the Stations through the close of business on the Closing Date. All prepaid and deferred income and expenses relating to the Assets and arising from the operation of the Stations shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 12:00 midnight on the Closing Date. Such prorations (the “Prorations”) shall include without limitation:

(a) Advance payments received from donors, programmers or underwriters of the Stations prior to or on the Closing Date for services to be rendered in whole or in part on or after the Closing Date;

(b) Prepaid expenses and deposits arising from payments made for goods or services prior to the Closing Date where all or part of the goods or services have not been received or used at the Closing Date (for example, rents or utilities paid in advance for a rental period extending beyond the Closing Date);

(c) Liabilities, customarily accrued, arising from expenses incurred but unpaid as of the Closing Date;

(d) Personal and real property taxes and utility charges related to the Stations or in respect of any of the Assets; and

(e) Deposits and unearned prepayments received by Seller in connection with any Station Contracts assumed by Buyer.

15.2 **Determination and Payment.** Prorations shall be made and paid, insofar as feasible, on the Closing Date and shall be paid by separate check and not by way of adjustment to the purchase price. As to Prorations that cannot be made on the Closing Date, within sixty (60) days after the Closing Date, the parties shall determine and agree upon all such Prorations and promptly thereafter Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the net amount due.

## 16. **Default and Remedies.**

16.1 **Material Breaches.** A party shall be deemed to be in default under this Agreement only if such party has materially breached or failed to perform its obligations hereunder, and no non-material breaches or failures shall be grounds for declaring a party to be in default, postponing the Closing, or terminating this Agreement.

16.2 **Opportunity to Cure.** If either party believes the other to be in default hereunder, the former party shall promptly provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured by the earlier of (i) five (5) business days after the scheduled Closing Date, or (ii) within twenty (20) 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 twenty (20) day period and continue such efforts thereafter), then the party giving such notice may exercise the remedies available to such party pursuant to this Section 16, subject to the right of the other party to contest such action through appropriate proceedings.

16.3 **Seller's Remedies.** Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach of this Agreement, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to Buyer's breach, Seller shall be entitled to the Escrow Deposit as liquidated damages in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Agreement.

16.4 **Buyer's Remedies.** Seller agrees that the Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right, if Buyer is not in material default in its obligations hereunder, as its sole remedy to specifically enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any suit for specific performance that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy. Buyer's reasonable costs of enforcing Seller's performance hereunder shall be offset by a reduction to the Purchase Price in the amount of such costs.

17. **Damage.** The risk of loss or damage to the Assets shall be upon Seller at all times prior to Closing and Buyer shall bear the risk of loss or damage thereafter. In the event of such loss or damage, Seller shall promptly notify Buyer thereof and repair, replace or restore any such damaged property to its former condition as soon as possible after its loss and prior to the Closing Date. If damage has occurred and such relief or restoration of any such damage has not been completed prior to the Closing Date, Buyer may, at its option:

(a) elect to consummate the Closing in which event Seller shall pay to Buyer the costs of such repairs, replacements or restoration as is required to restore the property to its former condition and against such obligation shall assign to Buyer all of Seller's rights under any applicable insurance policies. Buyer shall in such event submit to Seller an itemized list of the costs of such repairs, replacements or restoration. If the parties are unable to agree upon the costs of such repairs, the matter shall be referred to a qualified consulting communications engineer mutually acceptable to Seller and Buyer who is a member of the Association of Federal Communications Consulting Engineers, whose decision as to the costs shall be final, and whose fees and expenses shall be shared equally by Seller and Buyer; or

(b) elect to postpone the Closing Date for a period of up to ninety (90) days, with prior consent of the FCC if necessary, to permit Seller to make such repairs, replacements, or restoration as is required to restore the property to its former condition. If after the expiration of the extension period granted by Buyer the property has not been adequately repaired, replaced or restored, Buyer may terminate this Agreement, and the Escrow Deposit and all accrued interest shall be returned to Buyer. If the parties disagree as to whether the property has been adequately repaired, replaced or restored, the matter shall be referred to a mutually-acceptable

qualified consulting communications engineer, who is a member of the Association of Federal Communications Consulting Engineers, whose decision shall be final, and whose fees and expenses shall be shared equally by Seller and Buyer.

18. **Failure of Broadcast Transmission.** If prior to the Closing regular broadcast transmissions by any Station in the normal and usual manner is interrupted or discontinued for more than twenty-four (24) hours in a single occurrence, or if any Station is operated at less than eighty percent (80%) of its licensed operating or effective radiated power, as the case may be, Seller shall give prompt written notice thereof to Buyer. If prior to Closing, any Station is off the air or operating at power outside the tolerance permitted by the FCC's rules (a "Broadcast Interruption"), then Seller shall notify Buyer and use commercially reasonable efforts to return the Station to the air (or to tolerance) as promptly as practicable in the ordinary course of business. Notwithstanding anything herein to the contrary, if on the day otherwise scheduled for Closing, there is a Broadcast Interruption of any Station that has a material adverse effect on the Station, then Closing shall be postponed until the date five (5) business days after the Station returns to the air or to tolerance in all material respects.

19. **Brokerage.** To the extent either party hereto has engaged or engages a broker or other consultant in connection with this transaction, such party shall be solely responsible for the broker or consultant's commission or fee, and shall indemnify, defend and hold harmless the other against any claim from any broker based upon any agreement, arrangement, or understanding alleged to have been made by or with such party.

20. **Notices.** Any notice required hereunder shall be in writing and any payment, notice or other communication shall be deemed given on the date of personal delivery or confirmed facsimile transmission or confirmed delivery by a nationally recognized overnight courier service, or on the third day after mailing by U.S. certified mail, postage prepaid, with return receipt requested, and addressed as follows (or to any other address as any party may request by written notice):

If to Buyer: University of Northwestern-St. Paul  
Scott Jones, Asst. VP of Operations  
3003 Snelling Avenue North  
Saint Paul, MN 55113-1598

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

Joseph C. Chautin, III, Esq.  
Hardy, Carey, Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471  
Ofc: 985-629-0777  
[jchautin@hardycarey.com](mailto:jchautin@hardycarey.com)

If to Seller: Lake Area Educational Broadcasting Foundation  
PO Box 800

Camdenton, MO 65020  
James McDermott

21. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes any prior agreements between the parties and contains all of the terms agreed upon with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement. This Agreement may not be altered or amended except by an instrument in writing signed by the party against whom enforcement of any such change is sought.

22. **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument.

23. **Headings.** The headings of the paragraphs of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of specific provisions of the Agreement.

24. **Exhibits.** The Exhibits to this Agreement are a material part hereof, as are any requirements or actions specified thereon.

25. **Severability.** In case any one or more of the provisions contained in this Agreement should be found to be invalid, illegal or unenforceable in any material respect by a court or governmental authority, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

26. **Choice of Laws and Venue.** This Agreement is to be construed and governed by the laws of the State of Missouri.

27. **Bulk Sales.** Seller will indemnify and hold Buyer harmless against any cost or expense as a result of Seller's failure to comply with the provisions of any bulk sales or fraudulent conveyance statutes.

28. **Benefit; Assignment.** This Agreement shall enure to the benefit and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its rights and obligations hereunder without the other party's written consent. Nothing in this Agreement, expressed or implied, is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

29. **Fees and Expenses.** Except as specifically otherwise provided herein, Buyer and Seller shall each pay their own costs and expenses relating to the execution and delivery of this Agreement and the consummation of all transactions contemplated hereby. With respect to any fees or costs associated with the preparation and recording of the Real Property transfer documents, Seller and Buyer shall be responsible for such necessary expenses applicable to each consistent with customary practice for transactions in the applicable jurisdictions.

30. **Public Announcements.** Prior to Closing, no party hereto shall make or shall authorize any other person to make any public announcement relating to any aspect of the transactions described herein without having first consulted with the other party concerning the requirement for, and timing and content of, such public announcement and having received their prior written consent thereto. Notwithstanding the foregoing, actions relative to obtaining approvals and like matters shall be permissible and Buyer may make all disclosures in its judgment necessary to obtain financing for purposes of carrying out the transactions described in this Agreement.

31. **Confidentiality.** Each party and its counsel, accountants, engineers and other representatives shall hold in confidence all data and information obtained regarding the other party and the Station's business and properties, except for public record information, and if the transactions provided for in this Agreement are not consummated as contemplated, shall continue to hold such non-public information in confidence and return all information and documents without retaining any copies thereof, and further Buyer (and its representatives) shall not directly or indirectly disclose to anyone or use in competition with the Station any data and information obtained in connection with this proposed purchase.

32. **Assurances.** After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

33. **Employees.** Prior to the Closing, in Buyer's discretion, Buyer may interview and request completion of paperwork by Seller's employees in connection with the potential hire of such employees upon Closing. Notwithstanding such interview rights or the completion of interviews with Seller's employees, nothing herein shall obligate Buyer to offer employment to or hire Seller's employees in connection with this transaction.

SIGNATURE PAGE FOLLOWS



**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

**BUYER:**

**UNIVERSITY OF NORTHWESTERN-ST. PAUL**

A handwritten signature in cursive script, appearing to read "Corbin Hoonbeek", written over a horizontal line.

By: Corbin Hoonbeek  
Title: President

**SELLER:**

**LAKE AREA EDUCATIONAL BROADCASTING  
FOUNDATION**

---

By: James McDermott  
Title: Authorized Trustee

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

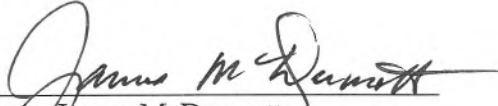
**BUYER:**

**UNIVERSITY OF NORTHWESTERN-ST. PAUL**

\_\_\_\_\_  
By: Corbin Hoonbeek  
Title: President

**SELLER:**

**LAKE AREA EDUCATIONAL BROADCASTING  
FOUNDATION**

  
\_\_\_\_\_  
By: James McDermott  
Title: Authorized Trustee

## **Exhibits**

- 1.1 FCC Authorizations
- 1.2 Tangible Personal Property
- 1.3 Station Contracts
- 1.4 Real Property
- 1.6 Intellectual Property
- 3.2 Excluded Contracts
- 4 Escrow Agreement
- 6.6 Litigation
- 11.8 Form of Studio Lease