

## **ASSET PURCHASE AGREEMENT**

This Agreement, for the sale and purchase of substantially all the assets used or usable in the operation of Broadcast Station KNSO-FM, Snowmass Village, CO (FCC Facility ID No. 57337) and FM Booster Station KSNO-FM1 (FCC Facility ID No. 180572) (hereafter together the "Station"), is between Cool Radio, LLC, a Colorado limited liability company ("Seller"), which is now the owner, operator and licensee of the Station, and Wild Goose LLC (referred to herein as the "Buyer").

In consideration of the mutual promises and covenants made in this Agreement, and in reliance upon the representations and warranties contained herein, the parties, intending to be legally bound, agree as follows:

### **ARTICLE 1**

#### **ASSETS TO BE CONVEYED**

At the Closing, Buyer shall purchase from Seller and Seller shall assign, convey, transfer and deliver to Buyer, by good and sufficient instruments, all of the tangible and intangible assets used or held for use in the operation of the Station (the "Purchased Assets"), such assets to include but not be limited to those assets described in the remainder of this Article 1, except: Seller's cash on hand and other such assets normally excluded in an asset sale; and any items of personal or historical significance to Seller, Seller's principals or employees such as awards, photographs or commemorations (collectively, the "Excluded Assets"). The Purchased Assets will be delivered to the Buyer by Seller at closing, free and clear of all liens, charges and encumbrances. The liabilities or obligations to be assumed by the Buyer at closing are future obligations under the Agreement with the leases and contracts entered into in the normal course of Station's business.

**1.1 Licenses.** Seller shall assign to Buyer the broadcast licenses issued by the FCC (the "FCC Licenses") and other licenses, permits and authorizations used in, required or intended for the operation of the Station, and all rights in pending applications (collectively, the "Licenses"). A list of the Licenses is included in Schedule A to this Agreement. The sale and assignment of the Station is contingent on FCC approval of the assignment of the licenses of both KSNO-FM and KSNO-FM1.

**1.2 Personal Property.** Seller shall convey to Buyer all the tangible personal property owned by Seller and used or held for use in the operation of the Station, including without limitation all assets listed in Schedule B to this Agreement (the "Personal Property").

**1.3 Real Property.** Seller shall convey to Buyer, as part of the purchase price, the lease to the Station's tower site. The lease is and will remain rent free for 20 years.

**1.4 Agreements.**

(a) Seller shall assign and transfer to Buyer all contracts, leases, agreements and other rights which relate to the Purchased Assets or the operation of the Station and are listed in Schedule C to this Agreement (collectively, the "Contracts"). Prior to the Closing Date (as defined herein below), Seller and Buyer shall join together and use their best efforts to obtain the consent of any third parties necessary for the assignment to Buyer of any Contract. Buyer shall assume and agree to pay and perform all obligations of Seller under the Contracts, to the extent such obligations arise or accrue after the Closing Date. Notwithstanding the foregoing, Buyer will not be obligated to assume any Contract that Seller does not have the right to assign Buyer, or for which Seller and Buyer have not obtained any necessary third party consents. It shall be a condition precedent to Buyer's closing hereunder that all

Contracts listed on Schedule C-2 (the "Essential Contracts") be assigned to Buyer on the Closing Date.

(b) In addition, Seller shall assign and transfer to Buyer all agreements for the sale of broadcast time on the Station in effect on the Closing Date ("Air Time Agreements"). Buyer shall assume and agree to perform all obligations of Seller under such agreements to the extent such obligations are to be performed after the Closing Date. Notwithstanding the foregoing, Buyer, at its option, shall not be obligated to assume any such agreement which (i) is in effect on the date hereof and has a term beyond the date which is one year from the date hereof, (ii) is entered into after the date hereof and has a term longer than ninety (90) days, (iii) obligates Buyer to do anything other than provide broadcast time on the Station, or (iv) was not entered into in the ordinary course of the Station's business for the benefit of the Station and substantially in accordance with past practices of the Station.

(c) Anything herein to the contrary notwithstanding, Seller shall not convey, and Buyer shall not be obligated to assume, accept or perform, any Air Time Agreements on the Station which provide for payment in goods, services, or other non-cash consideration in respect thereof ("Barter Transaction") except for the barter program known as the commerce program run on the Station (the "Commerce Program"), or as provided in Paragraph 10.5 hereof, but subject in all events to paragraph 8.2 (h) hereof. Buyer's obligations to assume any Air Time Agreement in the Commerce Program ("Commerce Program Agreement") shall be limited to any Commerce Program Agreement where the goods or services to be provided are less than ninety (90) days old and the value of the broadcast time provided by Buyer does not exceed the value of the goods or services provided.

(d) Buyer shall not assume or be liable for any contract, liability or obligation of the Seller of any kind or nature, whether known or unknown, contingent, absolute or otherwise, other than as expressly provided herein.

**1.5 Intellectual Property Rights** Seller shall transfer and convey to Buyer all copyrights, trademarks, service marks, trade names or other similar rights (including, without limitation, all of Seller's rights, if any, in and to the call letters KSNO, all logos and licenses to use intellectual property rights of others) as used in connection with the operation of the Station, and any additions thereto made by Seller in the ordinary course of business between the date hereof and the Closing Date, and all other intellectual property and property rights, all goodwill and other general intangibles including those on Exhibit D.

**1.6 Records** Upon the Closing Date, Seller shall deliver to Buyer all files, records and logs (or, except for the logs, copies thereof) relating to the business or operation of the Station as Buyer shall require or reasonably request (collectively, the "Records"). The Records shall not include the Seller's bookkeeping, financial and accounting records relating to the Station.

**1.7 Accounts Receivable**. Seller accounts receivable, whether for cash, services or merchandise, in connection with the Seller's broadcasting operations of the Station prior to the Closing Date shall remain the property of Seller. Buyer accounts receivable, whether for cash, services or merchandise, generated in connection with Buyer's provision of programming to the Station under any Time Brokerage Agreement ("TBA") that may hereafter be negotiated shall be the property of Buyer.

**1.8 Other Assets** Seller shall convey and deliver all other property and property rights held for the operation of the Station except the Excluded Assets.

## ARTICLE 2

### PURCHASE PRICE FOR ASSETS

The purchase price to be paid by Buyer to Seller shall be TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) ("Purchase Price") to be paid by Buyer to Seller in the following manner:

**2.1 Escrow Deposit.** Coincident with the execution of this Agreement, Buyer has deposited (or caused to be deposited) with Kozacko Media Services, (the "Escrow Agent"), pursuant to an escrow agreement of even date herewith (the "Escrow Agreement") TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) as a security deposit for its obligation to buy the Purchased Assets (the "Deposit"). At the Closing, the Escrow Agent shall pay over to Seller the Deposit as a portion of the cash Purchase Price Buyer will pay for the Purchased Assets.

**2.2 Cash Payment at Closing.** Buyer shall deliver to Seller at Closing by wire transfer or other immediately available federal funds, under instructions to be given by Seller to Buyer at least two days before the Closing, the sum of TWO HUNDRED AND TWENTY FIVE THOUSAND DOLLARS (\$225,000.00) (the "Cash Balance") plus or minus the prorations and adjustments described in Article 5 hereof.

## ARTICLE 3

### FCC CONSENT

The consummation of this Agreement is subject to the prior receipt of consent of the Federal Communications Commission ("FCC"). As expeditiously as possible, Buyer and Seller will join in the preparation of an application for consent to assignment of the Station's FCC Licenses as contemplated herein (the "Application") and will, in any event, file the

Application within eight (8) business days following the execution hereof, provided that Seller has provided Buyer with any account information necessary to access the FCC application and delivered all Schedules and/or Exhibits required in connection with this Agreement so the contract is completed and whole at the time the Application is filed. The parties will take or cooperate in taking all reasonable steps that are necessary and proper to the expeditious and diligent prosecution of the Application to a favorable conclusion.

#### **ARTICLE 4**

#### **TERMINATION**

(a) Provided that Buyer is not otherwise in breach or default under this Agreement, Buyer may terminate this Agreement upon written notice to Seller at any time prior to the closing in the event (i) the Seller is in breach of any representation, warranty or covenant contained in this Agreement in any material respect, or (ii) in accordance with Article 15 hereof.

(b) Provided that Seller is not otherwise in breach or default under this Agreement, Seller may terminate this Agreement upon written notice to Buyer at any time prior to the Closing in the event (i) the Buyer is in breach of any representation, warranty or covenant contained in this Agreement in any material respect or (ii) Buyer's failure to appear on the Closing Date ready, willing and able to close the transaction.

(c) If not sooner terminated in accordance with subparagraphs (a) or (b) of this Article 4, and if Closing has not occurred, this Agreement shall automatically terminate without further notice or action by any party at 12:01 a.m. Mountain Time on December 30, 2021 (the "Outside Closing Date").

(d) Upon termination of this Agreement pursuant to subparagraph (a) or subparagraph (c) of this Article 4, except otherwise expressly provided herein, neither party shall have any further right or liability hereunder and the Deposit shall be returned to Buyer together with all interest accrued thereon. Upon termination of this Agreement pursuant to subparagraph (b) of this Article 4, the Deposit shall be immediately delivered to Seller together with all interest accrued thereon not as a penalty but rather as liquidated damages for Buyer's breach or default, it being agreed that in the event of a breach or default of Buyer under this Agreement, damages would be difficult or impossible to ascertain, and the amount of the Deposit being delivered to Seller in the event of a Buyer breach or default is a fair estimation of Seller's anticipated damages.

(e) The indemnification provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months as set forth in Article 18.

## **ARTICLE 5**

### **PRORATIONS AND ADJUSTMENTS**

The income and expenses attributable to the operation of the Station up to 12:01 a.m. on the Closing Date shall be for the account of the Seller, and thereafter for the account of the Buyer. Expenses including, but not limited to, such items as power and utility charges, real and personal property taxes, advances to salesmen, frequency discounts, rents, and similar prepaid and deferred items shall be prorated between Buyer and Seller, the proration to be made, insofar as feasible, on the Closing Date, with a final settlement within ninety (90) days after the Closing Date.

## ARTICLE 6

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

**6.1 Licenses and Authorizations** Seller is, and on the Closing Date will be, the holder of the Licenses relating to the Station, all of which are in full force and effect (and none of which shall be altered or modified between the date hereof and the Closing Date) ; and, except as disclosed in Schedule A hereof and except as may be expressly consented to in writing by Buyer, Seller has and will have no applications outstanding for any operating authority, or for the construction of any facility or for the modification of any authorization or application therefor. Schedule A annexed hereto sets forth a complete listing of all FCC Licenses and other authorizations currently held by or issued to Seller in connection with the operation of the Station. The Licenses constitute all licenses, permits and authorizations from the FCC and other regulatory bodies which are required for the operation of the Station and the conduct of its business as conducted on the date hereof. There is not now, and on the Closing Date there will not be, pending, or to the knowledge of Seller threatened, any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew in the ordinary course any of the Licenses, or any investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability for Forfeiture, Order of Forfeiture, or Complaint against the Station or Seller. In the event of any such action, or the filing or issuance of any such order, notice or complaint, or knowledge of the threat thereof, Seller shall notify Buyer of same within (5) business days after Seller receives notice thereof, and shall take all reasonable measures to contest in good faith or seek removal or rescission of such action, order, notice or complaint, and shall pay any sanctions imposed. There is not now in existence any

violation on any federal, state or local law or regulation in respect of the operation of the Station the effect of which, individually or in aggregate, could be materially adverse to the Station or the Purchased Assets. Seller knows of no reason why the FCC should not approve the Application required by Article 3 hereof.

**6.2 Title to and Condition of Personal Property.** Seller has good and marketable title to all of the Personal Property, free and clear of all liens, mortgages, pledges, or encumbrances, except as indicated on Schedule B. All of the Seller's Personal Property with an individual item current value in excess of \$1,000, used or held for use in the operation of the Station as of the date hereof, is listed in Schedule B except for items which may be leased which are listed in, noted or referenced on Schedule C. All Personal Property is being sold in "as-is/where-is" condition without any warranty whatsoever to its condition, fitness for use or the purpose to which it is employed, or repair, other than that at the Closing, the Personal Property, except for the items listed in, noted or referenced in Schedule C, shall be conveyed and/or transferred to Buyer free and clear of all liens, mortgages, pledges, or encumbrances.

**6.3 Contracts and Air Time Agreements.** Schedule C lists all written and oral contracts, leases and agreements relating to the operation or assets of the Station to which Seller is a party as of the date hereof other than Air Time Agreements. Seller is not in default under any Contract or Air Time Agreement. Seller has provided Buyer with a copy of each written contract and a description of each oral contract listed on Schedule C. As of the date hereof, Seller has made all payments and is otherwise in compliance with the terms and conditions in the Contracts or Air Time Agreements. As of the date hereof, the Contracts or Air Time Agreements are, and on the Closing Date will be, in full force and effect and

enforceable by Seller in accordance with their terms, or pursuant to renewals or extensions thereof on substantially the same terms.

**6.4 Intellectual Property Rights.** Except in each case as set forth in Schedule D:

(i) Seller owns, possesses or has the right to use all Intellectual Property Rights (as hereinafter defined) necessary or required for the conduct of its business as presently conducted, or otherwise used by Seller; (ii) no royalties or other amounts are payable by Seller to other persons by reason of the ownership or use of Intellectual Property Rights except as may be otherwise described in Schedule D; (iii) to the knowledge of the Seller, no product or service marketed or sold by Seller and no activities of Seller violate any license or infringe upon any Intellectual Property Rights of others; (vi) Seller has not received any notice that any of its Intellectual Property Rights or the operation of Seller's business in connection with operation of the Station conflicts with the Intellectual Property Rights of others; and (v) to the knowledge of Seller, there is not any reasonable basis to believe that any such violation, infringement or conflict may exist. As used herein, the term "Intellectual Property Rights" means all licenses, patents, trademarks, service marks, trade names, copyrights, inventions, trade secrets, proprietary processes, software and formulae, applications for patents, trademarks, service marks, and copyrights, and other creative industrial and intellectual property rights.

**6.5 Litigation.** Except as disclosed in Schedule E hereof, there is no judgment outstanding and no litigation, suit, action, claim investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability, complaint, or proceeding pending before any forum, court or government agency (including the FCC), or to the knowledge of Seller threatened, against or relating to the Station, its business operations, financial condition or

customer relations, the Purchased Assets, the right of Seller to dispose of the Purchased Assets or to enter into and carry out this Agreement and Seller does not know of any basis for any such action or proceeding.

**6.6 Insurance.** Seller now has and shall maintain until the Closing Date in full force and effect the policies of fire, hazard, and liability insurance on the Purchased Assets and the Station and its business are in effect on the date hereof. All such policies of insurance are listed on Schedule F hereof. Seller has delivered to Buyer evidence of all such policies and evidence of the payment of premiums for the current period under each of such policies.

**6.7 Personnel.** Seller has delivered to Buyer a list showing the names of all persons currently employed at the Station, together with a statement of the salary or other compensation payable to such persons and the basis thereof. Seller is not a party to any collective bargaining agreement covering any of the Station's employees nor is any proceeding pending, or threatened, to designate a union as the exclusive bargaining agent of such employees. No agreement exists that would require that Buyer employ any of the Station's or Seller's employees after the execution and delivery hereof and Buyer is not so obligated.

**6.8 Compliance with Laws.** The operation of the Station is now in compliance with all applicable laws, rules and regulations of all federal, state and local authorities or agencies so as to permit the Stations to operate as at present and/or as it is fully licensed to do. The Station have been, and shall continue to be, operated in full compliance with their FCC Licenses, the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC. All applications, reports and other disclosures and filings required by the FCC with respect to the Station have been, and will be as of the Closing Date, duly and

timely filed. All such applications, reports and other disclosures and filings are and will be as of the Closing Date hereunder complete and accurate in all material respects. Seller possesses all of the permits, authorizations, or consents necessary to operate the Station and own the Purchased Assets in accordance with law, and they are all, and on the Closing Date will be, transferable to Buyer, such that upon the Closing, Buyer will possess all permits, authorizations and consents necessary to enable the Buyer to operate the Station and own the Purchased Assets, except to the extent any third-party consent to the assignment of an Essential Contract may not have been received.

**6.9 Absence of Restrictions.** The execution, delivery and consummation of this Agreement by Seller does not and on the Closing Date will not conflict with, or result in breach of, the terms, conditions, or provisions of, or constitute a default under, or constitute an event that permits the imposition of a lien upon or the creation of a security interest in the Purchased Assets pursuant to, any agreement, instrument, law or regulation to which Seller is now or on the Closing Date will be subject, except to the extent that consent to the assignment of certain agreements to Buyer may be required as herein contemplated.

**6.10 Taxes.** Except as disclosed on Schedule G, the Seller has filed all income, franchise, sales and other tax returns, declarations, statements and reports of every nature, required to be filed by it relating to or affecting the Station.

**6.11 Public File.** The Station's online public inspection is and will be maintained in compliance with the rules and regulations of the FCC.

**6.12 Reports** All reports, schedules, and/or returns of any administrative agency of the federal or any state or local governments heretofore required to be filed by Seller in

connection with the Station have been filed and all such reports, schedules, and returns required to be filed before the Closing Date will have been filed before such date.

**6.13 Organization and Standing.** Seller is and on the Closing Date will be a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado with all requisite corporate power and authority to enter into and perform the terms of this Agreement, subject only to the issuance of the consent of the FCC with respect thereto.

**6.14 Authorizations.** Seller has taken all necessary action to approve the execution and delivery of this Agreement, and to approve the performance of this Agreement and the consummation of the transactions contemplated herein. This Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

**6.15 Solvency.** As of the date hereof and on the Closing Date (both before and after the transactions contemplated herein), the fair market value of Seller's assets does and will exceed the face amount of its liabilities, Seller has and will have adequate working capital to conduct its business, and Seller is paying and will be able to pay its debts as they mature.

**6.16 Benefit Plans.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not constitute a violation of, or give rise to any Buyer liability under, title I of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder ("ERISA") or section 4975 of the Code.

**6.17 Labor Relations.** There is no unfair labor practice complaint pending or, to the knowledge of the Seller, threatened against the Seller in connection with the Station nor,

to the knowledge of the Seller, any basis therefor. There is no discrimination charge (relating to sex, age, race, national origin, handicap or veteran status) pending before any federal, state or foreign agency or authority nor, to the knowledge of the Seller, any basis therefor.

## ARTICLE 7

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents, warrants and covenants to Seller as follows:

**7.1 Organization and Standing.** On the Closing Date Buyer will be a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado with all requisite corporate power and authority to enter into and perform the terms of this Agreement, subject only to the issuance of the consent of the FCC with respect thereto.

**7.2 Authorization.** Buyer has taken all necessary action to approve the execution and delivery of this Agreement, and to approve the performance of this Agreement and the consummation of the transactions contemplated herein. This Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms.

**7.3 Absence of Restrictions.** The execution, delivery and consummation of this Agreement by Buyer shall not, on the Closing Date, conflict with, or result in breach of, the terms, conditions, or provisions of, or constitute a default under its Articles of Organization or Operating Agreement or any other agreement, instrument, law or regulation to which it now is subject or will be subject on the Closing Date.

**7.4 Qualifications.** Buyer is legally, technically and financially qualified, and on the Closing Date will be legally, technically and financially qualified, to become a licensee of the FCC. Buyer knows of no reason why the FCC should not approve the application

required by Article 3 hereof. Between the date hereof and the Closing Date, Buyer will take no action which would adversely affect its qualifications to be the licensee of the Station or which would delay FCC approval of the application required by Article 3 hereof.

**7.5 Third Party Consents.** Buyer shall cooperate with Seller and will execute such documents as may reasonably be required in order to assign any Contract or Air Time Agreement to Buyer pursuant to the terms of this Agreement.

## **ARTICLE 8**

### **COVENANTS OF SELLER**

**8.1 Negative.** Between the date hereof and the Closing Date, Seller will not, without prior written consent of Buyer:

(a) Sell, assign, lease, encumber, mortgage or otherwise transfer or dispose of any asset or property of the Station, except in the normal and usual course of business:

(b) Cancel, modify or in any way impair any Essential Contracts or, except in the ordinary course of the Station's business, any other Contract;

(c) Enter into any new Air Time Agreement, except for agreements which:

(1) Are made in the ordinary course for the benefit of the Station and substantially in accordance with past practice of the Station; and

(2) Have a term not to exceed ninety (90) days after Closing.

(d) Increase the compensation or bonuses to become payable to any of Station's employees, except in accordance with existing employment practices, or effect any changes in personnel policies or employee benefits except in accordance with existing employment practices:

(e) Enter into any new Barter Transactions or transactions under the Commerce Program imposing obligations on Buyer where the broadcast time to be provided by Buyer exceed the value of the goods or services provided and the goods or services provided are to be provided for a period exceed ninety (90) days after Closing; or

(f) Violate any rules, regulations or policies of the FCC or any provisions of the Communications Act of 1934, as amended, or any provisions of any of the FCC Licenses, or cause or permit any of the FCC Licenses to lapse, to be modified in any adverse respect or to become impaired in any manner;

(g) Take or refrain from taking any action that would cause the face amount of Seller's liabilities to exceed the fair market value of its assets or render Seller with inadequate working capital with which to conduct its business or unable to pay its debts as they mature.

**8.2 Affirmative.** Between the date hereof and the Closing Date, Seller will:

(a) Give to Buyer and its authorized representatives reasonable access within normal business hours to all Records, properties, books, records, (including, without limitation, bookkeeping, financial and accounting records) contracts and documents and furnish or cause to be furnished to Buyer or its authorized representatives all information with respect to the affairs and business of the Station as Buyer may reasonably request (it being understood that the rights of Buyer under this subparagraph shall not be exercised in such a manner as to interfere unreasonably with the operations of the Station);

(b) Prepare and maintain the books, records and financial statements relating to the Station consistently with past periods;

(c) Comply with all laws and regulations to which it or the Station is subject;

(d) Notify Buyer within seven (7) days of Seller's first notice of any litigation pending or threatened against the Station and within forty-eight (48) hours of any damage to or destruction of any assets or property to be sold hereunder;

(e) Use commercially reasonable efforts to procure the consent of any third parties necessary for the assignment to Buyer of the Contracts and Air Time Agreements to be assigned hereunder;

(f) Use commercially reasonable efforts in the preparation, filing and prosecution of the Application;

(g) Notify Buyer upon receipt of any administrative or other order relating to any violation of the FCC's rules and regulations or any other federal, state or local regulatory or administrative body, including rules relating to the employment, labor or equal employment opportunity. Seller shall correct any such violations as relate to the operation of the Station prior to the Closing Date and shall be responsible for the removal of such, including the payment of any fines or back pay that may be assessed for any such violation committed by Seller;

(h) To the extent reasonably possible, complete all obligations owing by Seller to advertisers for the sale of air time on the Station for anything other than cash in accordance with past Station practices; and

(i) Continue to operate the Station in full compliance with the terms of its FCC Licenses, in the usual and ordinary course of business, and in conformity with all applicable laws, ordinances, regulations, rules and orders, and file with the FCC all applications, reports and other filings and documents required to be filed with the FCC in connection with the ownership and operation of the Station.

## ARTICLE 9

### **COVENANTS OF BUYER**

Between the date hereof and the Closing Date Buyer will:

- (a) Notify Seller within seven (7) days of Buyer's first notice of any litigation pending or threatened against the Station or any damage to or destruction of any assets or property to be sold hereunder;
- (b) Cooperate with Seller in its efforts to procure the consent of any third parties necessary for the assignment to Buyer of any Contract to be assigned hereunder;
- (c) Use its best efforts in the preparation, filing and prosecution of an Application seeking FCC consent to assignment of the Station's Licenses to Buyer;
- (d) Notify Seller within seven (7) days of the receipt of any administrative or other order relating to any violation by Buyer of the FCC's rules and regulations or any other federal, state, or local regulatory or administrative body, including rules and relating to the employment of labor or equal employment opportunity.

## ARTICLE 10

### **CONDITIONS OF CLOSING BY BUYER**

The obligations of Buyer hereunder are, at its option, subject to compliance with, on or prior to the Closing Date, each of the following conditions:

**10.1 FCC Consent.** The FCC shall have granted its consent to the transaction contemplated hereunder by granting the Application without imposing any conditions on grant which are materially adverse to Buyer or the Station.

**10.2 Representations and Warranties.** Seller's representations and warranties shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made at and as of such time.

**10.3 Compliance With Terms.** Seller shall have performed and complied with terms, covenants and conditions required by this Agreement to be performed and complied with by it on or before the Closing Date.

**10.4 Closing Documents.** Seller shall have delivered to Buyer all of the Closing materials described in Article 12.1 hereof.

**10.5 Barter Transactions.** The outstanding Barter Transaction liability with respect to the Station as of the Closing Date shall not exceed the sum of Ten Thousand Dollars (\$10,000). The value of the goods and services to be provided in the Commerce Program Agreements are less than 90 days old and are less than the value of the broadcast time to be provided by Buyer.

**10.6 FCC Licenses.** At the Closing, the FCC Licenses shall be assigned and transferred to Buyer, shall be valid and existing authorizations in every respect for the purposes of operating the Station, issued by the FCC under the Communications Act of 1934, as amended, for the full license term ending April 1, 2029, and shall contain no material adverse modifications of the terms of such Licenses from the terms as in effect as of the date of the Licenses and authorizations as set forth on Schedule A hereof. Seller shall not have violated any rules, regulations or policies of the FCC on any provisions of the Communications Act of 1934, as amended, or any of the provisions of the FCC Licenses, if, as a result of thereof (i) the Station shall have suffered or thereafter may suffer, any material

adverse effect, or (ii) there shall have been any material adverse impact on any of the Licenses.

## ARTICLE 11

### **CONDITIONS OF CLOSING OF SELLER**

The obligations of Seller hereunder are, at its option, subject to compliance with, on or prior to the Closing Date, each of the following conditions:

**11.1 FCC Consent.** The FCC shall have granted its consent to the transaction completed hereunder by granting the Application without imposing any conditions on grant which are materially adverse to Buyer or the Station.

**11.2 Representations and Warranties.** Buyer's representations and warranties shall be true and correct on and as of the Closing Date as though such representations and warranties were made at and as of such time.

**11.3 Compliance with Terms.** Buyer shall have performed and complied with the terms, covenants and conditions required by this Agreement to be performed and complied with by it on or before Closing Date.

**11.4 Closing Documents.** Buyer shall have delivered to Seller all of the Closing materials described in Article 12.2 hereof and the Purchase Price as provided in Article 2 hereof.

**11.5 Third-Party Consents.** Seller shall have delivered to Buyer any required third party consents to the assignment of the Essential Contracts.

## ARTICLE 12

### CLOSING DOCUMENTS

**12.1 To Be Delivered By Seller.** On the Closing Date Seller shall execute and/or deliver or cause to be delivered to Buyer:

(a) A good sufficient bill of sale, or other instruments of assignment, transfer and conveyance for all of the Personal Property and intangible personal property to be transferred to Buyer hereunder, including the Licenses, free and clear of any lien, mortgage, charge, or encumbrance whatsoever.

(b) The Contracts, including the tower site lease specifying a term of 20 years rent free and fully enforceable in favor of Buyer, and Air Time Agreements to be assigned to Buyer hereunder, with assignments thereof.

(c) Copies of all third party consents or approvals which may be required under any provision hereof.

(d) List of all Agreements for the sale for cash of broadcast time on the Station in effect on the Closing Date.

(e) A certificate of Seller's manager or other duly authorized agent certifying to the fulfillment of the conditions set forth in Articles 10.2 and 10.3 hereof.

(f) Certified resolution of the members and such other organizational authorizations as may be required under applicable law, authorizing the transactions provided for in this Agreement.

**12.2 To Be Delivered By Buyer.** On the Closing Date Buyer shall execute and/or deliver or cause to be delivered to Seller:

(a) Certified resolutions of the members and such other organizational authorizations as may be required under applicable law, authorizing the transactions provided for this Agreement.

(b) Payment of the Purchase Price.

(c) An agreement, in form reasonably satisfactory to Seller, agreeing to assume and be bound by the Contracts to be assigned under this Agreement.

(d) A certificate of Buyer's manager or other duly authorized agent certifying to the fulfillment of the conditions set forth in Articles 11.2 and 11.3 hereof.

### **ARTICLE 13**

#### **CLOSING DATE AND PLACE**

The Closing shall occur, on the date (the "Closing Date") five (5) business days after the Public Notice of FCC consent to assignment of the FCC Licenses to Buyer shall have become a Final Order (*i.e.*, an order of the FCC which is not subject to or the subject of reconsideration or review by the FCC or any court). The Closing may occur electronically, or shall be held at such place as the parties shall mutually agree or, failing such agreement, at Seller's offices.

### **ARTICLE 14**

#### **TAXES AND EXPENSES**

Each party shall bear the expenses incurred by it in connection with the preparation, execution and consummation of this Agreement and the prosecution of the Application contemplated by this Agreement. All FCC fees shall be paid equally by the parties. The Seller will pay the FCC Filing Fee for the Application and be reimbursed for half of the

amount paid at Closing. Any transfer taxes, sales taxes and recordation taxes for the proposed transaction shall be borne by the Buyer.

## **ARTICLE 15**

### **RISK OF LOSS**

With the exception of any of the Purchased Assets utilized by Buyer under the TBA, the risk of any loss, damage or destruction to any of the Purchased Assets from fire or other casualty or cause shall be borne by the Seller at all times prior to the Closing Date. The risk of loss, damage or destruction of any of the Purchased Assets utilized by Buyer under any TBA that may hereafter be negotiated is assumed by Buyer on the Commencement Date of the TBA, as such date is defined in the TBA. Upon the occurrence of any loss or damage to any of the Station's assets to be transferred hereunder that are not utilized by Buyer under the TBA as a result of fire, casualty or other causes prior to Closing, Seller shall notify Buyer of same in writing as soon as practicable starting with particularity the extent of such loss or damage incurred, the cause thereof if known and the extent to which restoration, replacement and repair of the Purchased Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. Subject to the provisions hereof, Buyer shall have the option in the event the loss or damage exceeds Fifty Thousand Dollars (\$50,000) and the property cannot be substantially repaired or restored before the Closing Date, exercisable within ten (10) days after receipt of such notice from Seller to:

(i) Terminate this Agreement, in which case the Deposit, together with accrued interest thereon, shall be returned to Buyer,

(ii) Postpone the Closing until such time as the property has completely been repaired, replaced or restored, unless the same cannot be reasonably effected within five (5) months of notification, or

(iii) Elect to consummate the Closing and accept the property in its "then" condition, in which event Seller shall assign all rights under any insurance claims covering the loss and pay over (as part of the Purchased Assets) any proceeds under any such insurance policy theretofore received by Seller with respect thereto. In the event Buyer elects to postpone the Closing Date as provided in subparagraph (ii) above, the parties hereto will cooperate and extend the time during which this Agreement must be closed as specified in the consent of the FCC referred to in Article 3 hereof.

If any event occurs that prevents the broadcast transmissions of the Station with full licensed power and antenna height as described in the FCC Licenses and in the manner in which the Station have heretofore been operating, and such facilities are not restored so that operation is resumed with either full licensed power and antenna height as described in the Licenses or with facilities specified by FCC Special Temporary Authority within thirty (30) days of such event, or, in the case of more than one event, the aggregate number of days preceding such restorations from all such events exceeds sixty (60) days, Seller shall give prompt written notice to Buyer, and either party shall have the right, by giving written notice to the other of its election to do so, to terminate this Agreement forthwith without any further obligation hereunder.

## ARTICLE 16

### INDEMNIFICATION

**16.1 Rights of Buyer.** Seller shall indemnify and hold harmless Buyer, its successors and assigns, from and against:

(a) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees arising from or related to the operation of the Station prior to the Closing, any contract, liability or obligation of Seller not expressly assumed by Buyer, including, without limitation, any claim, liability or obligation with respect to any employee of the Seller in connection with his or her employment or the termination of such employment on or prior to the Closing Date or the failure of the Buyer to continue such employment;

(b) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees incurred by Buyer as a result of any misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Seller under this Agreement, or from any misrepresentation in any omission from any certificate or other instrument required to be furnished to Buyer pursuant to this Agreement or in any connection with any of the transactions contemplated herein; and

(c) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees incurred by Buyer as a result of Seller's failure or refusal to discharge, satisfy, compromise or defend any claim included within the foregoing provisions of this Article 16.1 and Article 21.

**16.2 Rights of Seller.** Buyer shall indemnify and hold harmless Seller, its successors and assigns, from and against:

(a) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees arising from or related to the operation of the Station on and subsequent to the Closing, any contract, liability or obligation of Seller assumed by Buyer, including, without limitation, any claim, liability or obligation with respect to any employee hired by Buyer in connection with his or her employment or the termination of such employment subsequent to the Closing Date or the failure of the Buyer to continue such employment after being hired by Buyer;

(b) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees incurred by Buyer as a result of any misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Buyer under this Agreement, or from any misrepresentation in any omission from any certificate or other instrument required to be furnished to Seller pursuant to this Agreement or in any connection with any of the transactions contemplated herein; and

(c) Any and all claims, demands, actions, suits, proceedings, damages, deficiencies, assessments, judgments, costs, liabilities, obligations and expenses, including reasonable attorney's fees incurred by Seller as a result of Buyer's failure or refusal to discharge, satisfy, compromise or defend any claim included within the foregoing provisions of this Article 16.2 and Article 21.

**16.3 Claims.** Any party seeking indemnification hereunder (the "Indemnified Party") shall promptly notify the party hereto obligated to provide indemnification hereunder (the "Indemnifying Party") of the amount and circumstances surrounding such claim for indemnification (a "Claim"), provided that failure of the Indemnified Party to give such notice shall not relieve any Indemnifying Party of its obligations under this Agreement except to the extent, if at all, that such Indemnifying Party shall have been prejudiced thereby. Upon receipt of a notice from an Indemnified Party of any action, suit, proceeding or demand by a person not a party to this Agreement (a "Third Party Claim") as to which an Indemnified Party is seeking indemnification hereunder, The Indemnifying Party shall be entitled to participate in the defense of such Third Party Claim, if and only if each of the following conditions is satisfied, the Indemnifying Party may assume the defense of such Third Party Claim, and in the case of such an assumption the Indemnifying Party shall have the authority to negotiate, compromise and settle such Third Party Claim:

(i) The Indemnifying Party confirms in writing that it is obligated hereunder to indemnify the Indemnified Party with respect to such Third-Party Claim: and

(ii) The Indemnified Party does not give the Indemnifying Party written notice that it has determined, in the exercise of its reasonable discretion, that matters of corporate or management policy or a conflict of interest make separate representation by the Indemnified Party's own counsel advisable.

The Indemnified Party shall retain the right to employ its own counsel and to participate in the defense of any Third-Party Claim, the defense of which has been assumed by the Indemnifying Party pursuant hereto, but the Indemnified Party shall bear and shall be solely responsible for its own costs and expenses in connection with such participation.

**16.4 Threshold of Indemnification.** No Indemnifying Party shall be required to indemnify an Indemnified Party hereunder with respect to any Claim for less than Five Hundred Dollars (\$500), unless the aggregate of all Claims against such Indemnified Party (including Claims of \$500 or less) shall exceed Ten Thousand Dollars (\$10,000), in which event the Indemnifying Party shall be required to pay all Claims, including Claims for less than Five Hundred Dollars (\$500). No Indemnifying Party shall be required to indemnify an Indemnified Party hereunder with respect to any Claim for greater than Fifty Thousand Dollars (\$50,000.00) except with respect to Third-Party Claims which shall be exempted from this indemnification limitation.

## **ARTICLE 17**

### **CONTROL OF STATION**

Subject to the TBA, 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 operations of the Station; such operations, including control and supervision of all Station's programming, personnel and finances, shall be the sole responsibility of Seller.

## **ARTICLE 18**

### **SURVIVAL OF REPRESENTATIONS**

Subject to the provisions of Article 16 hereof, the representations, warranties, covenants and agreements of Buyer and Seller contained herein shall be binding upon the successors and assigns of Buyer and Seller and shall survive the Closing for a period of twelve (12) months from the date thereof.

## **ARTICLE 19**

### **SPECIFIC PERFORMANCE**

Seller recognizes that in the event it should refuse to sell the Station in accordance with the provisions of this Agreement, money damages will not be adequate. In such event, if Buyer is not itself in default, then Buyer shall have the right to specifically enforce this Agreement in lieu of seeking monetary damages as the remedy for Seller's default.

## **ARTICLE 20**

### **LIQUIDATED DAMAGES**

If the purchase and sale is terminated because of a willful breach by Buyer, including, but not limited to the failure of Buyer to deliver the Purchase Price to Seller at the Closing, and provided that the Seller is not in default, the entire Deposit shall be paid to Seller as liquidated damages as the sole and exclusive remedy for Buyer's default.

## **ARTICLE 21**

### **EMPLOYEES**

Seller shall terminate all of the Station's employees effective as of the Closing Date and pay all termination and severance costs in connection with such termination. Prior to the Closing Date, Buyer shall give Seller's employees an opportunity to apply for employment with Buyer with the understanding that Buyer may, or may not, offer employment to any such employees.

**ARTICLE 22**

**BULK SALES**

The parties hereto waive compliance with the provisions of any bulk sales law applicable to the transaction contemplated herein; provided, however, that any loss, liability, obligation or cost suffered by Buyer as a result of a failure to comply therewith shall be borne by Seller and Seller will indemnify and hold Buyer harmless against any cost or expense incurred in connection with such failure.

**ARTICLE 23**

**ALLOCATION OF PURCHASE PRICE**

The Purchase Price shall be allocated as follows:

Real Property: \$

Personal Property: \$

Intangibles: \$

**ARTICLE 24**

**BENEFIT AND ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors and assigns. Nevertheless, neither party shall assign its rights or obligations under this Agreement without the written consent of the other.

**ARTICLE 25**

**NOTICES**

All notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be sent for next business day delivery by USPS Express Mail, Federal Express or similar recognized overnight courier

service with all charges prepaid, and shall be deemed to have been duly delivered and received on the next business day after being sent. All such notices, demands, and requests shall be addressed as follows:

If to the Seller, to:

Tom Dobrez  
Cool Radio LLC  
1135 Golfview Lane  
Flossmoor, IL 60422

With copies (which shall not constitute notice) to:

If to the Buyer, to:

Andrew Scott, Managing Member  
Wild Goose LLC  
Box 565  
Snowmass, CO 81654

With copies (which shall not constitute notice) to:

James L. Oyster, Esq.  
108 Oyster Ln.  
Castleton, VA 22716

And

James L. Oyster, Esq.  
1926 Canterbury Ct. #303  
Lynchburg, VA 24503

**ARTICLE 26**

**ENTIRE AGREEMENT**

This Agreement and the Escrow Agreement contain the entire understanding of the parties with respect to the subject matter hereof. This Agreement shall not be modified except by a written instrument signed by both Parties.

**ARTICLE 27**

**HEADINGS**

The headings of the paragraphs of this Agreement are inserted as a matter of convenience and for references purposes only, and in no way define, limit or describe the scope of this Agreement or the intent of any paragraph hereof. The use of any gender herein shall include the other genders and the use of the singular shall, where appropriate, include the plural.

**ARTICLE 28**

**COUNTERPARTS**

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE 29**

**LAW GOVERNING/JURISDICTION/VENUE/ATTORNEYS FEES**

This Agreement shall be constructed and governed in accordance with the laws of the State of Colorado. Any dispute related to this Agreement shall be only filed in the State of Colorado and all parties hereby submit to the jurisdiction of any court sitting in Eagle County, Colorado in any action or proceeding arising out of or relating to this Agreement

and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party waives any defense of inconvenient forum or lack of personal jurisdiction to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the other party with respect thereto. The prevailing party in such action, proceeding or lawsuit shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

### **ARTICLE 30**

#### **COVENANT OF FURTHER ASSURANCES**

After the Closing, Seller and Buyer shall, upon the request of the other, take such other action, and execute and deliver to the other such additional instruments, as may be commercially reasonable to assure, complete, and evidence the full and effective implementation and consummation of the transaction contemplated by this Agreement with the commercially reasonable costs of any such action to be reimbursed by the requestor to the party taking such requested action.

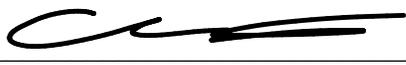
IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement  
to be executed by their duly authorized officers as of \_\_\_\_\_

**SELLER**

**COOL RADIO, LLC**

By  \_\_\_\_\_  
Tom Dobrez, President

**BUYER**

By  \_\_\_\_\_  
Andrew C. Scott, Managing Member

**EXHIBIT 1**  
**SALES CONSULTING AGREEMENT**

**SCHEDULE A**  
**LICENSES**

[To be prepared by Seller]

**SCHEDULE B**  
**ASSETS**

[To be prepared by Seller]

**SCHEDULE C**  
**CONTRACTS**

[To be prepared by Seller]

**SCHEDULE C-2**  
**ESSENTIAL CONTRACTS**

**SCHEDULE D**  
**INTELLECTUAL PROPERTY RIGHTS**

[To be prepared by Seller]

**SCHEDULE E**  
**LITIGATION**

[To be prepared by Seller]

**SCHEDULE F**  
**INSURANCE**

[To be prepared by Seller]

**SCHEDULE G**  
**TAXES**

[To be prepared by Seller]