

## Asset Purchase Agreement

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement") is made this 2nd day of January 2019, by and among **Mortenson Broadcasting Co. of Texas, Inc.**, a Texas corporation, of Key Bank Square, Suite 141, 960 W. State Street, Alliance, Ohio 44601 ("Seller") and **KTN Broadcasting, LLC**, a Texas limited liability company ("Purchaser") and **Kim Family Partnership Ltd**, a Texas limited partnership ("Guarantor"), both of 11363 Denton Drive, Suite 127, Dallas, Texas 75229 (Seller and Purchaser individually a "Party" and collectively the "Parties").

### WITNESSETH:

**WHEREAS**, Seller is the owner and licensee, pursuant to certain authorizations (the "Station Licenses") issued by the Federal Communications Commission (the "FCC"), for radio broadcast stations KHVN(AM), licensed to Fort Worth, Texas (Facility ID#: 63780) ("KHVN") and KKGM(AM), licensed to Fort Worth, Texas (Facility ID#: 87147) ("KKGM"), and the holder of a construction permit for FM translator K237HD, Fort Worth, Texas (Facility ID#: 202305) ("K237HD") (collectively, the "Stations") and owns or leases the property and assets used in the operation of the Stations; and

**WHEREAS**, Seller desires to sell and assign and Purchaser desires to purchase and acquire assignment of the Station Licenses and authorizations together with certain of the Stations' property and assets, upon the terms and subject to the conditions hereinafter set forth; and

**WHEREAS**, upon any such sale, Purchaser and Seller desire to enter into a Time Brokerage Agreement (the "TBA"), in substantially the form attached hereto as Exhibit E pursuant to which, among other things and subject to the terms and conditions of this Agreement, Seller will provide programming for Station KHVN(AM), and shall be entitled to receive the revenues from the sale of advertising on the station; and

**WHEREAS**, the authorizations and Station Licenses issued by the FCC for the operation of the Stations may not be assigned without the prior consent of the FCC.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises, terms, covenants and conditions herein contained, the Parties hereto agree as follows:

## ARTICLE ONE

### SALE AND PURCHASE OF STATIONS AND ASSETS

1.1 Agreement of Sale and Purchase. At the Closing (as defined below), Seller agrees to sell, assign, transfer, convey and deliver to Purchaser, and Purchaser agrees to purchase, accept and receive from Seller all right, title and interests of Seller in and to the Station Licenses and certain other assets and properties of Seller, as set forth in Section 1.2 hereof. Should translator K237HD be constructed and a license granted by the FCC prior to the consummation of any sale contemplated under this Agreement, such license shall be included in the definition of "Station Licenses" for the purposes of this Agreement. It is expressly understood and agreed by Seller and Purchaser that this is an asset purchase and Purchaser does not assume, nor shall be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, or acquire the assets contemplated hereunder subject to, any lien, encumbrance, liability, obligation, commitment, undertaking, expense or agreement of Seller of any nature whatsoever, whether known or unknown or whether absolute or contingent, except (i) for liens relating to property taxes not yet due and payable, (ii) for those accruing following the Closing under any Assumed Contracts, or (iii) as otherwise expressly agreed to by Purchaser herein or otherwise in writing.

1.2 Assets Included in Sale. There shall be included in this sale all of Seller's right, title and interests in and to the assets of the Seller that are used or held for use in connection with the operation of the Stations, whether tangible or intangible, real, personal or mixed, together with any additions thereto between the date of this Agreement and the Closing, but excluding the Excluded Assets described in Section 1.3 and those nonmaterial assets disposed of in the ordinary course of business between the date hereof and the Closing Date (the "Acquired Assets"), such to include:

a) All of Seller's right, title and interests in and to the equipment, transmitters, antennas, cables, towers, leasehold improvements, furniture, fixtures, computers and computer software, spare parts and other tangible personal property of every kind and description that are used or held for use in the operation of the Stations, including those delineated in Exhibit A, attached hereto (collectively the "Tangible Personal Property"); together with such modifications, improvements and additions thereto and replacements thereof occurring between the date hereof and the Closing Date;

b) Leasehold interests in and to (i) the KKGM tower/transmission site (the "KKGM Tower Site") (and Seller will exercise commercially reasonable efforts to obtain, prior to Closing, an optional five (5) year renewal term for such leasehold interest following the underlying lease's current term); (ii) the

KKGM studio premises (the "KKGM Studio Site"); and (iii) the KHVN tower/transmission site (the "KHVN Tower Site"), as the first two being delineated in Exhibit B, attached hereto, and the last one being the KHVN Tower Site Lease, delineated herein (collectively the "Leasehold Interests");

c) All authorizations, including all of the Station Licenses, permits and other authorizations issued by the FCC for the operation of the Stations, subject to approval for transfer by the FCC, as well as environmental or land use permits, construction permits, and other permits or licenses issued by local, state or federal governmental authorities, such as the Federal Aviation Administration (to the extent assignable and, if required, approved for assignment by such governmental authorities), used in connection with the Assigned Assets, including those listed in Exhibit C, attached hereto (collectively the "Authorizations");

d) Such of Seller's rights and obligations as may accrue from and after the Closing, under agreements (other than those relating to the Leasehold Interests being assigned under item Section 1.2(b) above) entered into by Seller for operation of the Stations, (other than those for the sale of advertising or program time on the KHVN, or for programming services, content, music libraries, or other services on KHVN), that Purchaser, in its sole discretion, indicates in writing it desires to assume (collectively the "Assumed Contracts"), it being expressly understood and agreed by both Seller and Purchaser (i) that Purchaser will not be required to assume any one or more of such agreements, (ii) that Purchaser will not have any responsibility, obligation or liability whatsoever with respect to any such un-assumed agreements, and (iii) Seller's obligation to assign, and Purchaser's assumption of, any of such agreements is subject to obtaining, prior to Closing, any consents to assignment and/or assumption required under such agreements (collectively the "Assumed Contracts Consents");

e) All FCC call signs, domain names, websites, URL registrations, copyrights, trademarks, trade names, service marks, service names, patents, jingles, slogans, logos, proprietary information, technical information and data, maps, plans, diagrams, blueprints, schematics, assignable machinery and equipment warranties relating to any Acquired Assets, and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing), issued to, or owned by Seller or under which Seller is licensed or franchised and which are used in the business and operations of the Stations (collectively the "Intellectual Property");

f) Such books and records relating to the Acquired Assets or the business or operations of the Stations from and after the Closing Date, including executed copies of any Assumed Contracts, and all records required by the FCC to be

kept at the Stations, subject to the right of Seller to have such books and records made available to Seller for a reasonable period, not to exceed three (3) years after the Closing Date;

g) an option to acquire the Retained KHVN Property (as defined below) or any substitutes or replacements for any of such property (the "KHVN Retained Personal Property Option"), in accordance with the terms set forth herein below;

h) an option to acquire the KHVN Tower Site (the "KHVN Tower Site Option"), in accordance with the terms set forth herein below;

i) a right-of-first refusal to acquire the KHVN Tower Site (the "KHVN Tower ROFR"), in accordance with the terms set forth herein below; and

k) an option to lease the KHVN Tower Site (the "KHVN Tower Site Lease"), in accordance with the terms set forth herein below.

**1.3 Assets Excluded from Sale.** Notwithstanding anything to the contrary contained in this Agreement, there shall be excluded from this sale, and retained by Seller, the following assets of the Seller, together with any additions thereto between the date of this Agreement and the Closing (the "Excluded Assets"):

a) Cash and cash equivalents, on hand or in banks, including without limitation, certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

b) All accounts receivable accrued as of the time of Closing or for services provided (including, but not limited to advertising or programming time) prior to the Closing;

c) All rights, title and interests of Seller in and to the KHVN Tower Site, subject to the KHVN Tower Site Option, the KHVN Tower Site ROFR, the KHVN Tower Site Lease Option and the KHVN Tower Site Lease);

d) All rights, title and interests of Seller in and to the existing leasehold for the KHVN studio premises (the "KHVN Studio Site") and the equipment and other tangible personal property owned by Seller and utilized for the operations of the KHVN studio (the material items being delineated in Exhibit E (the "Retained KHVN Personal Property"), subject to the KHVN Retained Personal Property Option, and a lease from Purchaser to Seller of the KHVN Tower Site personal property/improvements delineated in Exhibit A for \$1.00 per month, such lease to be coterminous with the TBA.

(e) Any claims, rights and interest in and to any refunds, rebates, deposit returns, and other similar items for or relating to matters prior to the Closing, including, but not limited to, any refunds of federal, state or local franchise, income or other taxes or fees of any nature whatsoever for periods prior to the Closing;

(f) Any property or assets not owned by Seller that are utilized in the operation of the Station; and

g) The books and records of Seller not directly relating to the operations of the Stations and any copies of books and records desired by Seller which are described in Section 1.2(f) hereof.

## **ARTICLE TWO**

### **CONSIDERATION**

2.1 Consideration for Sale. In consideration for the sale, assignment, transfer, conveyance and delivery of the foregoing Acquired Assets to Purchaser, Purchaser agrees that it will, in the manner hereinafter provided, pay to Seller a total of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Purchase Price") plus or minus any prorations or adjustments described in Section 2.2, payable in cash. The Purchase Price will be transmitted by Purchaser to Seller at the Closing by means of either a wire transfer, a cashier's check, or other method agreed to by Seller and Purchaser, with a credit for any of the Escrow Funds (defined below) applied to the Purchase Price.

2.2 Prorations; Other Expense Allocations. The Purchase Price shall be increased or decreased as required to effectuate the proration of expenses. Subject to the terms of this Agreement, all expenses arising from the operation of the Stations, including business and license fees, utility charges, real and personal property taxes and assessments levied against the Acquired Assets, property and equipment rentals, FCC regulatory fees applicable copyright or other fees, sales and service charges, taxes (except for taxes arising from the transfer of the Assets under this Agreement), ASCAP, BMI and SESAC licenses and similar prepaid and deferred items, shall be prorated between Purchaser and Seller in accordance with the general principle that Seller shall be responsible for all expenses, costs, and liabilities allocable to the period prior to the Closing, and Purchaser shall be responsible for all expenses, costs, and obligations allocable to the period on and after the Closing. Notwithstanding the preceding sentence, there shall be no adjustment for, and Seller shall remain solely liable with respect to, any agreements not included in the Assumed Contracts and any other obligation or liability not being assumed by Purchaser hereunder. Any proration adjustments will, insofar as feasible, be determined and paid at the Closing, with

final settlement and payment by the appropriate Party occurring no later than forty-five (45) days after the Closing Date or such other date upon which the Parties shall mutually agree. Sales taxes relating to the sale of the Acquired Assets shall be paid by Purchaser, but other transfer taxes and similar fees arising from the conveyance of the Acquired Assets from Seller to Purchaser shall be paid by Seller, subject to splitting certain FCC filing fees as delineated in Section 5.1. Each Party acknowledges that Michael Ginter has served as broker for both the Parties with respect to the transactions contemplated herein and that his brokerage fee, equal to four percent (4%) of the Purchase Price shall be paid by Seller. The Parties also acknowledge that David Garland Media Brokerage acted as a consultant to Purchaser and that any fees, commissions or other compensation due such consultant shall be paid by Purchaser. Other than the allocations specifically mentioned herein, each of the Parties hereto shall bear all expenses incurred by it in connection with the consummation of the transactions contemplated hereby and the preparations therefor.

**2.3 Obligations Upon Closing.** As of the Closing Date, Purchaser shall assume and undertake to pay, discharge, and perform all obligations and liabilities with respect to the Authorizations, the Leasehold Interests and the Assumed Contracts insofar as they relate to any time on and after the Closing Date or arise out of events occurring on and after the Closing Date. Purchaser shall not assume any other debts, obligations or liabilities of Seller, including (i) any obligations or liabilities under any agreements not included in the Assumed Contracts, (ii) any obligations or liabilities under the Assumed Contracts relating to the period prior to the Closing Date, (iii) any claims or pending litigation or proceedings relating to the operation of the Stations prior to the Closing, (iv) any obligations or liabilities of Seller under any employee pension, retirement, health and welfare or other benefit plans or collective bargaining agreements, or (v) any obligation to any employee of Seller for severance benefits, vacation time, or sick leave accrued prior to the Closing Date, and all such obligations and liabilities shall remain and be the obligations and liabilities solely of Seller.

**2.4 Escrow Funds.** Upon execution of this Agreement, Purchaser shall deliver to Lawyers Escrow Company, of 12900 Preston Road, Suite 710, Dallas, Texas 75230, as escrow agent (the "Escrow Agent"), an escrow deposit (the "Escrow Funds") of One Hundred Fifty Thousand Dollars (\$150,000.00), which the Escrow Agent will cause to be placed into a federally-insured account (the "Escrow Account") administered by the Escrow Agent. The Escrow Funds shall be held in the Escrow Account in accordance with the terms of the Escrow Agreement attached hereto as Exhibit D and executed by the Parties and the Escrow Agent contemporaneous with the delivery of the Escrow Funds to the Escrow Agent. At any Closing, the principal amount of the Escrow Account shall be released and delivered to Seller as part of the total Purchase Price that will be paid at Closing and any accrued interest paid to Purchaser. If this Agreement is terminated by

Seller as authorized in Section 10.1(d) below, or as authorized in any of Sections 10.1(b), 10.1(e) or 10.1(f) where the termination triggering event is caused by a negligent, intentional or willful act or failure to act by the Purchaser, then in such event, the Escrow Funds, together with any accrued interest thereon, shall be disbursed to Seller, as liquidated damages. If this Agreement is otherwise terminated pursuant to its terms, the Escrow Funds, together with any accrued interest thereon, shall be disbursed to Purchaser, as liquidated damages.

**2.5 Allocation of Purchase Price.** Prior to Closing, Purchaser and Seller shall allocate the Purchase Price for tax purposes in accordance with the respective fair market values of the Acquired Assets and the goodwill being purchased and sold, all in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended. Each Party agrees not to take a position on any tax return before any governmental agency charged with the collection of any such tax or in any judicial proceeding that is in any manner inconsistent with the terms of any such allocation, without the prior written consent of the other Party.

## **ARTICLE THREE**

### **SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

Seller covenants, represents, and warrants to Purchaser, as of the execution of this Agreement and as of the Closing, the following:

**3.1 Power and Authority.** Seller has all requisite power and authority (i) to own, lease, and use the Acquired Assets as now owned, leased, and used, (ii) to conduct the business and operations of the Stations as now conducted, and (iii) and to perform and comply with all the terms, covenants, and conditions to be performed and complied with by Seller hereunder.

**3.2 Corporate Authorization; Binding Agreement.** The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary corporate actions on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid, and binding obligation of Seller, enforceable against it in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally, and by judicial discretion in the enforcement of equitable remedies.

**3.3 Governmental Authorizations.** Seller is duly organized and qualified to business in the State of Texas. Seller is the holder of the Station Licenses issued by the FCC as described in Exhibit C attached hereto and the other Authorizations described in such Exhibit C. The Authorizations have been validly

issued and are in full force and effect. The Seller warrants that as of the Closing Date (as defined below) the Stations and their operations will be in material compliance and good standing with the terms and conditions of the Station Licenses, in accordance with the rules and regulations of the FCC, and the other Authorizations, in accordance with the rules and regulations of the applicable issuing governmental authority. The Authorizations comprise such licenses, permits, and other authorizations required from any governmental or regulatory authority for the lawful conduct of the business and operations of the Stations in the manner and to the full extent they are now conducted, and none of the Authorizations is subject to any restriction or condition that would limit the operation of the Station as now operated. Except as disclosed in Exhibit C and except for proceedings affecting the broadcast industry generally, there are no applications, petitions, complaints or proceedings pending or threatened before the FCC relating to the Stations.

3.4 Noncontravention. To Seller's knowledge, and subject to obtaining any consents to assignment for Authorizations, Leasehold Interests and Assumed Contracts, the execution, delivery, and performance by Seller of this Agreement and the documents contemplated hereby and thereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any applicable law, judgment, order, ordinance, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Seller is a party or by which Seller may be bound.

3.5 Title to and Condition of Property. Seller owns and has good and marketable title to the Acquired Assets, and none of the Acquired Assets are subject to any security interest, mortgage, pledge, conditional sales agreement, or other lien or encumbrance, other than those to be released at or prior to the Closing and except for liens for property taxes not yet due and payable. All Tangible Personal Property is in good repair and operating condition, reasonable wear and tear excepted, and is in conformance, in all material respects with the requirements of the Station Licenses and applicable rules of the FCC.

3.6 Authority to Assign Authorizations, Leasehold Interests and Assumed Contracts. Except for the need to obtain any consents for assignment, Seller has full legal power and authority to assign its rights under the Authorizations, Leasehold Interests and Assumed Contracts to Purchaser in accordance with this Agreement, and such assignment will not affect their validity, enforceability, or continuation.



3.7 Reports and Filings. All reports and statements that the Stations are currently required to file with the FCC or with any other governmental agency have been filed and Seller has complied with all reporting requirements of the FCC and other governmental authorities having jurisdiction over Seller and the Stations. All such reports and statements are substantially complete and correct as filed. Seller has paid to the FCC all annual regulatory fees payable with respect to the Station Licenses required to be paid by Seller.

3.8. No Actions, Investigations or Proceedings. There are no actions, suits, investigations or other proceedings pending, or, to Seller's knowledge, threatened, which may adversely affect Seller's ability to perform in accordance with the terms of this Agreement or Purchaser's ability to operate the Stations and use the Acquired Assets following any Closing, and Seller is unaware of any facts which could reasonably result in any such actions, suits, investigations or other proceedings.

3.9 Environmental, Health and Safety Matters. To Seller's knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the real property included in the Station Assets. To Seller's knowledge, Seller has complied in all material respects with all environmental, health and safety laws, regulations, and ordinances applicable to the Stations.

3.10 Covenants Prior to Closing. From the execution of this Agreement and until the Closing or earlier termination of this Agreement:

(i) Seller shall not sell, assign, lease, or otherwise transfer or dispose of any of the Acquired Assets, except in the ordinary course of Seller's business (i) where such is not material to the operation of the Stations and are no longer used or useful in the business or operation of the Stations or (ii) in connection with the acquisition of replacement property of at least equivalent function, kind and value.

(ii) Seller shall not take any action that is inconsistent with its obligations under this Agreement or that could hinder or delay the consummation of the transactions contemplated by this Agreement.

(iii) Seller shall use its best efforts to maintain all the Acquired Assets in their current condition and use, operate, and maintain all the Acquired Assets in a reasonable manner and in material accordance with the terms of the Station Licenses, all rules and regulations of the FCC and generally accepted standards of good engineering practice.

(iv) Seller shall use reasonable commercial efforts to obtain consents to the assignment of the Authorizations, Leasehold Interests and Assumed Contracts without any change in the terms or conditions of any same that could be less advantageous to the Stations than those in effect on the date of this Agreement. Seller shall promptly advise Purchaser of any difficulties experienced in obtaining any such consents and of any conditions proposed, considered, or requested for any of the consents. Seller shall not be liable to Purchaser for failure to be able to obtain any of the consents necessary for assignment of any underlying Authorization, Leasehold Interest or Assumed Contract, provided Seller has utilized its commercially reasonable efforts to do so.

(v) Seller agrees that during the term of this Agreement, neither Seller, nor its officers, directors, employees, consultants, advisors, affiliates or agents (including brokers) will engage in, initiate, continue or permit to occur any contact or discussion of any kind whatsoever with any third party for the direct or indirect purchase or sale of the Stations or any portion of the Acquired Assets.

(vi) Seller agrees to construct the translator and any attendant facilities reasonably necessary to effectuate its use and operation in accordance with the construction permit for FM translator K237HD, Fort Worth, Texas (Facility ID#: 202305) ("K237HD").

## **ARTICLE FOUR**

### **PURCHASER'S COVENANTS, REPRESENTATIONS AND WARRANTIES**

Purchaser covenants, represents, and warrants to Seller, as of the execution of this Agreement and as of the Closing, the following:

**4.1 Authorization of Agreement.** The execution, delivery and performance of this Agreement will have been duly authorized by all necessary actions on Purchaser's part.

**4.2 Absence of Knowledge as to Certain Facts.** Purchaser is not aware of any facts nor has reasonable cause to know any facts that will disqualify Purchaser from securing the FCC's consent hereinafter provided for in this Agreement or from completing the transaction contemplated herein.

**4.3. Power and Authority.** Purchaser has all requisite power and authority to execute and deliver this Agreement and the documents contemplated hereby and thereby, and to perform and comply with all the terms, covenants, and conditions to be performed and complied with by Purchaser hereunder and thereunder.

4.4. Requisite Authorization; Binding Agreement. Purchaser is duly organized and authorized to do business in the State of Texas. The execution, delivery, and performance of this Agreement by Purchaser has been duly authorized by all necessary actions on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid, and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms except as the enforceability of this Agreement may be affected by bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by judicial discretion in the enforcement of equitable remedies.

4.5. Noncontravention. To Purchaser's knowledge, and subject to obtaining any consents to assignment for Authorizations, Leasehold Interests and Assumed Contracts, the execution, delivery, and performance by Purchaser of this Agreement and the documents contemplated hereby and thereby (with or without the giving of notice, the lapse of time, or both): (i) do not require the consent of any third party; (ii) will not conflict with, result in a breach of, or constitute a default under, any law, judgment, order, injunction, decree, rule, regulation, or ruling of any court or governmental instrumentality; and (iii) will not conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, or accelerate or permit the acceleration of any performance required by the terms of, any agreement, instrument, license, or permit to which Purchaser is a party or by which Purchaser may be bound, such that Purchaser could not acquire or operate the Acquired Assets.

4.6 FCC Consents Qualification. Purchaser is legally and financially qualified to become a licensee of the Stations under the Communications Act of 1934, as amended, the rules and regulations of the FCC and Section 5301 of the Anti-Drug Act of 1988, as amended. Purchaser is not aware of any other facts nor has reasonable cause to know of any facts that will disqualify Purchaser from securing the FCC's consent hereinafter provided for in this Agreement or from completing the transaction contemplated herein.

4.7 No Actions, Investigations or Proceedings. There are no actions, suits, investigations or other proceedings pending, or, to Purchaser's knowledge, threatened, which may adversely affect Purchaser's ability to perform in accordance with the terms of this Agreement, and Purchaser is unaware of any facts which could reasonably result in any such proceeding.

## **ARTICLE FIVE**

### **FCC CONSENT AND OTHER PRE-CLOSING MATTERS**

5.1 Applications for FCC Consents. The assignment of the Station Licenses in connection with the transactions contemplated by this Agreement shall be subject to the prior consent and approval of the FCC (the "FCC Consents"). As such, the consummation of all the transactions hereunder shall be subject to that prior consent and approval of that assignment of the Station Licenses. Within five (5) business days from the date hereof, Seller and Purchaser shall join in applications to be filed with the FCC requesting its consent to the assignment of the Station Licenses to Purchaser as contemplated herein. Each of the Parties hereto shall diligently take or cooperate in the taking of all steps that are necessary or appropriate to expedite the prosecution and favorable consideration of such applications and shall oppose any objections to the grant of the application for the FCC Consents. Each Party agrees to comply with any condition imposed on it by the FCC Consents, except that no Party shall be required to comply with a condition if (i) the condition was imposed on it as the result of a circumstance the existence of which does not constitute a breach by the Party of any of its representations, warranties, or covenants under this Agreement, and (ii) compliance with the condition would have a material adverse effect upon it. Each Party shall oppose any requests for reconsideration or judicial review of the FCC Consents. The total cost of any fees charged by the FCC for the filing of the applications for the assignment of the Station Licenses as contemplated hereby shall be paid one-half (1/2) by Purchaser and one-half (1/2) by Seller.

5.2 Final Order. For the purpose of this Agreement, a "Final Order" shall mean action by the FCC consenting to the assignment of a Station License which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing, or appeal is pending, and as to which the time for filing any such request, petition or appeal has expired.

5.3 Risk of Loss. The risk of any loss, damage, impairment, confiscation, or condemnation of any of the Assets from any cause whatsoever (other than by the intentional, reckless, or negligent acts of Purchaser or its agents or representatives) shall be borne by Seller at all times prior to the Closing.

5.4 Reasonable Cooperation. Each Party shall reasonably cooperate the other and their respective counsel and accountants in connection with any actions required to be taken as part of their respective obligations under this Agreement, and each Party shall execute such other documents as may be reasonably necessary and desirable for the implementation and consummation of this Agreement, and otherwise use reasonable commercial efforts to consummate the transactions contemplated hereby and to fulfill their obligations under this Agreement.

## ARTICLE SIX

### CLOSING

6.1 Closing. The closing of the transactions contemplated herein (the "Closing") shall take place following the time both FCC Consents shall have become Final Orders, the exact date, time and place of the Closing to be mutually agreed on by Purchaser and Seller. In the event no such agreement is reached by the Parties, the Closing shall occur electronically, at 2:00 p.m., Eastern Time, on the tenth (10<sup>th</sup>) business day following the date both FCC Consents have become Final Orders. The time of Closing, fixed in accordance with the provisions of this Section, is herein called the "Closing Date".

6.2 Seller's Performance at Closing. At Closing, Seller will deliver to Purchaser, and Purchaser's obligation to consummate the Closing is subject to Purchaser's receipt of:

- (i) a Bill of Sale in form and substance satisfactory to Purchaser, duly executed by Seller, selling and assigning good and marketable title to Purchaser in all the tangible personal property described in Exhibit A, attached hereto, free and clear of all claims and encumbrances, other than any Purchaser agrees in writing to assume or take such property subject to hereunder or otherwise in writing;
- (ii) Such leases, subleases or assignments, in form and substance satisfactory to Purchaser, duly executed by Seller, as are necessary to assign to Purchaser the Leasehold Interests;
- (iii) Such assignments, in form and substance satisfactory to Purchaser, duly executed by Seller, as are necessary to assign to Purchaser any Assumed Contracts;
- (iv) good and sufficient instruments of conveyance, transfer and assignment, all in form and substance satisfactory to Purchaser, duly executed by Seller, to vest in Purchaser ownership of (a) the Station Licenses and/or other Authorizations as listed on Exhibit C, attached hereto, and (c) any other intangible property constituting part of the Acquired Assets;
- (v) delivery to Purchaser, duly executed by Seller, the Time Brokerage Agreement set forth in Exhibit E of this Agreement; and
- (vi) delivery to Purchaser, duly executed by Seller, one or more agreements, in form and substance reasonably satisfactory to Purchaser and Seller, as are necessary to grant to the Purchaser the KHVN Tower Site Option, the KHVN Tower Site ROFR, the KHVN Tower Site Lease Option, and the KHVN Retained

Personal Property Option, each containing the material terms delineated below.

**6.3 Purchaser's Performance at Closing.** Purchaser, at Closing, will deliver or cause to be delivered to Seller, and Seller's obligation to consummate the Closing is subject to Seller's receipt of:

- (i) the payment of the Purchase Price required hereunder, less any of the Escrow Amount paid to Seller as a credit against the Purchase Price;
- (ii) delivery to Seller, duly executed by Purchaser, the Time Brokerage Agreement set forth in Exhibit E of this Agreement; and
- (iii) delivery to Seller, in form and substance satisfactory to Seller, and duly executed by Purchaser, such documents deemed reasonably necessary by Seller to acknowledge any assumption obligations of Purchaser relating to the Acquired Assets.

**6.4 Purchaser's Conditions to Closing.** All obligations of Purchaser at the Closing are subject, at Purchaser's option, to the fulfillment prior to or at the Closing Date of each of the following conditions:

- (i) **Representations and Warranties.** All representations and warranties of Seller contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time, except for changes contemplated by this Agreement.
- (ii) **Covenants and Conditions.** Seller shall have performed and complied in all material respects with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date.
- (iii) **Consents.** All assignment consents relating to any Assigned Assets (other than the FCC Consents, otherwise addressed by Section 6.4(iv) below) shall have been obtained and delivered to Purchaser.
- (iv) **Final Orders.** The FCC Consents shall have been granted, Seller shall have complied with any conditions imposed on it by the FCC Consents and the FCC Consents shall have become Final Orders.
- (v) **Governmental Authorizations.** Seller shall be the holder of all Authorizations and there shall not have been any modification of any Authorizations that could have a materially adverse effect on the Stations or the conduct of their business and operations. No proceeding shall be pending or

threatened the effect of which could be to revoke, cancel, fail to renew, suspend, or modify adversely any Authorization.

(vi) Deliveries. Seller shall have made or stand willing to make all the deliveries to Purchaser set forth in Section 6.2.

(vii) Adverse Change. Between the date of this Agreement and the Closing Date, there shall have been no material adverse change in the Acquired Assets or the operation of the Stations, including any material damage, destruction, or loss affecting them.

(viii) Replacement of Existing Studio Lease. The replacement of the existing lease for both the KKGM Studio Site and the KHVN Studio Site with separate leases for each of such studio sites.

(ix) Extension of KKGM Studio Lease. The Seller shall have obtained or receive assurance from the Landlord of obtaining, a one-year extension of KKGM existing lease for the KKGM Studio Site.

6.5 Seller's Conditions to Closing All obligations of Seller at the Closing are subject at Seller's option to the fulfillment prior to or at the Closing Date of each of the following conditions:

(i) Representations and Warranties. All representations and warranties of Purchaser contained in this Agreement shall be true and complete in all material respects at and as of the Closing Date as though made at and as of that time, except for changes contemplated by this Agreement.

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

(iii) Deliveries. Purchaser shall have made or stand willing to make all the deliveries set forth in Section 6.3.

(iv) FCC Consents. The FCC Consents shall have been granted, Purchaser shall have complied with any conditions imposed on it by the FCC Consents and the FCC Consents shall have become Final Orders.

(v) Consents. All assignment consents (other than the FCC Consents, otherwise addressed by Section 6.5(v) above) shall have been obtained.

(vi) Release of Liens. Seller's commercial lender shall have consented to, and shall, release contemporaneous with the Closing, any liens, mortgages, conditional assignments or other encumbrances it possesses with respect to the Acquired Assets.

(vii) Replacement of Existing Studio Lease. The replacement of the existing lease for both the KKGM Studio Site and the KHVN Studio Site with separate leases for each of such studio sites.

## **ARTICLE SEVEN**

### **CONFIDENTIALITY/PRESS RELEASES**

7.1 Confidentiality/Press Releases. Seller and Purchaser agree that all non-public information regarding the Parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the Parties' representatives for the purposes of consummating the transaction contemplated by this Agreement or for satisfying funding sources and/or as otherwise required by applicable law. Prior to Closing, no Party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement except to the extent that such Party is so obligated by law. If this Agreement is terminated, without consummation of the contemplated Closing, Purchaser shall promptly return to Seller, all originals and copies of any information provided by Seller to Purchaser that contains any confidential or proprietary to Seller.

## **ARTICLE EIGHT**

### **CONTROL OF STATIONS**

8.1 Control of Stations. Purchaser shall not, directly or indirectly, control, supervise or direct the operation of the Stations prior to Closing. Consistent with FCC rules and regulations, control, supervision and direction of the operation of the Stations prior to Closing shall remain the responsibility of Seller as the holder of the Station Licenses.

## **ARTICLE NINE**

### **DUE DILIGENCE**

9.1 Due Diligence. Between the date of this Agreement and the Closing Date, Seller hereby authorizes Purchaser to make or have made, at the expense of the



Purchaser, whatever inquiries, studies, or investigations Purchaser reasonably requests as relate to its investigation of the Acquired Assets or the operation of the Seller, provided, such does not unreasonably interfere with Seller's use of the Acquired Assets and its operation of the Seller and such would not, under normal circumstances, foreseeably result in employees, customers, suppliers of Seller, or parties other than Purchaser or its representatives, to become aware of the proposed transactions prior to the Closing, and further provided that any requests for such due diligence investigations be made only through duly designated representatives of Seller.

## ARTICLE TEN

### TERMINATION/INDEMNIFICATION

10.1 Termination. This Agreement may be terminated, by written notice given by either Party (provided such notifying Party is not in breach of any of its obligations, representations, warranties or duties hereunder) to the other Party hereto, at any time prior to the Closing Date as follows, and in no other manner:

(a) By mutual written consent of all the Parties hereto;

(b) By any Party if a court of competent jurisdiction or any governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and non-appealable, but only if the event triggering such termination is not caused by a negligent, intentional or willful act or failure to act by the terminating Party and the terminating Party, at such time, is not in breach of or has not failed to perform any of Purchaser's obligations, representations, warranties or duties under this Agreement;

(c) By Purchaser, if Seller fails to perform or breaches any of its obligations, representations, warranties or duties under this Agreement and Seller has not cured such failure to perform or breach within fifteen (15) days after delivery of written notice from Purchaser, but only if Purchaser at such time is not in breach or has not failed to perform any of Purchaser's obligations, representations, warranties or duties under this Agreement;

(d) By Seller, if Purchaser fails to perform or breaches any of its obligations, representations, warranties or duties under this Agreement and Purchaser has not cured such failure to perform or breach within fifteen (15) days after delivery of written notice from Seller, but only if Seller at such time is not in breach or has not failed to perform any of Seller's obligations, representations,

warranties or duties under this Agreement;

(e) By any Party, if the FCC denies one or both the FCC application(s) for assignment of the Station Licenses, but only if the denial triggering such termination is not caused by a negligent, intentional or willful act or failure to act by the terminating Party and if the terminating Party, at such time, is not in breach of or has not failed to perform any of Purchaser's obligations, representations, warranties or duties under this Agreement; or

(f) By any Party, if the Closing has not occurred within thirty (30) days after the date of the last Final Order, but only if delay in the Closing is not caused by a negligent, intentional or willful act or failure to act by the terminating Party and if the terminating Party, at such time, is not in breach of or has not failed to perform any of Purchaser's obligations, representations, warranties or duties under this Agreement.

(g) By Purchaser, if Seller is unable to negotiate assignments of the leases for the KKGM Studio Site and the KKGM Tower Site to Purchaser on terms no less favorable than those currently contained in the underlying leases (unless any such less favorable terms are deemed reasonably acceptable to Purchaser), but only if Purchaser, at such time, is not in breach of or has not failed to perform any of Purchaser's obligations, representations, warranties or duties under this Agreement.

If this Agreement is (i) terminated pursuant to Section 10.1(a) by either Party or (ii) terminated pursuant to any of Sections 10.1(b), 10.1(e) or 10.1(f) by either Party and the triggering event for such termination is not caused by a negligent, intentional or willful act or failure to act by the Party not terminating the Agreement, the parties hereto shall not have any further liability to each other with respect to the consummation of the transactions contemplated hereunder. If this Agreement is terminated pursuant to any of 10.1(b), 10.1(e) or 10.1(f) and the triggering event is caused by a negligent, intentional or willful act or failure to act by the Party not terminating the Agreement, then the terminating Party shall have all rights and remedies available at law or equity.

10.2 Survival of Warranties and Representation and Limitations Period. The representations, warranties and covenants of the respective parties hereto shall survive the Closing of the transactions contemplated hereunder until the first anniversary date of the Closing. Any claims to be made against a Party based on such Party's representations, warranties and covenants must be made in writing, specifically setting forth such claims, prior to such date.

10.3 Specific Performance. Seller and Purchaser each recognize and acknowledge that, if Seller fails to perform its obligations to consummate the

transactions contemplated hereby, money damages alone will not be adequate to compensate Purchaser for its injury. Seller and Purchaser, therefore, each agrees and acknowledge that, in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Purchaser shall be entitled to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

**10.4 Seller's Remedies.** The Purchaser and Seller understand and agree that the damages to Seller as a result of Purchaser's failure to consummate this Agreement would be difficult to ascertain with any degree of precision. Accordingly, in the event this Agreement is not consummated by reason of default on the part of the Purchaser's covenants, warranties and representations, or other obligations under this Agreement, the One Hundred Fifty Thousand Dollar (\$150,000.00) constituting the Escrow Funds, together with any then-accrued interest thereon, shall be paid to Seller as liquidated damages for Purchaser's default, it being agreed that said sum shall constitute full payment for any damages suffered by Seller by reason of Purchaser's failure to consummate this Agreement.

## **ARTICLE ELEVEN**

### **KHVN TOWER SITE LEASE, KHVN TOWER SITE OPTION, KHVN TOWER SITE ROFR, KHVN TOWER SITE LEASE OPTION AND KHVN RETAINED PERSONAL PROPERTY OPTION**

**11.1 KHVN Tower Site Lease.** The KHVN Tower Site Lease shall grant to Purhaser the right to lease the KHVN Tower Site at a monthly rental of One Dollar (\$1.00) for a term coterminous with the term of the Time Brokerage Agreement.

**11.2 KHVN Tower Site Option.** The KHVN Tower Site Option shall grant to Purhaser the right to acquire the KHVN Tower Site at its fair market value ("Fair Markert Value") by exercise of such KHVN Tower Site Option at any time during the term of the Time Brokerage Agreement; provided, however, that such KHVN Tower Site Option shall be, in certain circumstances, subordinate to the KHVN Tower Site ROFR (i.e., the KHVN Tower Site Option may be exercised only if Purchaser has not received, prior to such exercise, a third-party offer to purchase the KHVN Tower Site which has invoked or would invoke the KHVN Tower Site ROFR and such restriction on its exercise shall continue through the period ending in a sale of the KHVN Tower Site (whether to Purchaser by exercise of the KHVN Right of First Refusal or to the third-party due to Purchaser's failure to exercise the KHVN Tower Site ROFR) at which time the KHVN Tower Site Option shall terminate and may no longer be exercised. The exercise the KHVN Tower

Site Option may be made only by written notice to Seller indicating such exercise. The payment terms shall require that the purchase price be paid in cash at the time of closing. The closing must occur within thirty (30) days after the Fair Market Value of the KHVN Tower Site is determined. The Fair Market Value would be determined as follows. The Seller and Buyer shall have fifteen (15) days after Purchaser's delivery of its written exercise of the KHVN Tower Site Option within which to mutually agree to the Fair Market Value. If no mutual agreement concerning the Fair Market Value can be reached during the prescribed period, the Parties shall then have five (5) business days to mutually agree to an appraiser to determine the Fair Market Value, the cost of such appraiser to be paid by Purchaser, and the determination of Fair Market Value shall be final, conclusive and binding on the Parties. If no mutual agreement concerning an appraiser can be reached within the prescribed period, then each Party shall select a qualified appraiser within five (5) business days thereafter and the selecting Party shall pay any costs incurred with respect to its selected appraiser. The two appraisers selected by the Parties shall prepare their respective determinations of Fair Market Value, such to be completed within thirty (30) days of selection of the two appraisers. If the two determinations of Fair Market Value by such appraisers vary by fifteen percent (15%) or less, using the lower determination as a base, then the Fair Market Value shall be the average of the two determinations. If the two determinations of Fair Market Value vary by more than fifteen percent (15%), the two appraisers shall jointly select a third appraiser, the cost for which shall be split equally between the Parties, within five (5) business days, and shall present their respective appraisals to the third appraiser. The third appraiser shall act as an arbitrator and shall determine the Fair Market Value by selecting either (i) one of the two appraisals presented, or (ii) a value between the two appraisals presented.

**11.3 KHVN Tower Site ROFR.** In the event the Seller receives, at any time during the term of the Time Brokerage Agreement (other than at any time the KHVN Tower Site Option has been invoked by Purchaser), a bona fide offer from an unrelated third party, the KHVN Tower Site ROFR shall be invoked and the Seller shall provide the Purchaser with written notice of the terms of the offer in writing, at which time the Purchaser shall have fifteen (15) days to provide Seller with written notice of exercise of such KHVN Tower Site ROFR. If so exercised, the material terms of the third party offer will be deemed controlling as any such purchase by Purchaser; provided, however, that if the third-party offer does not contain an outside closing date, the closing must occur within fifteen (15) days of Purchaser's exercise of the KHVN Tower Site ROFR.

**11.4 KHVN Tower Site Lease Option.** The KHVN Tower Site Lease Option shall grant to Purchaser the right to lease the KHVN Tower Site for a term of three (3) years from the expiration or termination date of the Time Brokerage Agreement at a monthly rental of Three Thousand Dollars (\$3,000.00) by

providing Seller of written notice of exercise of such option no later than thirty (30) days following such expiration or termination date. Terms other than the term of the such lease and the monthly rental value under such lease shall be substantially similar to the terms of the KHAVN Tower Site Lease, except to the extent the parties shall mutually agree otherwise. The KHAVN Tower Site Lease Option shall terminate upon any sale of the KHAVN Tower Site to a third party.

11.5 KHAVN Retained Personal Property Option. The KHAVN Retained Personal Property Option shall grant to Purchaser the right to purchase the KHAVN Retained Personal Property, or any subsequent substitutions or replacements thereof, at a purchase price of Ten Thousand Dollars (\$10,000) following the expiration or termination date of the Time Brokerage Agreement. Such exercise shall be deemed made by Purchaser unless Purchaser provides Seller of written notice that Purchaser elects not to exercise of such option no later than thirty (30) days following such expiration or termination date. The payment terms shall require that the purchase price be paid in cash at the time of closing. Any closing must occur within sixty (60) days after the expiration or termination of the Time Brokerage Agreement.

## **ARTICLE TWELVE**

### **GENERAL PROVISIONS**

12.1 Retained Liabilities. Except as expressly provided for in this Agreement, or as expressly acknowledged and accepted by Purchaser in writing, Purchaser does not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liability, obligation, commitment, undertaking, expense or agreement of Seller of any nature whatsoever, whether known or unknown or whether absolute or contingent.

12.2 Employees. Seller hereby covenants that any employee of the Stations shall be terminable, without liability to Purchaser, on and as of the Closing Date, and that Purchaser will have no liability to any present or past employee of the Stations for wages, commission, retirement, pension, bonus, termination, vacation, or other pay, or for hospitalization, major medical, life or other insurance or other employee benefits applicable to the time employed by Seller. All employees who currently work for Seller at or for the Stations will, at the time of the Closing, be released by Seller providing Purchaser, at its option, the freedom to hire such individuals.

12.3 Covenant of Further Assurance. The Parties will execute such other documents as may be reasonably necessary for the implementation and consummation of this Agreement.

12.4 Amendment and Waiver. This Agreement cannot be changed or terminated orally. No amendment, waiver of compliance with any provision or condition hereof, and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the Party hereto sought to be charged with such amendment, waiver or consent.

12.5 Effect of this Agreement. This Agreement sets forth the entire understanding of the Parties and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. No representations, promises, inducements or statements of intention have been made by either Party which is not embodied in this Agreement, and neither Party shall be bound by or be liable for any alleged representations, promises, inducements, statements or intentions not embodied herein.

12.6 Assignment. All the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, provided that neither Party shall be entitled to assign its rights and obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Purchaser may assign its rights and obligations hereunder to an entity controlled by Purchaser or Odes H. Kim, without Seller's advance written consent, but in such event the Purchaser shall continue to be liable for any of its assigned obligations hereunder.

12.7 Section Headings. The headings used within this Agreement are for convenience of reference only and do not form a part thereof and do not in any way modify, interpret or construe the intentions of the Parties.

12.8 Construction. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas (without regard to the choice of law provisions thereof). In the event that a dispute should arise under this Agreement that cannot be resolved by negotiation, the dispute shall be submitted to mediation under the Uniform Mediation Act (even if said Act has not been adopted in the State of Texas). Upon written notice by one party to the other of a dispute for mediation, seven (7) days shall be provided for the answer, including an indication of the answering party's willingness to move forward with mediation. In the dispute shall be settled by binding arbitration conducted in Dallas, Texas, in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association. The prevailing party in an action brought to enforce the performance or compliance of any provisions of this Agreement, including without limitations any action to enforce this Agreement under Section 10.3, may recover reasonable attorney's fees and costs from the prevailing party.

12.9 Notices. Any notice, demand, waiver or other communication required or

permitted hereunder shall be in writing (which shall include notice by e-mail or facsimile transmission) and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, or, if sent by e-mail or facsimile communications equipment, when delivered as confirmed by a "read receipt" or other delivery confirmation, addressed as follows:

If to Seller: Jack M. Mortenson, President  
Mortenson Broadcasting Co. of Texas, Inc.  
Key Bank Square, Suite 141  
960 West State Street  
Alliance, OH 44601  
Fax: (330) 829-3955  
E-Mail: [jack@mortensonradio.com](mailto:jack@mortensonradio.com)

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

William F. Rigsby  
Rigsby Ball Law Group, PLC  
228 East High Street  
Lexington, KY 40507  
Fax: (859) 233-4633  
E-Mail: [wfrigsby@rlgattorneys.com](mailto:wfrigsby@rlgattorneys.com)

If to Purchaser: Odes H. Kim, Manager  
KTN Broadcasting, LLC  
11363 Denton Drive, Suite 127  
Dallas, Texas 75229  
Fax: (972) 241-7691  
E-Mail: [ohkim@membersltd.com](mailto:ohkim@membersltd.com)

If to Guarantor: Ann Kim, Manager  
Kim Management, LLC, as General Partner  
Kim Family Partnership Ltd.  
11363 Denton Drive, Suite 127  
Dallas, Texas 75229  
Fax: (972) 241-7691  
E-Mail: [annkim@membersltd.com](mailto:annkim@membersltd.com)

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

**Assets Purchase Agreement**

*Mortenson Broadcasting Co. of Texas, Inc.*

*KTN Broadcasting, LLC*

January 2, 2019

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Erwin G. Krasnow, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, Suite 200  
Washington, DC 20007  
Fax: (202) 965-1729  
E-Mail: [ekrasnow@gsblaw.com](mailto:ekrasnow@gsblaw.com)

The date of any such notice and of service thereof shall be deemed to be the day of dispatch. Any Party may change its address for purposes of notice by giving notice in accordance with the provisions of this Section 12.9.

12.10 Waiver or Consent. Except as may be otherwise expressly provided in this Agreement, any failure of any of the Parties to comply with any obligation, representation, warranty, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent breach or other failure. Whenever this Agreement requires or permits consent by or on behalf of any Party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 12.10.

12.12 Expenses. Except as otherwise provided in this Agreement, each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. Sales or use taxes shall be paid by Purchaser. Transfer taxes and similar fees arising from the conveyance of the Assets to Purchaser shall be paid by Seller.

12.12 Guarantor. Kim Family Partnership Ltd. hereby agrees to guaranty the prompt performance of Purchaser of the obligations set forth in this Agreement relating to the acquisition of the Stations

12.13 Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered will be an original, and all of which when executed will constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by electronic image transmission in PDF format will constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by electronic image scan transmission in PDF format will be deemed to be their original signatures for all purposes. Any Party that delivers an executed counterpart signature page by



electronic image transmission in PDF format will, upon the request of the other Party, promptly thereafter deliver a manually executed counterpart signature page to such Party; *provided, however*, that the failure to do so will not affect the validity, enforceability, or binding effect of this Agreement.

Signature Page to follow

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed as of the day and year first above written.

Seller:

Mortenson Broadcasting Co. of Texas, Inc.,  
a Texas corporation

By: Jack M. Mortenson  
Jack M. Mortenson, President

Purchaser:

KTN Broadcasting, LLC,  
a Texas limited liability company

By: \_\_\_\_\_  
Odes H. Kim, Manager

Guarantor:

Kim Family Partnership Ltd.,  
a Texas limited partnership

By: \_\_\_\_\_  
Ann Kim, as Manager of  
Kim Management, LLC, General Partner

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed as of the day and year first above written.

**Seller:**

Mortenson Broadcasting Co. of Texas, Inc.,  
a Texas corporation

By: \_\_\_\_\_  
Jack M. Mortenson, President

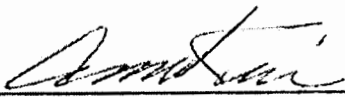
**Purchaser:**

KTN Broadcasting, LLC,  
a Texas limited liability company

By:   
Odes H. Kim, Manager

**Guarantor:**

Kim Family Partnership Ltd.,  
a Texas limited partnership

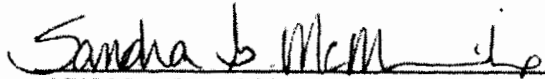
By:   
Ann Kim, as Manager of  
Kim Management, LLC, General Partner

STATE OF KENTUCKY

COUNTY OF FAYETTE

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared Jack M. Mortenson, with whom I am personally acquainted (or was proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be to be the President of Mortenson Broadcasting Co. of Texas, Inc., a Texas corporation, the within named Seller, and that he as President of Seller, being authorized to do so, executed this Agreement for the purposes therein contained.

WITNESS my hand and official seal in Fayette County, Kentucky, this the 2<sup>nd</sup> day of January 2019.

  
NOTARY PUBLIC  
ID# 545927

My commission expires: December 7, 2019

STATE OF TEXAS:

COUNTY OF DALLAS:

Before me, the undersigned authority, a Notary Public in and for the State and City aforesaid, personally appeared Odes H. Kim, with whom I am personally acquainted (or was proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be to be Manager of KTN Broadcasting, LLC, a Texas limited Liability company, and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office in Dallas County, Texas, this the 2<sup>nd</sup> day of January 2019.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires: \_\_\_\_\_

STATE OF KENTUCKY

COUNTY OF FAYETTE

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared Jack M. Mortenson, with whom I am personally acquainted (or was proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be to be the President of Mortenson Broadcasting Co. of Texas, Inc., a Texas corporation, the within named Seller, and that he as President of Seller, being authorized to do so, executed this Agreement for the purposes therein contained.

WITNESS my hand and official seal in Fayette County, Kentucky, this the 2<sup>nd</sup> day of January 2019.

\_\_\_\_\_  
NOTARY PUBLIC

ID# \_\_\_\_\_

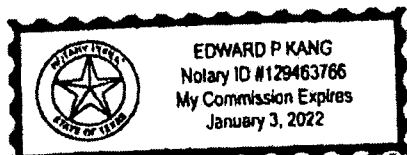
My commission expires: \_\_\_\_\_

STATE OF TEXAS:

COUNTY OF DALLAS:

Before me, the undersigned authority, a Notary Public in and for the State and City aforesaid, personally appeared Odes H. Kim, with whom I am personally acquainted (or was proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be to be Manager of KTN Broadcasting, LLC, a Texas limited Liability company, and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office in Dallas County, Texas, this the 2<sup>nd</sup> day of January 2019.



  
\_\_\_\_\_  
NOTARY PUBLIC

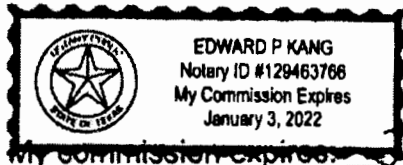
My commission expires: January 3, 2022

STATE OF TEXAS:

COUNTY OF DALLAS:

Before me, the undersigned authority, a Notary Public in and for the State and City aforesaid, personally appeared Ann Kim, with whom I am personally acquainted (or was proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged herself to be to be Manager of Kim Management, LLC, a Texas limited partnership, the General Partner of Kim Family Partnership Ltd., a Texas limited partnership, and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal at office in Dallas County, Texas, this the 2nd day of January 2019.



  
\_\_\_\_\_  
NOTARY PUBLIC

my commission expires: January 3, 2022

**Exhibit E**

***Time Brokerage Agreement***

The Time Brokerage Agreement is attached.

## TIME BROKERAGE AGREEMENT

**THIS TIME BROKERAGE AGREEMENT (the “Agreement”)**, entered into as of the \_\_\_\_th day of \_\_\_\_, 201\_\_, by and between **KTN Broadcasting, LLC**, a Texas limited liability company, (“Licensee”), and **Mortenson Broadcasting Co. of Texas, Inc.**, a Texas corporation, (“Broker”):

**WHEREAS**, Licensee holds a license from the Federal Communications Commission (the “Commission” or the “FCC”) to operate AM broadcast station KHAVN, operating on 970 kHz, at Fort Worth, Texas, FCC Facility, ID. No. 63780 and holds a permit from the FCC to construct FM translator station K237HD, at Fort Worth, Texas, FCC Facility ID No. 202305 (the “Station”); and

**WHEREAS**, Licensee wishes to sell to Broker and Broker wishes to purchase from Licensee the broadcast time on the Station, subject to the terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Sale and Purchase of Broadcast Time.** Subject to the provisions of this Agreement and the applicable rules, regulations and policies of the FCC, Licensee agrees to make the Station’s broadcast transmission facilities available to Broker for the broadcast of Broker’s programs on the station originating either from Broker’s studio or from Licensee’s studio. Broker will have the right to broadcast on the Station up to twenty-four (24) hours of programming each day during the Term, as defined herein. Licensee shall be entitled to provide programming to be aired on the Station in the first two (2) hours after local sunrise on Sunday mornings, should it be deemed necessary to meet Licensee’s obligations to present public interest programming on the Station.
2. **Term.** The term of this Agreement (the “Term”) shall commence on the date hereof (the “Effective Date”) and unless earlier terminated as provided in this Agreement, shall continue in force and effect for a period of eight (8) years, provided, however, that this Agreement shall also



terminate prior to the expiration of the Term (1) ninety (90) days after the retirement, adjudicated legal disability or death of Jack Mortenson or (2) upon the deadline date specified in a final order issued by the FCC that is no longer subject to judicial or administrative review mandating the surrender of the license of either the Station or Station KKGM(AM), Fort Worth, Texas.

3. **Licensee Authority.** Notwithstanding anything to the contrary in this Agreement, Licensee shall have authority and power over the operation of the Station during the Term. Licensee shall be responsible for compliance with the rules and regulations of the FCC and for complying with the FCC's requirements for meeting its local service obligations, including but not limited to Licensee's right, in its absolute discretion, to pre-empt Broker's programming. Should Licensee pre-empt Broker's programming for more than two (2) hours of any day during the Term, Licensee shall remit to Broker all gross advertising revenues it receives from commercials and time sales during such pre-emption, or revenues lost by Broker as a result of such pre-emption, whichever is greater.
4. **Facilities.** During the Term, Licensee will ensure that its broadcasting transmission facilities for the Station remain available for the broadcasting of programs at the maximum power permitted by the Station's license, and without any degradation of sound or signal other than as may be caused by normal terrain or atmospheric factors, during the hours of operation stated in the Station's FCC license, seven (7) days per week, subject to normal periods of maintenance.
5. **Compensation.** The brokerage fee to be paid by Broker to Licensee under this Agreement shall be one dollar (\$1.00) per month for the life of this Agreement. Broker may prepay this fee in advance, in whole or in part. This fee is in addition to the monthly reimbursement by Broker to Licensee for utilities, maintenance and miscellaneous expenses described herein and in Schedule A.
6. **Political Broadcasting.** Licensee shall oversee and take ultimate responsibility with respect to the provision of equal opportunities, lowest unit charge, and reasonable access to political

candidates and compliance with the political broadcast rules of the FCC. During the Term, Broker shall cooperate with Licensee as Licensee complies with its broadcast responsibilities, and shall supply such information promptly to Licensee as may be necessary to comply with the political time, recordkeeping and lowest unit charge requirements of federal law.

7. **Licensee's Responsibility for Expenses.** The parties agree and understand that their ability to enter into and carry out this Agreement is based upon the case law decisions of the Commission and its Media Bureau. The parties recognize that Licensee shall solely be responsible for payment of the direct and individual operating costs not directly related to Broker's use of the Station, including but not limited to:
- a. Reasonable and prudent salaries and/or wages of management and maintenance personnel hired by Licensee whose duties are limited to overseeing the operation of the Station;
  - b. Mortgage interest or lease payments on the Station's transmitter site, studio site and physical equipment, if any;
  - c. All required Station maintenance, except for production facilities operated by Broker;
  - d. Reasonable and prudent costs and expenses (including legal costs and filing fees) incurred in connection with the Station's compliance with FCC rules and regulations;
  - e. Station's liability and/or libel and slander insurance, provided, however, that Broker shall have such insurance for programming it broadcasts;
  - f. Power and other utility bills incurred through the operation of the Station;
  - g. Insurance costs relating to Licensee's owned assets and operations; and
  - h. All fines and fees imposed by the Commission or by any other governmental authority arising from the operation of the Station.
  - i. All fines and fees imposed by the Commission or by any other governmental authority arising from the operation of the Station, other than those resulting from Brokers programming. Licensee

shall make all necessary payments in a timely fashion and from its own accounts. Licensee shall be reimbursed by Broker for the expenses as provided for in this paragraph and in Schedule A.

8. **Broker's Responsibility for Expenses.** Other than those expenses enumerated in paragraph 7 above, Broker shall bear the following expenses incurred by the Station in connection with programming, sales and promotions provided by it, including but not limited to:
- a. Compensation paid to all personnel provided and/or employed by Broker, including any salaries, insurance provided as an employee benefit, workmen's compensation, and pension plans, if any;
  - b. Commissions due to persons generating revenue for Broker;
  - c. Fees paid for programming, news and/or sales support services related to Broker's provision of programming on the Station;
  - d. Costs of the Station's promotions and advertising;
  - e. Music licensing fees (i.e., BMI, ASCAP, SESAC) incurred as a result of Broker's programming airing on the Station; and
  - f. All other costs incurred by Broker in the production and delivery of programming to Station, including, but not limited to, taxes, insurance, and utilities.

In addition, Broker shall reimburse Licensee for those legitimate and prudent expenses set forth above and in Schedule A which have been incurred by Licensee in its operation of the Station during the term of this Agreement, as well as the annual regulatory fees assessed by the FCC on the Station. Reimbursement shall be made within two (2) days of Broker's receipt of proof of Licensee's payment.

9. **Bankruptcy; Insolvency.** In the event that Licensee and/or the Station is voluntarily or involuntarily subject to a petition in bankruptcy before a United States Bankruptcy Court, Broker shall have the right to rescind this Agreement unilaterally without penalty. Likewise, in the event that Licensee is subject to a state court proceeding relative to any insolvency on its part, Broker shall have the right to rescind this Agreement unilaterally without penalty.

10. **Special Events.** Licensee reserves the right, in its discretion, to provide non-entertainment programming to meet its obligation to the Commission to serve the public interest, convenience and necessity. In addition, Licensee reserves the right to require Broker to broadcast special events of importance to the public within the Station's primary service contour. In all such cases, Licensee will use its best efforts to give Broker reasonable notice of its intention to require such broadcasts.
11. **Payola.** Broker represents that neither it nor its employees, contractors or agents will accept any compensation or any type of gift or gratuity of any kind whatsoever, regardless of its value or form, including but not limited to, a commission, discount, bonus, materials, supplies or other merchandise, services or labor, whether or not pursuant to written contracts or agreements between Broker and merchants or advertisers, unless the payer is identified in the program as having paid for or furnished such consideration in accordance with the Communications Act of 1934, as amended, and/or the Rules and Regulations of the Commission. Broker agrees to provide upon request of Licensee an affidavit or affidavits containing representations that Broker and all of its employees, contractors or agents are aware of the Station's "payola" policy and will abide by it.
12. **Brokers.** There are no business brokers (or any other person or entity who would be entitled to a "finder's fee" or commission) involved on behalf of either party in the coming together of the parties to reach this Agreement.
13. **Representations of Licensee.** Licensee makes the following representations which it agrees are material in inducing Broker to enter into this Agreement:
  - a. Licensee possesses the requisite legal capacity to freely enter into this Agreement and to be bound according to its terms, and that it is entering into this Agreement voluntarily and without duress of any kind; and

- b. This Agreement constitutes the legal, valid and binding obligation of Licensee enforceable in accordance with its terms;
  - c. There are no agreements in existence pertaining to the Station which would prevent or hinder Licensee from performing under this Agreement; and
  - d. To the best of Licensee's knowledge, there are no administrative, civil or criminal legal actions, pending or to Licensee's knowledge, threatened, affecting the Station; and
  - e. Licensee shall timely and diligently pursue a renewal of the FCC license of the Station to extend the current expiration date of August 1, 2021.
14. **Representations of Broker.** Broker makes the following representations which it agrees are material in inducing Licensee to enter into this Agreement:
- a. Broker possesses the requisite legal authority to freely enter into this Agreement and to be bound according to its terms; and
  - b. Broker is entering into this Agreement voluntarily and without duress of any kind; and
  - c. This Agreement constitutes the legal, valid and binding obligation of Broker enforceable in accordance with its terms.
15. **Taxes.** Subject to the expense reimbursement provision of Schedule A, Licensee shall be solely responsible for any and all real estate and ad valorem property taxes applicable to the Station.
16. **Expenses.** Other than as expressly agreed upon herein, each party shall bear its own expenses in connection with the signing and consummation of this Agreement.
17. **Indemnification.**
- a. **By Broker.** Broker shall indemnify and hold Licensee harmless from and against any and all claims, losses, costs, liabilities, damages and expenses of every kind, nature and description (including reasonable attorney's fees) arising out of or resulting from Broker's broadcasts pursuant to this Agreement or any breach of its obligations under this Agreement by Broker.

b. By Licensee. Licensee shall indemnify and hold Broker harmless from and against any and all claims, losses, costs, liabilities, damages and expenses of every kind, nature and description arising out of or resulting from programming originated by Licensee or by any breach of its obligations under this Agreement by Licensee. Licensee acknowledges that the continued use of the Station's call letters is a material factor in Broker's decision to enter into this Agreement. Licensee and Broker agree that Station shall air the call letters "KHVN" as the legal station identification, pursuant to Section 73.1201 of the rules of the FCC (47 C.F.R. 73.1201) at the beginning of each time of operation and hourly, as close to the beginning of the hour as possible, at a natural break in programming.

c. Notice. Neither Licensee nor Broker shall be entitled to indemnification pursuant to this Section unless such claim from indemnification is asserted in writing delivered to the other party, and, where such claim, loss, costs, liability, damage or defense involves a legal action, the party against whom indemnification is sought has been given written notice sufficiently in advance to permit such party to defend, contest, or compromise such action at its own cost and risk.

d. Survival. The obligation of Broker and licensee to indemnify and hold each other harmless as set forth in this Agreement shall survive any termination of this Agreement and shall continue until the expiration of all applicable statutes of limitations as to the parties hereto and to claims of third parties.

18. Notices. All notices required or permitted to be given hereunder shall be in writing and copies shall be effective when sent by registered or certified mail, postage and fees prepaid, addressed as follows:

If to Licensee:

KTN Broadcasting, LLC  
Attn: Odes H. Kim  
11363 Denton Drive, Suite 127  
Dallas, TX 75229

With a copy to:

Erwin G. Krasnow, Esq.  
Garvey Schubert Barer  
1000 Potomac Street, N.W.  
Suite 200  
Washington, DC 20007

If to Broker:

Mortenson Broadcasting Co. of Texas, Inc.  
Attn: Jack Mortenson  
Financial Center--Key Bank Square  
960 West State Street, Suite 141  
Alliance, OH 44601

With a copy to:

Jerrold Miller, Esq.  
Miller & Neely, PC  
3750 University Boulevard, West  
Suite 203  
Kensington, MD 20895

19. **Headings.** The headings contained in this Agreement are included for the convenience of the parties only, and do not in any way modify, interpret or alter the meaning of the provisions hereof.
20. **Entire Agreement.** This Agreement, including Schedule A hereto, supersedes any prior agreements between the parties and contains the entire and whole agreement of the parties with respect to the subject matter hereof, and may not be modified, amended or changed in any way unless in writing signed by all of the parties hereto. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.
21. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns. Neither Broker

nor Licensee may assign this Agreement without the prior written approval of the other party. An assignment shall not relieve the parties of their obligations to guarantee the prompt performance of any and all of the obligations hereunder.

22. **Governing Law.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas (without regard to the choice of law provisions thereof). In the event that a dispute should arise under this Agreement that cannot be resolved by negotiation, the dispute shall be submitted to mediation under the Uniform Mediation Act (even if said Act has not been adopted in the State of Texas). Upon written notice by one party to the other of a dispute for mediation, seven (7) days shall be provided for the answer, including an indication of the answering party's willingness to move forward with mediation. In the event that one or both parties determine that mediation of an identified dispute is unacceptable, the dispute shall be settled by binding arbitration conducted in Dallas, Texas, in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association. The prevailing party in an action brought to enforce the performance or compliance of any provisions of this Agreement, may recover reasonable attorney's fees and costs from the prevailing party.
23. **Licensee's Certification.** Licensee hereby certifies that it maintains ultimate control over the Station's facilities, including specifically, control over the finances, personnel and programming of the Station.
24. **Broker's Certification.** Broker hereby certifies that its relationship with Licensee complies with the provisions of Section 73.3555(a) of the Commission's Rules, which governs the maximum number of commercial broadcast stations in a particular geographical area in which one party may have an attributable interest.
25. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be considered an original counterpart, and shall become a binding agreement when the parties



shall have each executed one counterpart. Any facsimile signature shall be given the same force and effect as an original signature.

[SIGNATURE PAGE FOLLOWS]

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

**LICENSEE**

**KTN Broadcasting, LLC**

By: \_\_\_\_\_  
Odes H. Kim, Manager

**BROKER**

**Mortenson Broadcasting Co. of Texas, Inc.**

By: \_\_\_\_\_  
Jack M. Mortenson, President

## SCHEDULE A

Broker hereby agrees to pay Licensee a sum equal to the Reimbursable Expenses, as defined below, for the previous month, due within two (2) business days of the receipt by Broker of a written statement from Licensee itemizing in reasonable detail with backup documentation the Reimbursable Expenses for such month. Time is of the essence with respect to such payment, and failure to pay the Reimbursable Expenses within five (5) business days after written notice that such payment is past due shall constitute immediate grounds for termination of this Agreement, provided, however, that in the event of any dispute over whether an expense item properly constitutes a Reimbursable Expense, the failure to pay such particular disputed amount shall not be grounds for termination. The payment of any disputed item shall not excuse the payment of other Reimbursable Expenses.

The Reimbursable Expenses shall include the reasonable and prudent expenses of Licensee in owning and operating the Station which shall include:

- a) Costs relating to the maintenance of the Station's transmission equipment and facilities, including the antenna, transmitter and transmission line;
- b) All repairs as are necessary to maintain full-time operation of the Station with its maximum authorized facilities;
- c) The current rent, if any, paid to a third party for lease of space on the tower or for lease of land for the tower site, including any space in any transmitter building, and rent, if any, for the current studio and office facilities;
- d) The utility expenses, including but not limited to electricity, Internet and telephone costs;
- e) Licensee's reasonable insurance costs relating to Licensee's assets and operations relating;
- f) The salaries incurred and other costs and expenses of Licensee's employees at the Station;
- g) The reasonable and prudent administrative costs of operating the Station;
- h) Any gross receipts, sales, real property, personal property, excise and/or any other taxes of any nature whatsoever related to the Station;

- i) If FM Translator Station K237HD is not on the air as of the Effective Date, the reasonable and prudent costs of constructing the station;
- j) All costs and expenses (including legal costs and filing fees), with such costs and expenses to be approved in advance by Broker to be incurred in connection with the Station's compliance with FCC rules and regulations; and
- k) Any other operating costs and expenses (including legal costs and filing fees, with such costs and expenses to be approved in advance by Broker), which are reasonably required to be paid by Licensee to maintain the broadcast operations of the Station and not any other station licensed to Licensee in accordance with FCC rules and policies and applicable law.