

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the 8<sup>th</sup> day of DECEMBER, 2010 by and between Mountain Community Translators, LLC ("Seller"), and 4-K's, LLLP ("Buyer").

### Background

WHEREAS, Seller holds a license (the "License") issued by the Federal Communications Commission ("FCC") for FM Translator Station K229BS, Lakewood, Colorado (Facility ID No.140231) (the "Station"); and

WHEREAS, subject to FCC consent, Seller wishes to sell the License for the Station to Buyer, and Buyer wishes to purchase same from Seller.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, representations and covenants contained herein, the parties, intending to be bound legally, subject to the terms and conditions set forth herein agree as follows:

#### **1. Assignment and Sale of License.**

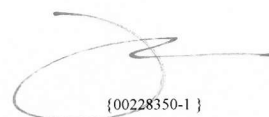
a. Subject to the terms and conditions set forth in this Agreement, Seller agrees to convey, transfer and assign to Buyer at the Closing (as defined in Section 3) all of Seller's right, title and interest in and to the License for the Station (copies of which are annexed hereto in Schedule 1(a)) and all assets used or useful in the operation of the Station including leases and contracts listed in Schedule 1(a)-2. There are no other assets relating to the Station being sold.

b. The consideration to be paid for the License shall be TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (the "Purchase Price"). The Purchase Price shall be paid as follows:

i) A TWENTY-FIVE THOUSAND DOLLAR (\$25,000.00) escrow deposit ("Deposit") shall on execution of this Agreement be delivered to Gammon & Grange, P.C. to be held in escrow pursuant to an Escrow Agreement in the form as attached Schedule 1(b)i. The Deposit shall be applied to the Purchase Price at closing. In the event this Agreement is breached by Seller, provided Buyer is not itself in breach, the Deposit shall be returned to Buyer. The Deposit shall also be returned to Buyer in the event the Agreement is terminated pursuant to paragraph 7(a). In the event this Agreement is breached by Buyer the Deposit shall be retained by Seller as liquidated damages.

ii) TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000.00) at the closing by cashier's check or wire transfer.

c. As additional consideration, Buyer agrees to enter a long term Tower Lease Agreement in the form attached as Schedule 1(c).



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2. **FCC Consent.** Within three (3) business days of the execution of this Agreement, the parties shall file an application (the "Assignment Application") for FCC consent to the assignment of the License for the Station (the "FCC Consent"). Each party shall be responsible for its own costs relating to the preparation of the Assignment Application. Buyer and Seller agree to proceed expeditiously and with due diligence to use their best efforts to cooperate with each other in seeking the FCC's approval of the transaction contemplated herewith.

3. **Closing.** Within ten (10) business days after the FCC Consent in an FCC public notice becomes final, that is no longer subject to appeal or review, the parties shall consummate the transaction contemplated by this Agreement at a closing (the "Closing"); provided, however, Buyer, at its sole discretion, may consummate the transaction on grant of FCC consent prior to finality. At the Closing, Seller shall deliver to Buyer a Bill of Sale, an Assignment and Assumption of License, an executed tower lease, and any other documents of conveyance reasonably requested by Buyer and necessary to consummate the transaction contemplated by this Agreement. Seller shall deliver any necessary third party consents. Buyer shall deliver to Seller an Assignment and Assumption of License, an executed tower lease agreement, and any other documents of conveyance reasonably requested by Seller and necessary to consummate the transaction contemplated by this Agreement. Buyer and Seller shall each deliver to the other a certificate executed by an officer or managing member of the respective companies certifying that the representations and warranties of such party contained herein are true and correct as of the Closing Date, as if made on such date, as well as duly adopted resolutions by Buyer and Seller authorizing the transaction herein.

4. **Pre-Closing Covenants.** Should Buyer wish to modify the facilities of the Station prior to Closing, Seller will cooperate in the filing of such applications and provide written permission to Buyer for filing with the FCC, as necessary; however, Buyer shall be responsible for the payment of all legal and engineering costs associated with such filings. The parties will cooperate fully with each other in fulfilling their respective obligations under this Agreement, including using their respective reasonable best efforts to obtain the required FCC Consent.

5. **Condition Precedent to Closing.** The parties acknowledge and agree that the FCC Consent to the assignment of the License from Seller to Buyer is a condition precedent to the Closing provided that such Consent is final, that is, no longer subject to reconsideration or appeal.

6. **Representations and Warranties.** Each party hereto expressly represents and warrants that it has the full power and authority to enter into and execute this Agreement. Subject only to the FCC Consent, there is no constraint upon either party's legal ability to perform its responsibilities hereunder. Seller represents and warrants to Buyer that the License has been validly issued by the FCC, that it is in full force and effect, that it constitutes all of the authorizations issued by the FCC in connection with the Station and that it is not subject to any restriction or condition that would limit the operation of the Station. Seller further warrants that the authorizations and station assets shall be unencumbered in any way and shall be free and clear of all claims.

**7. Additional Seller Warranties.**

a. There are no outstanding unsatisfied FCC citations or cease and desist orders against the Station, and that any such FCC citations or orders subsequently issued shall be satisfied prior to Closing.

b. Seller is aware of no ongoing investigation of Seller or the Station by the FCC or by any other federal or state governmental agency, or of any conditions at the Station which are in violation of any FCC Rule or policy.

c. Seller is aware of no litigation, proceeding, or investigation whatsoever, pending or threatened against or relating to Seller, its business, or the property to be transferred hereunder and that it knows of no reason why the FCC would not find it qualified to assign its license.

d. As of the Closing Date (defined below), the Equipment shall be in the same or equivalent condition as at the date hereof, wear and tear and ordinary usage excepted.

e. Seller has, or will have as of the Closing Date, good and marketable title to all assets being sold herein.

f. The execution and delivery of this Agreement and the performance of all obligations hereunder shall have been duly authorized, and this Agreement constitutes a valid and binding agreement of the Seller, enforceable in accordance with its terms.

g. To the best of Seller's knowledge, Seller has filed all forms and reports with the FCC which are required to be filed with respect to the Station, including any required requests for silence authorizations.

h. Seller indemnifies and holds Buyer harmless from any and all claims of trade creditors, judgment creditors, lien holders, purported owners, or any other person making claim by or through Seller or asserting any claim on the Assets purchased under this Agreement.

**8. Termination.** This Agreement may be terminated at any time prior to the Closing as follows:

a. by mutual written consent of Buyer and Seller; or

b. by written notice from a party that is not then in material breach of this Agreement if the other party has failed to cure a material breach of any of its representations, warranties or covenants under this Agreement within fifteen (15) days after receipt of written notice of such breach from the party not in material breach; or

c. by written notice of a party to the other party, if the Closing shall not have occurred by the first anniversary from the filing of the Assignment Application, provided, however, that if the Closing shall not have occurred because the FCC Consent shall not have

been granted, this Agreement may not be terminated by a party who materially contributed to the delay in the issuance of the FCC Consent.

**9. Effect of Termination.**

a. If this Agreement is terminated by the parties pursuant to Section 8(a) or (c), then neither party shall have any further liability to the other, and this Agreement shall be deemed null and void and of no further force and effect.

b. If this Agreement is terminated by Seller or Buyer pursuant to Section 8(b), Seller shall be entitled to retain the Deposit as liquidated damages and Buyer shall be entitled to specific performance as provided in Section 10(a), as its sole remedy.

**10. Miscellaneous.**

a. Specific Performance. The parties recognize that if Seller refuses to perform its obligations under this Agreement, monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled to obtain specific performance of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law and to interpose no opposition to the propriety of specific performance as a remedy.

b. Notices. All notices, demands, requests or other communication required or permitted hereunder shall be in writing and sent by overnight air courier service (charges prepaid), or personal delivery to the appropriate party at the address specified below (or to such other address which a party shall specify to the other party in writing):

**If to Seller:**

Victor A. Michael, Jr.  
Mountain Community Translators, LLC  
87 Jasper Lake Road  
Loveland, CO 80537

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

A. Wray Fitch III  
Gammon & Grange, P.C.  
8280 Greensboro Drive, 7<sup>th</sup> Floor  
McLean, VA 22102-3807

**If to Buyer:**

James Merilatt  
4-K's, LLLP  
1717 Whistle Pig Lane  
Broomfield, CO 80020

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

Kathleen Victory  
Fletcher Heald & Hildreth, PLC  
1300 N. 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209

Each party may change its address for notice purposes by providing written notice in accordance with this Section.

c. Assignment and Binding Effect. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, except that Buyer may assign its rights and obligations under this Agreement without the prior consent of Seller to any business entity which owns and controls Buyer, which Buyer owns and controls or which is owned and controlled by the same entity which owns and controls Buyer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

d. Governing Law. Except to the extent governed by federal law, this Agreement shall be governed, construed and enforced in accordance with the laws of the State of Colorado, without regard to the choice of law provisions thereof.

e. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

f. Entire Agreement. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior negotiation, memoranda and agreements between the parties with respect to the subject matter hereof, and may not be altered, changed, modified or amended except by a written instrument signed by each of the parties hereto.

g. No Waiver. No provision or condition of this Agreement shall be waived by either party hereto except by a written instrument delivered to the other party and signed by the party consenting to and to be charged with such waiver.

h. Other and Further Documents. The parties hereto agree to execute, acknowledge and deliver, before, at or after the Closing, such other and further instruments and documents as may be reasonably necessary to implement, consummate and effectuate the terms of this Agreement.

i. Good Faith. All parties hereto shall act with reasonable diligence, and in good faith, in performing and discharging their respective duties and obligations hereunder.

j. Headings and Cross References. Headings of the sections have been included for convenience of reference only and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross references to sections herein shall mean the section of this Agreement unless otherwise stated or clearly required by the context.

k. Litigation Expenses. If a formal legal proceeding is instituted by a party to enforce that party's rights under this Agreement, the prevailing party in the proceeding shall be reimbursed by the other party for all reasonable costs incurred thereby, including but not limited to reasonable attorney's fees.

l. Expenses. Except as otherwise provided herein, each party shall be solely responsible for all fees and expenses each party incurs in connection with the transaction contemplated by this Agreement, including, without limitation, legal fees incurred in connection herewith. Any filing fees shall be split evenly between Buyer and Seller.

*[Signatures on following page]*

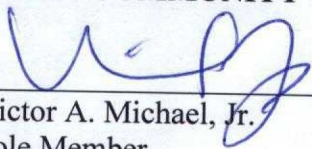


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above

**SELLER:**

**MOUNTAIN COMMUNITY TRANSLATORS, LLC**

By: \_\_\_\_\_

  
Victor A. Michael, Jr.  
Sole Member

**BUYER:**

**4-K's, LLLP**

By: \_\_\_\_\_

James Merilatt  
President

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

**SELLER:**

**MOUNTAIN COMMUNITY TRANSLATORS, LLC**

By: \_\_\_\_\_  
Victor A. Michael, Jr.  
Sole Member

**BUYER:**

**4-K's, LLLP**

By: \_\_\_\_\_  
James Merilatt  
President



**SCHEDULE 1(a)  
FCC AUTHORIZATIONS**

<u>Application</u>	<u>File Number</u>	<u>Expiration Date</u>
License to Cover	BLFT-20100719AFS	04/01/2013

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**SCHEDULE 1(a)-2**  
**STATION ASSETS**

Nicom NT-250 FM transmitter  
Omnia "3" FM audio processor  
Andrew LDF5-50A, 50 feet, transmission line  
Nicom BKG-77, one bay FM transmit antenna

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**SCHEDULE 1(b)i  
ESCROW AGREEMENT**

**SCHEDULE 1(c)  
TOWER LEASE AGREEMENT**

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## ESCROW AGREEMENT

This Escrow Agreement ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between Mountain Community Translators, LLC ("Seller"); 4-K's, LLLP ("Buyer"); and Gammon & Grange, P.C. ("Escrow Agent") (individually, a "Party" and, collectively, the "Parties").

### WITNESSETH

WHEREAS, Seller and Buyer entered into an Asset Purchase Agreement dated \_\_\_\_\_, 2010 (the "Purchase Agreement"), for the sale and purchase of the assets used or useful in the business and operation of translator station K229BS, Lakewood, Colorado (Facility ID No. 140231) ("Station"), including the licenses issued by the Federal Communications Commission ("FCC");

WHEREAS, the Parties desire Escrow Agent to hold and Escrow Agent is willing to hold certain deposit monies in escrow as contemplated by the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth herein, the Parties, intending to be legally bound, hereby agree as follows:

1. **ESCROW DEPOSIT.** Escrow Agent hereby acknowledges that Buyer has deposited with Escrow Agent the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) (the "Escrow Deposit"). The Escrow Deposit shall be invested in a federally insured interest-bearing account (the "Escrow Account") by Escrow Agent and the Escrow Deposit, together with all accrued interest thereon (collectively, the "Escrowed Funds"), shall be held in accordance with the terms of this Agreement and shall be released by Escrow Agent as required by the terms of this Agreement. Buyer shall provide the Escrow Agent with Buyer's taxpayer identification number to be utilized by the Escrow Agent for the creation of the Escrow Account.

### 2. **RELEASE FROM ESCROW**

2.1 **Release.** The Escrow Agent shall retain the Escrowed Funds, which shall be released only upon receipt of (i) joint written instructions executed by Seller and Buyer, as so directed therein or (ii) a final order of a court of competent jurisdiction. An order shall be deemed "final" when, by lapse of time or otherwise, it is no longer subject to review, reconsideration, appeal or stay. Escrow Agent shall in no event be required to resolve any controversy concerning the Escrowed Funds or take any action concerning any such controversy. Upon termination of the escrow provided for herein, Buyer and Seller agree to execute and deliver to Escrow Agent such further documents as Escrow Agent may reasonably request to

evidence the termination of this Escrow Agreement and to cause Escrow Agent to release the Escrowed Funds.

### 3. ESCROW AGENT'S OBLIGATIONS

3.1 Resignation and Removal. The Escrow Agent may resign and be discharged from its duties hereunder at any time by giving notice of such resignation to the other Parties specifying a date not less than thirty (30) days after the giving of such notice when such resignation shall take effect. Promptly after such notice, a successor Escrow Agent shall be appointed by mutual agreement of Seller and Buyer, such successor to become the Escrow Agent hereunder upon the resignation date specified in such notice. If Seller and Buyer are unable to agree upon a successor Escrow Agent within twenty (20) days after such notice, the Escrow Agent shall be entitled to appoint its successor, which may be another law firm, or a bank or financial institution. The Escrow Agent shall continue to serve as Escrow Agent until its successor has assumed in writing the Escrow Agent's obligations hereunder and receives the Escrowed Funds. Seller and Buyer may agree at any time to substitute a successor Escrow Agent by giving notice thereof to the Escrow Agent then acting.

#### 3.2. Performance.

(a) The duties and responsibilities of the Escrow Agent are limited to those specifically set forth herein. The Escrow Agent shall not be liable for any mistake of fact or error of judgment made in good faith or for any acts or omissions by it of any kind other than willful misconduct or gross negligence. The Escrow Agent shall be entitled to rely, and shall be protected in doing so, upon (i) any written notice, instrument or signature believed by it in good faith to be genuine and to have been signed or presented by the proper Party or Parties duly authorized to do so, and (ii) the advice of counsel (which may be of the Escrow Agent's own choosing). The Escrow Agent shall have no responsibility for the contents of any writing submitted to it hereunder and shall be entitled in good faith to rely without any liability upon the contents thereof. Moreover, the Escrow Agent shall have no responsibility to maximize the interest earned on the Escrow Deposit, nor will the Escrow Agent be liable for any failure of the institution in which the Escrowed Funds are being held.

(b) In the event of any dispute relating to the right of possession or the disposition of the Escrowed Funds, the Escrow Agent will retain dominion and control over the Escrowed Funds until such dispute shall either have been settled by mutual agreement of Buyer and Seller with notice thereof to Escrow Agent or pursuant to a final order of a court of competent jurisdiction, whereupon the Escrowed Funds will be paid in accordance with such mutual agreement of the Parties or such final order. If a dispute relating to the right of possession or the disposition of the Escrowed Funds is taken to a court of competent jurisdiction, the Escrow Agent reserves the right to institute an interpleader action as set forth in paragraph 3.4, below. It is contemplated that the Escrow Agent will not incur any cost or expense in the performance of

its duties hereunder; and, in the event of a dispute, Escrow Agent shall be reimbursed for reasonable attorneys' fees and out-of-pocket expenses incurred in connection with such dispute and the settlement thereof as provided in paragraph 3.4, below. In no event shall Escrow Agent be under any duty to institute or defend any such proceeding, nor shall Escrow Agent be required under any circumstances to take any action requested by Seller or Buyer until indemnified to Escrow Agent's reasonable satisfaction by the Party or Parties requesting such action.

3.3. Indemnification. Seller and Buyer, jointly and severally, agree to indemnify the Escrow Agent and hold him harmless against any and all liabilities incurred by him hereunder, except for liabilities incurred by the Escrow Agent resulting from his own willful misconduct or gross negligence. As between Seller and Buyer, each Party shall be responsible for the payment of one-half of any such liabilities.

3.4. Interpleader. If, at any time prior to the termination of this Escrow Agreement as provided herein, either Buyer or Seller should make demand upon or file suit against the Escrow Agent for the Escrowed Funds, the Escrow Agent shall be authorized to bring an interpleader action in any court of competent jurisdiction. If a suit is commenced against the Escrow Agent, he may answer by way of interpleader and name Buyer and Seller (or either of them) as additional parties to such action, and the Escrow Agent may tender the Escrowed Funds into such court for determination of the respective rights of Seller and Buyer thereto. Upon such tender, the Escrow Agent shall be entitled to receive from Seller and Buyer Escrow Agent's reasonable attorneys' fees and expenses incurred in connection with said interpleader action. As between Seller and Buyer, such fees, expenses and other sums shall be paid in the case of a dispute between Buyer and Seller by the Party which fails to prevail in the proceedings brought in a court of competent jurisdiction to determine the appropriate distribution of the Escrowed Funds or, in the case of a claim against the Escrowed Funds by a third party claiming by or through Seller or Buyer, by Seller or Buyer, as the case may be. If and when the Escrow Agent shall so interplead such Parties, or either of them, and deliver the Escrowed Funds to the clerk of such court, all of its duties shall cease and it shall have no further obligations hereunder. Nothing herein shall prejudice any other right or remedy of the Escrow Agent.

3.5. Discharge by Delivery. After the Escrow Agent has delivered the Escrowed Funds pursuant to the terms of this Escrow Agreement, the Escrow Agent shall have discharged all of its obligations hereunder and neither Seller nor Buyer shall thereafter have any claim against the Escrow Agent on account of this Escrow Agreement.

3.6. Conflict. In the event of any conflict between the terms and provisions of this Escrow Agreement and those of the Purchase Agreement, the terms and provisions of this Escrow Agreement shall control as to the rights, duties, obligations and liabilities of the Escrow Agent, and the terms of the Purchase Agreement shall control as to the respective rights, duties, obligations and liabilities of Seller and Buyer.



4. MISCELLANEOUS.

4.1. Assignment. Except as may be provided in the Purchase Agreement and in Section 3.1 of this Escrow Agreement, no Party may assign or delegate its rights and obligations hereunder without the prior written consent of the other Parties.

4.2. Binding Effect. This Escrow Agreement will be binding upon, inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties.

4.3 Notices. All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by hand; by courier (including nationally-recognized overnight delivery service); sent by registered or certified first-class mail, return receipt requested, postage prepaid; or by facsimile, with receipt confirmation and a follow-up copy sent by a nationally-recognized overnight delivery service on the same day as such facsimile, addressed as follows:

If to Buyer: Victor A. Michael, Jr., Sole Member  
Mountain Community Translators, LLC  
87 Jasper Lake Road  
Loveland, CO 80537

Copy to: A. Wray Fitch III  
(which shall not Gammon & Grange, P.C.  
constitute notice) 8280 Greensboro Drive, 7<sup>th</sup> Floor  
McLean, Virginia 22102

If to Seller: James Merilatt, President  
4-K's, LLLP  
1717 Whistle Pig Lane  
Broomfield, CO 80020

Copy to: Kathleen Victory  
(which shall not Fletcher Heald & Hildreth, PLC  
constitute notice) 1300 N. 17<sup>th</sup> Street, Suite 1100  
Arlington, VA 22209

If to Escrow Agent: Gammon & Grange, P.C.  
8280 Greensboro Drive, 7<sup>th</sup> Floor  
McLean, Virginia 22102  
Attention: A. Wray Fitch III

or such other address with respect to either Party as such Party may from time to time specify (as

provided above) to the other Party hereto. Any such notice, demand or communication shall be deemed to have been given:

(a) if sent by first class mail, as of the close of the third (3<sup>rd</sup>) business day following the date so mailed;

(b) if personally delivered or sent by overnight courier, on the date delivered; and

(c) if faxed, on the date faxed, provided written or verbal confirmation of receipt has been obtained by the sending Party.

4.4 Other Documents. The Parties shall execute such other documents as may be necessary or desirable to the implementation and consummation of this Agreement.

4.5 Further Assurances. The Parties each pledge to the other that they shall take whatever steps are reasonably necessary, in good faith, and use their best efforts to carry out their obligations under this Agreement.

4.6 Separate Counsel. The Parties have retained counsel in connection with the negotiation and preparation of this Agreement, and have consulted with and sought advice from their respective counsel, prior to execution, concerning their respective rights and duties under this Agreement.

4.7 Appendices. Any exhibits or schedules attached to this Agreement shall be deemed to be a part of this Agreement and incorporated in it, where applicable, as if fully set forth in the body of this Agreement. If any provision in any exhibit or schedule conflicts with or is not consistent with the provisions of this Agreement, the terms of this Agreement shall govern.

4.8 Counterparts. This Agreement may be executed in any number of counterparts, and by either Party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or other electronically-delivered copies of signature pages to this Agreement or any other document or instrument delivered pursuant to this Agreement shall be treated as between the Parties as original signatures for all purposes.

4.9 Headings. The headings of the Articles, Sections and paragraphs of this Agreement are inserted as a matter of convenience and for reference purposes only and in no way define, limit or describe the scope of this Agreement nor the intent of any Section or paragraph.

4.10 Entire Agreement. This Agreement and any exhibits or schedules attached

hereto and the ancillary documents provided for herein constitute the entire agreement and understanding of the Parties relating to the matters provided for herein and supersede any and all prior agreements, arrangements, negotiations, discussions and understandings relating to the matters provided for herein.

4.11 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties.

4.12 Waivers. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party or Parties waiving such provision. No waiver of any right or waiver of any obligation shall constitute a waiver of any other or similar right or obligation and no failure to enforce any right or obligation under this Agreement shall preclude or affect the later enforcement of such right or obligation.

4.13 Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had not been contained herein.

4.14 Number and Gender. Whenever required by the context, the singular number shall include the plural and the masculine, feminine, or neuter gender shall include all genders.

4.15 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia, including all matters of constitution, validity and performance, but not its choice of laws principles.

4.16 Attorneys' Fees. Should any Party institute any action or proceeding at law or in equity to enforce any provision of this Agreement, including an action for declaratory relief, or for damages by reason of an alleged breach of any provision of this Agreement, or otherwise in connection with this Agreement, or any provision hereof, the prevailing Party shall be entitled to recover from the losing Party or Parties its costs and expenses, including reasonable attorneys' fees and costs for services rendered to the prevailing Party in such action or proceeding. In the event some but not all of the claims are awarded to both Parties, such that each Party could be considered to be the prevailing Party, the payment of reasonable attorneys' fees and other expenses incurred in connection with the proceedings shall be prorated between the Parties according to the division of the awarded claims.

4.17 Continuing Effect. This Agreement shall remain in full force and effect until the Escrow Agent has delivered the Escrowed Funds and any monies and earnings thereon

and other instruments held by it pursuant to this Escrow Agreement in accordance with the terms hereof.

4.18 Waiver. All Parties acknowledge that the Escrow Agent is acting as an escrow agent as an accommodation to both Buyer and Seller and that Gammon & Grange, P.C., represents Seller. By execution of this Agreement, both Buyer and Seller acknowledge the potential for conflict but specifically waive any claim or right to make a claim that the Escrow Agent is or would be prohibited from representation of Seller in any transaction with Buyer by virtue of the fact (i) that Gammon & Grange, P.C., has served as Escrow Agent, or (ii) that Escrow Agent has learned facts about the Parties in its capacity as Escrow Agent, or (iii) that Escrow Agent, by virtue of its role as fiduciary for Buyer and Seller with respect only to the Escrowed Funds, could therefore be held to have a conflict of interest. Seller and Buyer agree that information conveyed to the Escrow Agent during the course and scope of Escrow Agent's duties, as Escrow Agent only, shall not be considered confidential by Seller or Buyer. Finally, Buyer and Seller agree that in the event that there exists an actual controversy between Buyer and Seller, the Escrow Agent can interplead the Escrowed Funds, resign as Escrow Agent and represent Seller with respect to the subject matter of the controversy.

*[Signatures on following page.]*

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed and delivered by the Parties as of the date first written above.

**Seller:**

**MOUNTAIN COMMUNITY  
TRANSLATORS, LLC**

By: \_\_\_\_\_  
Victor A. Michael, Jr.  
Sole Member

**Buyer:**

**4-K's, LLLP**

By: \_\_\_\_\_  
James Merilatt  
President

**Escrow Agent:**

**GAMMON & GRANGE, P.C.**

By: \_\_\_\_\_  
A. Wray Fitch III

## LEASE AGREEMENT

THIS AGREEMENT ("Agreement"), made and entered into this 8th day of December 2010 by and between Mauna Towers, LLC with offices at 87 Jasper Lake Road, Loveland, Colorado 80537, herein called "Lessor", and 4-K's, LLLP, 1717 Whistle Pig Lane, Broomfield, Colorado 80020, herein called "Lessee".

### WITNESSETH

WHEREAS, Lessor is the owner of a parcel of real property on Lookout Mountain, 21190 Cedar Lake Road, Jefferson County, Colorado, on which a radio tower with the NAD 27 geographic coordinates of 39°-43'-45" Lat. and 105°-14'-08" Long. and related transmitter building are located (collectively "Antenna Site" or "Site");

WHEREAS, Lessee has purchased certain antenna(s) and equipment that has previously been installed at the Site and wishes to operate and maintain such antenna(s) and equipment at the Site upon and subject to the terms and special conditions, if any herein; and

WHEREAS, the parties hereto desire to cooperate on the Site and to operate and maintain the communications tower and facility subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreement hereinafter set forth, to be paid, kept, and performed, it is agreed as follows:

1. GRANT OF INTEREST IN SITE: Lessor hereby grants to Lessee, subject to the subsequent provisions hereof, and at Lessee's sole risk, cost and expense (including utilities) except as otherwise set forth herein, the right to operate and maintain the facilities described in Schedule A in Lessor's transmitter building on the Site and the facilities described in Schedule B on Lessor's tower on the Site. For such purposes, Lessor grants to Lessee the right to ingress and egress to and from said premises twenty-four (24) hours per day, seven (7) days per week over the access road and right of accesses to the utility runs and all areas on the Site necessary to the Lessee's operation and maintenance of the equipment and facilities described in Schedule A and Schedule B. Lessor covenants that there are no liens, judgments or impediments on the Site that could impair the Lessee's use of the Site as contemplated herein.

2. UTILITIES:

A. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the premises (including, but not limited to, the installation of emergency back-up power). Subject to Lessor's approval of the location, Lessee shall have the right to place utilities on (or bring utilities across) Lessor's



property in order to service the premises and Lessee's equipment. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right.

B. If Lessee desires, Lessor is willing to provide Lessee with electric utility service provided such service does not exceed a continuous current draw over 5 amps at 240 volts AC. This is approximately 1200 watts of service. Lessor cannot guarantee the uninterrupted supply of this electric service, but will promptly seek to repair any service interruptions that might be experienced from time to time. Lessee will pay for this electric service a surcharge of \$50.00 per month which will be added on to the base rent and is also subject to the 3% annual increase. Lessor reserves the right to adjust this surcharge when necessary, commensurate with Lessor's increased cost, based on changes in Lessee's power draw and/or increases in the cost of power as billed to Lessor at the Site by the utility company providing such power.

### 3. COMPATIBILITY OF OPERATIONS:

A. All operations of Lessee hereunder shall be conducted in such a manner as not to cause interference, as defined in Section 3(B) below, with the pre-existing communications facilities serving the pre-existing activities of the Lessor. Should the communication facilities of Lessee cause such interference, Lessee shall be notified in writing of such interference and Lessee shall power down its equipment within seventy-two (72) hours after Lessee's receipt of such notice. If Lessee does not cease all interfering operation within such seventy-two (72) hour period, Lessor shall have the right to disconnect Lessee's equipment until such time as Lessee can affect repairs to the interfering equipment. If Lessee is unable to eliminate the interference, or reduce it to a level acceptable to Lessor, within a period of thirty (30) days following initial notice (provided that during such thirty (30) day period, Lessee may operate its equipment intermittently for testing purposes only), then Lessor may at its option terminate this Agreement in which event, Lessee shall promptly cease its operations hereunder and remove all facilities from said premises.

B. In the event that Lessor or any other lessee or user of the Site changes its facilities or if Lessor allows for any new or modified use of the Site and such change results in any interference to Lessee's operations as permitted hereunder, Lessor shall cause the party causing the interference to, or Lessor shall itself, promptly remove the cause of such interference. Any dispute as to the cause of the interference, or the steps reasonably required to correct it, arising under this Section 3, shall be submitted to an independent professional broadcast engineer mutually agreeable to Lessor and Lessee, and such engineer's decision shall be final and binding upon the parties. The fees and charges of such engineer shall be borne by the party who caused the interference. Interference shall be deemed to be any objectionable electrical or physical interference which interferes with existing users of the Site when such users are operating in accordance with their respective transmitter licenses and the rules and regulations of the Federal Communications Commission ("FCC") or the provisions of the recommended practices of the Electronics Industries Association then in effect.

4. EQUIPMENT OF LESSEE: Lessor shall provide Lessee the space on its tower for the equipment listed in Schedule B to this Agreement and space in its transmitter building for the equipment listed in Schedule A hereto.

5. INITIAL CONFIGURATION OF EQUIPMENT: The parties agree that the communications equipment which they will install on the tower shall be mounted as set forth in Schedule C to this Agreement.

6. INDEMNIFICATION:

A. Lessee shall indemnify and hold Lessor harmless from (i) all costs and of any damage done to Lessor's or other tenants' facilities or equipment located at the Site, that occurs as a result of the operation, maintenance or replacement of Lessee's equipment or other improvements (provided, however, that the initial installation of Lessee's equipment will be performed by Lessor, and therefore Lessor is responsible for such initial installation); and; (ii) any claims, demands, or causes of action for personal injuries, including any payments made under any workers' compensation law or any plan of employee's disability and death benefits, arising out of Lessee's occupancy of the Site or maintenance, and operation or removal of Lessee's equipment, except only to the extent that such damages, costs, claims, causes of actions or demands are caused by the negligence or willful misconduct of the Lessor.

B. Lessor shall not be responsible or liable to Lessee for any loss, damage, or expense that may be occasioned by, through, or in connection with any acts or omissions of other licensees or tenants occupying the Site. Lessee hereby assumes the risks and/or the inability to operate as a result of any structural or power failures at the Site or failure of the Lessee's equipment for any reason whatsoever and agrees to indemnify and hold Lessor harmless for all damages and costs defending any claim or suit for damages of any kind brought by any party related to Lessee's use of the Site hereunder, including, but not limited to, business interruption and attorney's fees, asserted against Lessor by reason of such failure.

C. Lessee shall also indemnify and hold Lessor harmless from any losses, liabilities, claims, demands, or causes of action for property damage or personal injuries, including any payment made under any workers' compensation law or any plan of employees' disability and death benefits, arising out of, or resulting from, any claims, damages, losses, liabilities, or causes of action resulting in any way from radio frequency radiation emissions from Lessee's equipment or any other harmful effect of Lessee's equipment. Lessee shall further indemnify and hold Lessor and its officers and employees harmless from all claims arising or alleged to arise from any breach of this Agreement by Lessee or from any negligent act, negligent omission or intentional tort of Lessee.

D. Lessor shall indemnify and hold Lessee, its parent companies, and the officers, directors, shareholders and employees of any of them harmless from all

claims arising or alleged to arise from any breach of this Agreement by Lessor or from any negligent act, negligent omission or intentional tort of Lessor.

E. The provisions of this Section 6 shall survive the termination of this Agreement.

7. **DAMAGE AND DESTRUCTION:** Lessor and Lessee agree that Lessor shall in no way be liable for loss of use or other damage of any nature arising out of loss, destruction, or damage to the Site or to Lessee's equipment located thereon by fire, explosion, windstorms, water, or any other casualty or acts of third parties. In the event the Site or any part thereof is damaged or destroyed by elements or any other cause, Lessor may elect to repair, rebuild, or restore the Site or any part thereof, to the same condition as it was immediately prior to such casualty. In such event, the payments required herein shall cease as of the date of unusable condition for Lessee's operation. If Lessor chooses not to repair, rebuild, or restore the Site, Lessor shall send to Lessee a notice of cancellation of this Agreement within thirty (30) days of such casualty. If this Agreement is cancelled, the payments required herein shall terminate as of the date of such casualty. If the Site is condemned so as to render all or any part of the Site substantially unusable for Lessee's intended use, Lessee shall be entitled to terminate this Agreement.

8. **INSURANCES:**

A. Lessee shall keep in full force and effect during the term of this Agreement a comprehensive general liability insurance policy, including blanket contractual and completed operations coverage, with limits of liability of at least one million (\$1,000,000.00) dollars in respect to bodily injury, including death, arising from any one occurrence and one million (\$1,000,000.00) dollars in respect to damage to property arising from any one occurrence. Said insurance policy shall be endorsed to include the Lessor as an additional insured and shall provide that Lessor will receive at least thirty (30) days' prior written notice of any cancellation or material change in such insurance policy.

B. Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve Lessor or Lessee, as the case may be, from any obligations under this Agreement.

9. **LEASE PAYMENTS:** As full consideration of all rights and privileges accorded Lessee hereunder, Lessee shall pay or cause to be paid as rental to Lessor the sum of Six Hundred Dollars (\$600.00) monthly (\$7,200.00 annually) for the first year of this agreement. After this first year, rental payments will increase to One Thousand Dollars (\$1,000.00) monthly (\$12,000 annually), plus any electric surcharge pursuant to Section 2(B) hereof, payable in advance on or before the first day of the month. Such payments being mailed to the address listed in item 14 or to such other address as Lessor

may designate in writing. The rental stated herein shall be increased beginning with the third lease year of the term and every lease year thereafter throughout the term hereunder, by three (3%) percent.

10. **TERM OF AGREEMENT:** This Agreement shall remain in full force for twenty (20) years from the commencement date. After the initial term of this Agreement expires, it shall continue for one (1) successive additional period of twenty years under the same basic terms and conditions, provided that either Lessor or Lessee may terminate this Agreement at the start of the renewal period, with or without cause, upon 90 days prior written notice to the other party.

11. **GOVERNMENTAL PERMITS AND CONFORMANCE WITH LAWS:** All operations and activities of the parties hereunder shall be conducted in accordance with all applicable laws and with the rules, regulations, and orders of any governmental agency having jurisdiction, including, but not limited to, the FCC.

12. **NOTICE:** All notices to be given under the terms hereof shall be sent by recognized overnight courier, addressed to the respective parties at the following addresses:

**LESSOR:**

Mauna Towers, LLC  
87 Jasper Lake Road  
Loveland, CO 80537  
PH: (970) 669-9200

**LESSEE:**

4-K's, LLLP  
1717 Whistle Pig Lane  
Broomfield, CO 80020  
PH: \_\_\_\_\_

Notice shall be deemed received the next business day after such letter is deposited with the overnight courier, so addressed and sent with postage prepaid.

13. **ASSIGNMENT AND SUBLEASING:** Lessee shall not have the right to assign or sublease its rights hereunder without Lessor's written consent, which shall not be unreasonably denied, and any such attempted assignment or sublease by the Lessee shall be invalid without written consent. Notwithstanding the foregoing, Lessee shall be permitted to assign or sublease its rights hereunder without Lessor's consent to other entities under common control with Lessee, but no such assignment or sublease shall relieve Lessee of its obligations hereunder. Lessor shall retain the right to assign or sublease its interests in the Site. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the respective parties hereto. Lessor shall retain the authority to sublease antenna space on the tower to its other tenants. All installations, maintenance, or removal of third parties' antenna systems and related equipment located on the tower shall be performed by authorized personnel only and with the cooperation of the Lessee if necessary.

14. **FUTURE EQUIPMENT INSTALLATIONS:** Future antenna and tower loadings not listed in Schedule B of this Agreement shall be reviewed and need to be approved by Lessor, such approval not to be unreasonably withheld, with advance written

notice of at least thirty (30) days being given by Lessee, except that Lessor's approval shall not be required for replacement equipment.

15. OPERATIONS AND MAINTENANCE RESPONSIBILITIES: Lessor shall maintain the Site, at its sole expense, in good condition and repair, including the painting and lighting of the tower in accordance with applicable rules and regulations of the FCC and the Federal Aviation Administration ("FAA") and keeping applicable records (including records of notification to FAA of any failure or repairs of the tower and any correction of same). Both parties agree that frequency and intermodulation interference studies will be conducted by the party seeking to install radio equipment on the Site before that equipment is installed on the tower. Lessee will furnish to Lessor a list of frequencies used by Lessee and Lessor will furnish to Lessee a list of frequencies used by Lessor. Lessee shall be responsible for and shall reimburse Lessor for its pro rata share (based on the number of users of the antenna site) of all common expenses incurred by Lessor in the operation, maintenance and repair of the Site, including, but not limited to, the construction, maintenance and repair of a common septic system and field, all real estate taxes, assessments, levies or other fees assigned against the Site, all taxes which may be assessed against the tower, insurance, common utilities; provided, however, that Lessee's reimbursement of Lessor shall be limited to a maximum of five hundred dollars (\$500.00) per year.

16. TITLE TO AND REMOVAL OF EQUIPMENT: The tower, building, and land shall be and remain the property of the Lessor. The Lessee's equipment (listed in Schedule A and Schedule B) installed on the Site shall remain the property of the Lessee and personal property placed thereon by each party or Lessor's other tenants shall be and remain the property of the respective party and shall be removable by each party, at its option, from time to time. Lessee shall promptly remove its equipment and any personal property at the expiration or termination of this Agreement.

17. QUIET ENJOYMENT: Lessor represents and warrants to Lessee that Lessor has good fee title to the Site, and the right to grant Lessee the rights hereunder. Lessor shall comply with all local, state and federal laws, rules and regulations required by it to be performed as Lessor hereunder and owner of the tower. Without limiting the generality of the foregoing, Lessor warrants and represents that the tower and Lessee's contemplated use thereof complies with all zoning ordinances. Lessor covenants that Lessee, upon observing the covenants and conditions herein upon its part to be observed, shall peaceably and quietly hold and enjoy the right to use the Site on the terms and conditions and for the purposes stated herein during the term of this Agreement, as it may be extended, without hindrance, ejection or molestation by Lessor or any person or entity claiming under Lessor. Notwithstanding the foregoing, Lessor shall not be required to expend more than ordinary and reasonable expenses to comply with its obligations under this Section 17. In the event of any governmental regulatory requirements that would require Lessor, to expend time and resources which Lessor determines, in its reasonable discretion, are economically unfeasible, Lessor may terminate this Agreement upon ninety (90) days written notice to Lessee, in which case both parties shall be relieved of further liability.

18. DEFAULT:

A. In the event of Lessee's failure to comply with any material provision of this Agreement, which failure is not cured within thirty (30) days after receipt of written notice thereof from Lessor (provided, however, where any such default cannot reasonably be cured within thirty (30) days, Lessee shall not be deemed to be in default under this Agreement if Lessee commences to cure such default within said thirty (30) days and thereafter diligently pursues such cure to completion), Lessor may, at its option, terminate this Agreement without affecting its right to sue for any damages to which Lessor may be entitled. Notwithstanding the foregoing, Lessee's right to cure in the event of Lessee-caused interference shall be controlled by Section 3(A) above.

B. In the event of Lessor's failure to comply with any material provision of this Agreement, which failure is not cured within thirty (30) days after receipt of written notice thereof from Lessee (provided, however, where any such default cannot reasonably be cured within thirty (30) days, Lessor shall not be deemed to be in default under this Agreement if Lessor commences to cure such default within said thirty (30) days and thereafter diligently pursues such cure to completion), Lessee may, at its option, terminate this Agreement without affecting its right to sue for any damages to which Lessee may be entitled.

C. The rights and remedies stated in this Agreement are not exclusive, and the parties, in the event of a breach hereof or a dispute, are entitled to pursue any of the remedies provided herein by law or by equity. No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Agreement shall operate as a waiver of any of the rights hereunder or by law or equity provided, nor shall any waiver of any prior default operate as the waiver of any subsequent default, and no express waiver shall affect any term or condition other than the one specified in such waiver and that one only for the time and manner specifically stated.

19. OTHER CONDITIONS AND PROVISIONS: This Agreement shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience of reference only and neither limit nor amplify the provisions of this Agreement. The invalidity of any portion of this Agreement shall not have any effect on the balance thereof. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and permitted assigns of Lessor and Lessee. This Agreement shall be governed by the laws of the State of Colorado without reference to principles of conflicts of law. This Agreement may be prepared for execution by duplicate originals, each of which constitute one and the same instrument.



Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2010.

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Mauna Towers, LLC  
Victor A. Michael, Jr., Owner

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4 K's LLLP  
James Merilatt, President

## **SCHEDULE A**

The equipment to be placed in the transmitter building includes the following:

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Mauna Towers, LLC  
Victor A. Michael, Jr., Owner

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4 K's LLLP  
James Merilatt, President

## **SCHEDULE B**

Equipment scheduled for placement on the tower includes the following:

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Mauna Towers, LLC  
Victor A. Michael, Jr., Owner

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4 K's LLLP  
James Merilatt, President

## **SCHEDULE C**

Approved placement of antenna on tower:

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Mauna Towers, LLC  
Victor A. Michael, Jr., Owner

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4 K's LLLP  
James Merilatt, President