

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of February 16, 2010, by and between James S. Bumpous, a sole proprietor, residing in Mimbres, New Mexico d/b/a Big Bend Broadcasting ("Seller"); and Emmis Austin Radio Broadcasting Company, L.P., an Indiana limited partnership ("Buyer").

### RECITALS:

**WHEREAS**, Seller holds the licenses and authorizations (the "Licenses") issued by the FCC for the operation of the two (2) FM Translators identified on Schedule A (the "Translators").

**WHEREAS**, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Licenses.

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

### ARTICLE I TERMINOLOGY

#### 1.1 Defined Terms.

As used herein, the following terms shall have the meanings indicated:

Affiliate: With respect to any specified Person, another Person which, directly or indirectly controls, is controlled by, or is under common control with, the specified Person.

Code: The Internal Revenue Code of 1986, as amended.

FCC: Federal Communications Commission.

FCC Order: The order or decision of the FCC (or its delegatee) granting its consent to the transfer of the Licenses to Buyer.

Final Action: An action of the FCC that has not been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely petition for reconsideration or administrative or judicial appeal or sua sponte action of the FCC with comparable effect is pending; and as to which the normally applicable time for filing any such petition or appeal (administrative or judicial) or for the taking of any such sua sponte action of the FCC has expired.

Lien: Any mortgage, deed of trust, pledge, hypothecation, right of first refusal, security or other adverse interest, encumbrance, easement, restriction, claim, option, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any assets or property, including any agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement, and the filing of or agreement to give any financing statement with respect to any assets or property under the Uniform Commercial Code or comparable law of any jurisdiction.

Loss: With respect to any person or entity, any and all costs, obligations, liabilities, losses, demands, claims, settlement payments, awards, judgments, fines, penalties, damages and reasonable out-of-pocket expenses, including court costs and reasonable attorney fees, whether or not arising out of a third party claim.

Person: Any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, other form of business or legal entity or governmental authority.

Sale Assets: The Licenses and the Transmitters, collectively.

Taxes: All federal, state, local and foreign taxes including, without limitation, income, gains, transfer, unemployment, withholding, payroll, social security, real property, personal property, excise, sales, use and franchise taxes, levies, assessments, imposts, duties, licenses and registration fees and charges of any nature whatsoever, including interest, penalties and additions with respect thereto and any interest in respect of such additions or penalties.

Transmitters: The two (2) transmitters identified on Schedule A.

## **ARTICLE II PURCHASE AND SALE**

### **2.1 Sale Assets.**

Upon and subject to the terms and conditions in this Agreement, on the Closing Date, Seller will sell, transfer, assign and convey to Buyer, and Buyer will purchase from Seller, all of Seller's right, title and interest in and to the Sale Assets.

### **2.2 Assumed Obligations.**

(a) Buyer shall at Closing assume and agree to pay, satisfy, discharge and perform all liabilities and obligations of Seller relating to the Licenses arising after the Closing Date (collectively, the "Assumed Obligations").

(b) Except for the Assumed Obligations, Buyer shall not assume or in any manner be liable for any liabilities or obligations of Seller of any kind or nature, whether direct or indirect, accrued or unaccrued, absolute or contingent, or liquidated or unliquidated, all of which Seller shall pay, discharge and perform when due.

### **2.3 Purchase Price.**

The purchase price for the Sale Assets ("Purchase Price") shall be Two Hundred Fifty Thousand Dollars (\$250,000), which shall be paid as follows. Upon execution of this Agreement Buyer shall deliver to Seller an initial payment of Twelve Thousand Five Hundred Dollars (\$12,500) via wire transfer of immediately available funds pursuant to written instructions from Seller to Buyer. Such payment will be credited against the Purchase Price. On the Closing Date, the balance of the Purchase Price, in the amount of Two Hundred Thirty-seven Thousand Five Hundred Dollars (\$237,500) shall be paid to Seller by Buyer by wire transfer of immediately available funds pursuant to written instructions from Seller to Buyer. Seller shall furnish Buyer wire instructions at least two (2) business days prior to the Closing Date.

## **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows:

### **3.1 Organization, Good Standing and Requisite Power.**

Seller is a sole proprietor residing in Mimbres, New Mexico.

### **3.2 Authorization and Binding Effect of Documents.**

Seller has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller. This Agreement constitutes the valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

### **3.3 Consents.**

Except for the FCC Order, the execution, delivery and performance by Seller of this Agreement, and consummation by Seller of the transactions contemplated hereby and thereby, do not and will not require the authorization, consent, approval, exemption, clearance or other action by or notice or declaration to, or filing with, any court, any administrative or other governmental body, or any other third party.

### **3.4 Title to Transmitters.**

Seller has good and marketable title to the Transmitters free and clear of any Liens.

### **3.5 Licenses.**

(a) Seller is the valid and legal holder of each of the Licenses. The expiration date of the term of each FCC License is shown on Schedule A.

(b) The Licenses are valid and in full force and effect.

(c) No applications, complaints or proceedings are pending or, to the knowledge of Seller, are threatened which may result in the revocation, modification, non-renewal or suspension of any of the Licenses.

(d) Seller has, with respect to the Licenses, complied in all material respects with all requirements to file registrations, reports, applications and other documents with the FCC and all such registrations, reports, applications and documents are true, correct and complete in all material respects.

(e) There are no unsatisfied or otherwise outstanding citations issued by the FCC with respect to the Licenses.

(f) True, complete and accurate copies of the Licenses have been delivered by Seller to Buyer.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

### **4.1 Organization and Good Standing.**

Buyer is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Indiana and has all requisite power to own, operate and lease its properties and carry on its business.

### **4.2 Authorization and Binding Effect of Documents.**

Buyer has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement. The execution and delivery of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or partnership action (including necessary shareholder or partner approvals, if any) on the part of Buyer. This Agreement has been duly executed and delivered by Buyer. This Agreement constitutes the valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

### **4.3 Consents.**

Except for the FCC Order, the execution, delivery and performance by Buyer of this Agreement, and consummation by Buyer of the transactions contemplated hereby and thereby, do not and will not require the authorization, consent, approval, exemption, clearance or other action by or notice or declaration to, or filing with, any court or administrative or other governmental body, or the consent, waiver or approval of any other Person.

## **ARTICLE V OTHER COVENANTS**

### **5.1 FCC Filing.**

As promptly as practicable following execution of this Agreement and in no event more than ten (10) days after the execution of this Agreement, Seller and Buyer shall file all applications with the FCC necessary to obtain the FCC Order, and shall cooperate in taking all commercially reasonable action necessary and proper to promptly obtain the FCC Order. Seller and Buyer shall cooperate in taking all commercially reasonable action necessary and proper to cause the FCC Order to become a Final Action as soon as practicable, provided that commercially reasonable action shall not include payment or providing of material consideration to settle with an objecting party.

### **5.2 FCC Reports and Applications.**

Seller shall file, on a current and timely basis and in all material respects in a truthful and complete fashion until the Closing Date, all reports and documents required to be filed with the FCC with respect to the Licenses. In addition, Seller shall timely file all applications necessary for renewal of any of the Licenses, shall prosecute each such application with diligence, shall in each case seek renewal for a full term, and shall diligently oppose any objection to, appeal from or petition to reconsider the grant of any such renewal application.

### **5.3 Termination of Lease with Respect to Licenses.**

Immediately upon execution of this Agreement, Seller shall terminate any and all leases, licenses or other arrangements permitting any third party to use the Licenses.

**ARTICLE VI**  
**CONDITIONS PRECEDENT TO THE OBLIGATION**  
**OF BUYER TO CLOSE**

Buyer's obligation to close the acquisition of the Licenses pursuant to the terms of this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Buyer in writing:

**6.1 Accuracy of Representations and Warranties; Closing Certificate.**

(a) Each of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the date of this Agreement, and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date except for changes that are not materially adverse to Buyer.

(b) Each of the conditions specified in Sections 6.1(a) and 6.2 shall have been satisfied as of the Closing Date.

**6.2 Performance of Agreement.**

Seller shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.

**6.3 FCC Order.**

(a) The FCC Order shall have been issued, shall have become effective under the Act, and shall have become a Final Action.

(b) Conditions which the FCC Order or any order, ruling or decree of any judicial or administrative body specifies and requires to be satisfied prior to transfer of the Licenses to Buyer shall have been satisfied.

(c) Each of the Licenses shall be in full force and effect.

**ARTICLE VII  
CONDITIONS PRECEDENT TO THE  
OBLIGATION OF SELLER TO CLOSE**

The obligations of Seller to close the sale of the Sale Assets pursuant to the terms of this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Seller in writing:

**7.1 Accuracy of Representations and Warranties.**

(a) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the date of this Agreement, and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date except for changes that are not materially adverse to Seller.

(b) Each of the conditions specified in Sections 7.1(a) and 7.2 shall have been satisfied as of the Closing Date.

**7.2 Performance of Agreement.**

Buyer shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.

**7.3 FCC Order.**

(a) The FCC Order shall have been issued and shall have become effective under the Act.

(b) Conditions which the FCC Order or any order, ruling or decree of any judicial or administrative body specifies and requires to be satisfied prior to transfer of the Licenses to Buyer shall have been satisfied.

**ARTICLE VIII  
CLOSING**

**8.1 Time.**

Closing of the purchase and sale of the Sale Assets pursuant to this Agreement (the "Closing") shall take place following satisfaction or waiver of the conditions precedent hereunder to Closing (the "Closing Date").

## **ARTICLE IX INDEMNIFICATION**

### **9.1 Survival.**

All representations, warranties, covenants and agreements in this Agreement shall survive the Closing regardless of any investigation, inquiry or knowledge on the part of any party, and the Closing shall not constitute a waiver by any party of the representations, warranties, covenants or agreements of any other party in this Agreement; provided, however, that the period of survival will (i) with respect to all representations and warranties, end twelve (12) months after the Closing Date, and (ii) with respect to all covenants and agreements, end upon expiration of the applicable statutory limitation period (in each case, the "Survival Period"). No claim for breach of any representation, warranty, covenant or agreement may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the applicable Survival Period. In the event such notice of a claim is so given, the right to indemnification with respect to such claim will survive the applicable Survival Period until the claim is finally resolved and any obligations with respect to the claim are fully satisfied.

### **9.2 Indemnification by Seller.**

Seller shall indemnify, defend, and hold harmless each Buyer and its officers, directors, employees, partners, Affiliates, successors and assigns from and against, and pay or reimburse each of them for and with respect to, any Loss relating to, arising out of or resulting from any breach by either Seller of any of its representations, warranties, covenants or agreements in this Agreement.

### **9.3 Indemnification by Buyer.**

Buyer shall indemnify and hold harmless each Seller and its officers, directors, employees, agents, representatives, Affiliates, successors and assigns from and against, and pay or reimburse each of them for and with respect to any Loss relating to, arising out of or resulting from any breach by either Buyer of any of its representations, warranties, covenants or agreements in this Agreement.

## **ARTICLE X TERMINATION**

This Agreement may be terminated prior to Closing:

- (a) By written agreement of Seller and Buyer; or

(b) By written notice from a party that is not then in material breach of this Agreement if:

(i) The other party has continued in material breach of this Agreement for ten (10) days after written notice of such breach from the terminating party is received by the other party; or

(ii) Closing does not occur within six (6) months after the date on which the FCC issues notice of its acceptance of the applications to be filed pursuant to Section 5.1.

## **ARTICLE XI MISCELLANEOUS**

### **11.1 Further Actions.**

From time to time before, at and after the Closing, each party, at its expense and without further consideration, will execute and deliver such documents as reasonably requested by the other party in order more effectively to consummate the transactions contemplated hereby.

### **11.2 Payment of Expenses.**

(a) The fees for filing the applications with the FCC under Section 5.1 shall be paid fifty percent (50%) by Seller and fifty percent (50%) by Buyer. All Taxes shall be paid by the party primarily liable under applicable law to pay such tax.

(b) Except as otherwise expressly provided in this Agreement, each of the parties shall bear its own expenses, including the fees of any attorneys and accountants engaged by such party, in connection with the transactions contemplated by this Agreement.

### **11.3 Specific Performance and Monetary Damages.**

Seller acknowledges that the Station is of a special, unique and extraordinary character, and that damages alone are an inadequate remedy for a breach of this Agreement by Seller. Accordingly, as an alternative to termination of this Agreement under Article X, Buyer shall be entitled, in the event of Seller's breach, to enforcement of this Agreement (subject to obtaining any required approval of the FCC) by a decree of specific performance or injunctive relief requiring Seller to fulfill its obligations under this Agreement. Such right of specific performance or injunctive relief shall be in addition to, and not in lieu of, Buyer's right to recover damages and to pursue any other remedies available to Buyer for Seller's breach. In any action to specifically enforce Seller's obligation to close the transactions contemplated by this Agreement, Seller shall waive the defense that there is an adequate remedy at law or in equity and agrees that Buyer shall be entitled to obtain specific performance of Seller's obligation to close without being required to prove actual damages. As a condition to seeking specific performance, Buyer shall not be required to tender the Purchase Price as contemplated by

Section 2.3 but shall be required to demonstrate that Buyer is ready, willing and able to tender the Purchase Price as contemplated by such Section. Buyer and Seller further agree that if Buyer refuses to perform under the provisions of this Agreement or Buyer otherwise breaches any representation, warranty, covenant or agreement under this Agreement so that Closing has not occurred, Seller's sole and exclusive remedy shall be the right to claim and keep those payments made by Seller in accordance with Section 2.3 herein. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm that would be caused by Buyer's breach and failure to close under the terms of this Agreement. The parties further acknowledge and agree that the amount of actual loss caused by Buyer's breach of this Agreement is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder. In the event Buyer refuses to perform under the provisions of this Agreement or Buyer otherwise breaches such that Closing does not occur, which results in legal expense to Seller in order to execute its right to claim and keep the Section 2.3 payment as liquidated damages as a consequence of Buyer's contesting Seller's right to the payment, Seller shall be entitled to reimbursement by Buyer of reasonable legal fees and expenses incurred by Seller. Seller and Buyer hereby expressly acknowledge that this Section shall survive the termination of this Agreement.

#### **11.4 Notices.**

All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by courier (including overnight delivery service) or sent by registered or certified mail, first class, postage prepaid, addressed as follows:

(a) If to Buyer, to:

Emmis Austin Radio Broadcasting, L.P.  
8309 North IH-35  
Austin, TX 78753  
Attention: VP and Market Manager

Copies to:

Emmis Radio, LLC  
40 Monument Circle, Suite 700  
Indianapolis, IN 46204  
Attention: Legal Department

(b) If to Seller, to:

James S. Bumpous d/b/a Big Bend Broadcasting  
27 McKnight Rd.  
Mimbres, NM 88049

Copies to:

Shainis & Peltzman, Chartered  
1850 M Street NW, Suite 240  
Washington, DC 20036  
Attention: Lee J. Peltzman, Esquire

or to such other address as a party may from time to time give notice to the other party in writing (as provided above). Any such notice, demand or communication shall be deemed to have been given (i) if delivered for next day delivery by nationally recognized overnight delivery service (Federal Express or UPS), the day after sent, and (ii) if delivered in person, on the date received.

#### **11.5 Entire Agreement.**

This Agreement and the Schedules constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede any prior negotiations, agreements, understandings or arrangements between the parties hereto with respect to the subject matter hereof.

#### **11.6 Binding Effect; Benefits.**

Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or permitted assigns. Except to the extent specified herein, nothing in this Agreement, express or implied, shall confer on any person other than the parties hereto and their respective successors or permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

#### **11.7 Assignment.**

Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by either party without the prior written consent of the other party.

#### **11.8 Governing Law.**

This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of New York without regard to its principles of conflicts of laws.

#### **11.9 Amendments and Waivers.**

No term or provision of this Agreement may be amended, waived, discharged or terminated orally but only by an instrument in writing signed by the party against whom the enforcement of such amendment, waiver, discharge or termination is sought. Any waiver shall be effective only in accordance with its express terms and conditions.

#### **11.10 Severability.**

Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof, and any such unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law now or hereafter in effect which renders any provision hereof unenforceable in any respect.

#### **11.11 Headings.**

The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

#### **11.12 Counterparts.**

This Agreement may be executed in any number of counterparts, and by any party on separate counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

#### **11.13 References.**

All references in this Agreement to Articles and Sections are to Articles and Sections contained in this Agreement unless a different document is expressly specified.

#### **11.14 Schedules and Exhibits.**

Unless otherwise specified in this Agreement, each Schedule referenced in this Agreement is attached to, and is incorporated by reference into, this Agreement.

**[Signature Page Follows]**

Executed as of the date first written above.

“Buyer”

EMMIS AUSTIN RADIO BROADCASTING  
COMPANY, L.P.

By: Radio Austin Management, L.L.C.,  
its general partner

By: Scott F. Gillmore  
Printed: Scott F. Gillmore  
Title: V.P. & Market Manager

“Seller”

JAMES S. BUMPOUS d/b/a BIG  
BEND BROADCASTING

By: James S. Bumpous  
Printed: JAMES S. BUMPOUS  
Title: OWNER

**Schedule A**

**FCC Translator Details**

K288FJ, Bastrop, TX Station License BLFT-20070702DHY - Granted Oct. 3, 2007, Expires Aug. 1, 2013

K288FJ Construction Permit BPFT-20070718AEO - Granted July 19, 2007, Expires July 19, 2010

Bext FMR-20 Translator (FM transmitter and receiver in one associated with K288FJ)

K274AX, Austin, TX BMLFT-20080922AAG - Granted Oct. 22, 2008, Expires Aug. 1, 2013

Ptek FM-300 Transmitter (300 watt FM transmitter associated with K274AX)