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**ASSET EXCHANGE AGREEMENT**

by and between

**CALVARY CHAPEL OF TWIN FALLS, INC.**

and

**CUMULUS BROADCASTING LLC and CUMULUS LICENSING LLC**

Dated as of December 2, 2009

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## ASSET EXCHANGE AGREEMENT

This Asset Exchange Agreement (this "*Agreement*"), made as of December 2, 2009, by and between Calvary Chapel of Twin falls, Inc., an Idaho non-stock corporation ("*CCTF*"), and Cumulus Broadcasting LLC ("*Exchange Party*") and Cumulus Licensing LLC, each a Nevada limited liability company ("*Licensing*" and with Cumulus Broadcasting, the "*Exchange Parties*").

Licensing is the licensee of broadcasting station WTOD-AM, 1560 kHz, Toledo, Ohio (Facility ID Number 22672) ("*WTOD*"). CCTF is the licensee of FM translator station W264AK, 100.7 MHz, Toledo, Ohio (Facility ID Number 81369) ("*W264AK*").

Exchange Parties desire to acquire certain of the assets used in the operation of W264AK, including the Federal Communications Commission ("*FCC*") licenses issued for the station. CCTF desires to acquire certain of the assets used in the operation of WTOD, including the FCC licenses issued for the station. CCTF has agreed to exchange certain of the W264AK assets to Exchange Parties for certain of the WTOD assets. The parties intend the transactions contemplated by this Agreement to be a like-kind exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended (the "*Code*"). Definitions of capitalized terms in this Agreement are set forth in **Section 15.1**.

The assignment of FCC licenses for Station W264AK to Licensing and the assignment of the FCC licenses for Station WTOD to CCTF require the prior consent of the FCC.

Therefore, intending to be legally bound, the parties agree as follows:

### ARTICLE 1 ASSETS TO BE CONVEYED

**1.1. Closing.** Subject to **Section 12.1** (Termination Rights), the closing (the "*Closing*") of the sale and purchase of the W264AK Assets and the WTOD Assets shall take place remotely by facsimile and mail, on a date mutually agreed to be the parties hereto not later than fifteen (15) business days following the satisfaction or waiver of the conditions set forth in **Sections 9.1 and 9.2**, or in such other manner and at such other place, time, or date as Exchange Parties and CCTF may agree in writing.

#### **1.2. Transfer of W264AK Assets.**

(a) At the Closing, CCTF shall sell, assign, transfer and convey to Exchange Parties, and Exchange Parties shall purchase from CCTF, the following assets (the "*W264AK Assets*") (it being understood that Licensing shall acquire all right, title and interest in and to the W264AK FCC Licenses and Exchange Party shall acquire all of the other W264AK Assets):

(i) all of CCTF's rights in and to the FCC licenses, permits and other authorizations, including any temporary waiver or special temporary authorization, issued to

or held by CCTF exclusively in the operation of W264AK, including any pending applications and any renewals or modifications thereof between the date hereof and Closing, and the rights to call sign W264AK, all as set forth in Schedule 1.2(a)(i) (the "*W264AK FCC Licenses*").

(ii) all of CCTF's right, title and interest in that certain equipment, spare parts and other tangible personal property used exclusively in the operation of W264AK as listed on Schedule 1.2(a)(ii), except for any retirements or dispositions made between the date of this Agreement and the Closing and including all replacements and additions as of the Closing Date in accordance with Article 8 (the "*W264AK Personal Property*");

(iii) all of CCTF's rights and obligations under and interest in the agreements set forth on Schedule 1.2(c) (the "*W264AK Assumed Contracts*"); and

(iv) W264AK's station file, copies of filings on with the FCC related to W264AK on hand as of the Closing Date, executed copies of all written W264AK Assumed Contracts, and such technical information, engineering data, and rights under manufacturers' warranties as exist at Closing and relate exclusively to the W264AK Personal Property being conveyed hereunder.

The W264AK Assets shall be delivered without any representation or warranty by CCTF except as expressly set forth in this Agreement, and Exchange Parties acknowledge that they have not relied on or been induced to enter into this Agreement by any representation or warranty other than those expressly set forth in **Articles 4 and 5** hereof. The W264AK Assets shall be conveyed to Exchange Parties at Closing free and clear of all Liens, except as otherwise expressly provided in this Agreement.

(b) Except as expressly set forth in this **Section 1.2**, the W264AK Assets shall not include any properties, assets, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description, wherever located, of CCTF or any of its affiliates.

### **1.3. Transfer of the WTOD Assets.**

(a) At the Closing, Exchange Parties shall sell, assign, transfer and convey to CCTF, and CCTF shall acquire from Exchange Parties, the following assets (the "*WTOD Assets*"):

(i) all of Licensing's rights in and to the FCC licenses, permits and other authorizations, including any temporary waiver or special temporary authorization, issued to or held by Licensing exclusively in the operation of WTOD, including any pending applications and any renewals or modifications thereof between the date hereof and Closing, all as set forth in Schedule 1.3(a)(i) (the "*WTOD FCC Licenses*");

(ii) all of Exchange Parties' right, title and interest in the equipment, spare parts and other tangible personal property located at the WTOD main transmitter site and used or held for use exclusively in the operation of WTOD as listed on Schedule 1.3(a)(ii), except for the WTOD Excluded Assets and any retirements or dispositions made between the date of this Agreement and the Closing and including all replacements and additions as of the Closing Date in accordance with Article 8 (the "*WTOD Personal Property*");

(iii) all of Exchange Party's rights under and interest in the agreements set forth in Schedule 1.3(a)(iii) (the "*WTOD Assumed Contracts*");

(iv) WTOD's public inspection file, copies of filings with the FCC related to WTOD on hand as of the Closing Date, executed copies of all written WTOD Assumed Contracts, and such technical information, engineering data, and rights under manufacturers' warranties as exist at Closing and relate exclusively to the WTOD Personal Property being conveyed hereunder.

The WTOD Assets shall be delivered without any representation or warranty by Exchange Party except as expressly set forth in this Agreement, and CCTF acknowledges that it has not relied on or been induced to enter into this Agreement by any representation or warranty other than those expressly set forth in **Articles 4 and 6** hereof. The WTOD Assets shall be conveyed to CCTF at Closing free and clear of all Liens, except as otherwise expressly provided in this Agreement.

(b) Notwithstanding anything to the contrary contained herein, the WTOD Assets shall not include the following assets along with all rights, title and interest therein (the "*WTOD Excluded Assets*");

(i) all cash and cash equivalents of Exchange Party, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, asset or money market accounts and all such similar accounts or investments;

(ii) all accounts receivable or notes receivable arising in the operation of the WTOD prior to Closing;

(iii) all WTOD Assumed Contracts that terminate or expire prior to Closing in accordance with their respective terms and in the ordinary course of business of Exchange Party;

(iv) each Exchange Parties' name, limited liability company minute books, organizational documents, membership record books and such other books and records as pertain to the organization, existence or capitalization of Exchange Parties, duplicate copies of the records of the WTOD, and all records not relating exclusively to the operation of WTOD;

(v) contracts of insurance, and all insurance proceeds or claims made thereunder;

(vi) all pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Exchange Parties;

(vii) all of Exchange Parties' right, title, and interest in and to the real property owned by Exchange Parties and used for the operation of WTOD, including certain real property located at 3225 Arlington Avenue, Toledo, OH 43614 (collectively, the "*WTOD Real Property*"),

(viii) that certain tangible personal property located on the WTOD Tower and consisting of the items set forth on Schedule 1.3(b)(viii); and

(ix) all intellectual property and intellectual property rights held by Exchange Parties and used in the operation of WTOD, including the WTOD call letters, the WTOD trademark (including the goodwill symbolized by such mark), the station's domain name and internet web site and all other domain names and interests in internet web sites of the station or using the WTOD trademark (including the right to the HTML content accessible at any web sites and the "visitor" email database for any web sites), together with all registrations relating to the foregoing, and all other trademarks, trade names and service marks (including the goodwill symbolized by any such names and marks), copyrights, registrations, jingles, slogans, logos (including camera-ready logo slicks), promos, promotional materials and promotional plans and studies, programming agreements and other intangible property that is used or held for use in the operation of WTOD (the "*WTOD Intellectual Property*").

(c) Except as expressly set forth in **Section 1.3(a)**, the WTOD Assets shall not include any properties, assets, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description, wherever located, of Exchange Parties or any of their affiliates.

## **ARTICLE 2**

### **PURCHASE PRICE**

**2.1. Purchase Price.** The purchase price to be paid by the Exchange Parties for the W264AK Assets (the "*Purchase Price*") shall be the exchange of the WTOD Assets as provided in **Section 1.3** above. The parties stipulate that the Purchase Price is not based in any way upon the ratings or financial performance of either W264AK or WTOD. Neither station is being sold as a going concern, and the assets being conveyed do not include any goodwill or intellectual property. Therefore, neither CCTF nor Exchange Parties make any representation or warranty as to ratings or cash flow, and neither Exchange Parties' nor CCTF's obligations under this Agreement are conditioned in any way on the financial performance between the date of this Agreement and the Closing of the station to be acquired.

**2.2. Allocation.** It is the intention of the parties that, to the extent practicable, the exchange of the WTOD Assets and the W264AK Assets shall be accomplished through one

(vi) all pension, profit sharing or cash or deferred (Section 401(k)) plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Exchange Parties;

(vii) all of Exchange Parties' right, title, and interest in and to the real property owned by Exchange Parties and used for the operation of WTOD, including certain real property located at 3225 Arlington Avenue, Toledo, OH 43614 (collectively, the "*WTOD Real Property*"),

(viii) that certain tangible personal property located on the WTOD Tower and consisting of the items set forth on Schedule 1.3(b)(viii); and

(ix) all intellectual property and intellectual property rights held by Exchange Parties and used in the operation of WTOD, including the WTOD call letters, the WTOD trademark (including the goodwill symbolized by such mark), the station's domain name and internet web site and all other domain names and interests in internet web sites of the station or using the WTOD trademark (including the right to the HTML content accessible at any web sites and the "visitor" email database for any web sites), together with all registrations relating to the foregoing, and all other trademarks, trade names and service marks (including the goodwill symbolized by any such names and marks), copyrights, registrations, jingles, slogans, logos (including camera-ready logo slicks), promos, promotional materials and promotional plans and studies, programming agreements and other intangible property that is used or held for use in the operation of WTOD (the "*WTOD Intellectual Property*").

(c) Except as expressly set forth in **Section 1.3(a)**, the WTOD Assets shall not include any properties, assets, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description, wherever located, of Exchange Parties or any of their affiliates.

## **ARTICLE 2**

### **PURCHASE PRICE**

**2.1. Purchase Price.** The purchase price to be paid by the Exchange Parties for the W264AK Assets (the "*Purchase Price*") shall be the exchange of the WTOD Assets as provided in **Section 1.3** above. The parties stipulate that the Purchase Price is not based in any way upon the ratings or financial performance of either W264AK or WTOD. Neither station is being sold as a going concern, and the assets being conveyed do not include any goodwill or intellectual property. Therefore, neither CCTF nor Exchange Parties make any representation or warranty as to ratings or cash flow, and neither Exchange Parties' nor CCTF's obligations under this Agreement are conditioned in any way on the financial performance between the date of this Agreement and the Closing of the station to be acquired.

**2.2. Allocation.** It is the intention of the parties that, to the extent practicable, the exchange of the WTOD Assets and the W264AK Assets shall be accomplished through one

or more like-kind exchanges under Section 1031 of the Internal Revenue Code. Exchange Parties shall prepare an initial draft of IRS Form 8594 for approval by CCTF. Exchange Party and CCTF shall each file the IRS Form 8594 finally agreed upon by the parties with their respective federal income tax return for the tax year in which the Closing occurs.

### **ARTICLE 3**

#### **ASSUMPTION OF OBLIGATIONS; PRORATIONS**

##### **3.1. Assumption of Obligations.**

(a) At the Closing, Exchange Party shall assume and undertake to pay, satisfy or discharge (i) all liabilities, obligations and commitments of CCTF under the W264AK Assumed Contracts, arising or accruing after 12:01 a.m., local time, on the Closing Date (the "*Effective Time*"), and (ii) all undertakings and commitments arising from or relating to the ownership of the W264AK Assets after the Effective Time.

(b) At the Closing, CCTF shall assume and undertake to pay, satisfy or discharge (i) all liabilities, obligations and commitments of Exchange Party under the WTOD Assumed Contracts, arising or accruing after the Effective Time, and (ii) all undertakings and commitments arising from or relating to the ownership of the WTOD Assets after the Effective Time.

**3.2. Limitation.** Except as set forth in **Section 3.1**, CCTF and Exchange Parties expressly do not, and shall not, assume or be deemed to assume, under this Agreement or otherwise by reason of the transactions contemplated hereby, any liabilities, obligations or commitments of the other of any nature whatsoever.

**3.3. Proration of Expenses.** All expenses arising from the ownership and operation of the W264AK Assets and the WTOD Assets shall be prorated between CCTF and Exchange Party, as appropriate, as of the Effective Time in accordance with GAAP. Such prorations shall be based upon the principle that (a) CCTF shall be responsible for all liabilities and obligations accruing in connection with the ownership of the W264AK Assets until the Effective Time, and Exchange Party shall (subject to **Section 3.2** above) be responsible for such liabilities and obligations accruing thereafter and (b) Exchange Party shall be responsible for all liabilities and obligations accruing in connection with the ownership of the WTOD Assets until the Effective Time, and CCTF shall (subject to **Section 3.2** above) be responsible for such liabilities and obligations accruing thereafter. Such prorations shall include, without limitation, all *ad valorem* and other property taxes, deposits, utility expenses, liabilities and obligations under the W264AK Assumed Contracts and the WTOD Assumed Contracts, regulatory fees attributable to the Assigning Party, prepaid and deferred items, and all other expenses attributable to the ownership and operation of the W264AK Assets and the WTOD Assets. Any regulatory fees attributable to an Assigning Party, property taxes or similar annual assessments that have not been determined for the current year by the date of the Closing shall be prorated based upon the amounts for such assessments in the prior year.

**3.4. Payment of Proration Items.** Three (3) business days prior to the Closing, CCTF and Exchange Parties shall deliver to the other party a preliminary list of all items to be prorated pursuant to Section 3.3 and, to the extent feasible, such prorations shall be made at the Closing. To the extent that the parties agree on any of the respective prorations, they shall be paid as appropriate at the Closing. In the event CCTF and Exchange Parties do not reach a final agreement on all of the respective prorations at the Closing, the dispute shall be submitted within ten (10) days after the Closing to Scott Knoblauch (the "*Referee*") for resolution. The Referee shall reach a resolution of the disputed amount(s) within thirty (30) days thereafter and such resolution shall be final, conclusive and binding on CCTF and Exchange Parties. Exchange Party and CCTF agree to share equally the cost and expenses of the Referee, but each party shall bear its own legal and other expenses, if any. Payment by Exchange Party or CCTF, as the case may be, for the disputed proration amounts determined by the Referee pursuant to this Section 3.4 shall be due fifteen (15) days after the date on which the Referee issues its decision.

#### **ARTICLE 4**

#### **REPRESENTATIONS AND WARRANTIES**

#### **COMMON TO CCTF AND EXCHANGE PARTIES**

CCTF represents and warrants to Exchange Parties, and Exchange Parties represent and warrant to CCTF, as follows (the party or parties making the representations and warranties being referred to as the "*Representing Party*"):

**4.1. Organization and Standing.** The Representing Party (a) is an entity duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation, (b) is qualified to do business and is in good standing in the state in which the assets it owns and will convey to the other are located and (c) has all necessary power and authority to own, lease and operate the assets it is conveying hereunder and to carry on its business as now conducted.

**4.2. Authorization and Binding Obligation.** The Representing Party has the full right and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions provided for in this Agreement. All required organizational action with respect to the Representing Party has been taken to approve this Agreement and the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Representing Party and constitutes its valid and binding obligation, enforceable against the Representing Party in accordance with its terms, except as limited by laws affecting creditors' rights generally or to the extent that the enforceability of such obligations may be limited by the exercise of judicial discretion in applying principles of equity (regardless of whether this Agreement is considered a proceeding in equity or at law).

**4.3. No Litigation.** There are (a) no unsatisfied judgments, awards, orders, writs, injunctions, arbitration decisions or decrees outstanding, and (b) no claims, actions, suits,



investigations or proceedings pending or, to the best of the Representing Party's knowledge, threatened against or affecting the Representing Party's assets to be conveyed under this Agreement, in any court or before any governmental authority or arbitrator that (if adversely determined, in the case of pending or threatened matters) would impair in any material respect the ability of the Representing Party to perform its obligations under this Agreement or would impair or hinder in any material respect the ability or right of the Acquiring Party to operate the station to be conveyed to it by the Representing Party after the Closing in the physical manner now operated by the Representing Party.

**4.4. Taxes.** There are no tax audits or other governmental proceedings pending or, to the best of the Representing Party's knowledge, threatened that could result in a Lien on the assets being conveyed by the Representing Party to the Acquiring Party under this Agreement or the imposition of any tax liability on the Acquiring Party, and, to the best of the Representing Party's knowledge, no event has occurred that could impose on the Acquiring Party any liability for any taxes, penalties or interest due or to become due from the Representing Party, except for taxes subject to proration under this Agreement.

**4.5 Broker's Fees.** Neither CCTF nor any person or entity acting on its behalf has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity, and no person or entity is entitled to any such payment from CCTF. Exchange Party shall be solely responsible for and shall pay any brokerage fee payable in connection with this transaction and will indemnify CCTF with respect to any claim or demand for any such brokerage fee.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF CCTF**

CCTF represents and warrants to Exchange Parties as follows:

**5.1. Absence of Conflicting Agreements or Required Consents.** The execution, delivery and performance of this Agreement by CCTF: (a) do not and will not violate any provisions of the organizational documents of CCTF; (b) do not and will not require the consent or approval of or any filing with any third party or governmental authority, except as set forth in **Article 7** and **Section 8.1** of this Agreement and as set forth on Schedule 5.1 hereof; (c) do not and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority affecting CCTF or to which CCTF is subject; and (d) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination or acceleration of or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, lease, instrument, license or permit to which CCTF or any of the W264AK Assets being conveyed hereunder is now subject.

## **5.2. FCC Authorizations and Qualifications.**

(a) Schedule 1.2(a)(i) contains a true and complete list of the W264AK FCC Licenses, and there are no other licenses, permits or other authorizations from the FCC required for the lawful operation of W264AK in the manner now operated. The W264AK FCC Licenses are in full force and effect. All required FCC regulatory fees with respect to the W264AK FCC Licenses have been paid. The W264AK FCC Licenses have been issued for the full terms customarily issued to an FM translator station in the State of Ohio. The W264AK Licenses are not subject to any condition except for conditions shown on the face of the W264AK FCC Licenses, applicable to FM translator licenses generally or otherwise disclosed in Schedule 1.2(a)(i). Except as disclosed in Schedule 1.2(a)(i), W264AK is being operated at full authorized power in material compliance with the terms and conditions of the W264AK FCC Licenses and the rules and regulations of the FCC.

(b) Except as set forth in Schedule 1.2(a)(i), to the knowledge of CCTF, there are no applications, petitions, complaints, proceedings or other actions pending or threatened before the FCC relating to W264AK, other than proceedings affecting the FM translator and radio broadcasting industry generally.

**5.3. Title to and Condition of Personal Property.** CCTF has, and at the Closing CCTF will have, good title to the W264AK Personal Property, free and clear of all Liens. The W264AK Personal Property is (i) in good operating condition and repair (ordinary wear and tear excepted), and (ii) in compliance in all material respects with the rules and regulations of the FCC and all other applicable federal, state and local statutes, ordinances, rules and regulations. To the best of CCTF's knowledge, no PCBs are used in the W264AK Personal Property.

**5.4. Assumed Contracts.** CCTF has delivered a true and complete copy of each W264AK Assumed Contract listed on Schedule 1.2(c) to Exchange Party. All W264AK Assumed Contracts are valid, binding and enforceable by CCTF in accordance with their respective terms, except as limited by laws affecting creditors' rights or equitable principles generally. CCTF is in compliance in all material respects with the terms and conditions of the W264AK Assumed Contracts. To the knowledge of CCTF, no other contracting party is in material default under any of the W264AK Assumed Contracts. Subject the receipt of the consents set forth on Schedule 5.1 and the governmental consents described in Article 7, CCTF has full legal power and authority to assign its rights under the W264AK Assumed Contracts to Exchange Party in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuity of any of the W264AK Assumed Contracts.

**5.5. Compliance With Laws.** CCTF is in compliance in all material respects with any federal, state or local laws, regulations or orders relating to the operation of W264AK. Without limiting the generality of the foregoing:

(a) The W264AK transmitting and other equipment to be conveyed hereunder is operating in accordance in all material terms with the terms and conditions of the W264AK FCC Licenses and all underlying construction permits, and the rules, regulations and policies of the FCC, including, without limitation all regulations concerning equipment authorization and human exposure to radio frequency ("RF") radiation.

(b) Any tower registrations required to be filed by CCTF with the FCC have been filed. All measurements that are required to be made by CCTF with respect to W264AK's transmission facilities have been completed and maintained by CCTF.

**5.6. Insurance.** The W264AK Assets are, and will be until the Closing Date, insured against loss or damage for full replacement value.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF EXCHANGE PARTIES**

Exchange Parties represent and warrant to CCTF as follows:

**6.1. Absence of Conflicting Agreements or Required Consents.** The execution, delivery and performance of this Agreement by Exchange Parties: (a) do not and will not violate any provisions of the organizational documents of Exchange Parties; (b) do not and will not require the consent or approval of or any filing with any third party or governmental authority, except as set forth in **Article 7** and **Section 8.1** of this Agreement and as set forth on Schedule 6.1 hereof; (c) do not and will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority affecting Exchange Parties or to which Exchange Parties are subject; and (d) do not and will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination or acceleration of or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, lease, instrument, license or permit to which Exchange Parties or any of the WTOD Assets being conveyed hereunder is now subject.

#### **6.2 FCC Authorizations and Qualifications.**

(a) Schedule 1.3(a)(i) contains a true and complete list of the WTOD FCC Licenses, and there are no other licenses, permits or other authorizations from the FCC required for the lawful operation of WTOD in the manner now operated. With the exception of the WTOD Modification Application, as defined in **Section 8.1**, the WTOD FCC Licenses are in full force and effect; have been issued for the full terms customarily issued to a radio broadcast station in the State of Ohio; and are not subject to any condition except for conditions shown on the face of the WTOD FCC Licenses, applicable to radio broadcast licenses generally, or otherwise disclosed in Schedule 1.3(a)(i). All required FCC regulatory fees with respect to the WTOD FCC Licenses have been paid. Except as disclosed in Schedule 1.3(a)(i), WTOD is being operated at full authorized power in material compliance

with the terms and conditions of the WTOD FCC Licenses and the rules and regulations of the FCC.

(b) Except as set forth in Schedule 1.3(a)(i), to Exchange Parties' knowledge, there are no applications, petitions, complaints, proceedings or other actions pending or threatened before the FCC relating to WTOD, other than proceedings affecting the radio broadcasting industry generally.

**6.3. Title to and Condition of Personal Property.** At Closing, Exchange Party will have good title to the WTOD Personal Property, free and clear of all Liens. The WTOD Personal Property is (i) in good operating condition and repair (ordinary wear and tear excepted), and (ii) except as set forth in Schedule 1.3(a)(i), in compliance in all material respects with the rules and regulations of the FCC and all other applicable federal, state and local statutes, ordinances, rules and regulations, including without limitation all tower painting, marking, and lighting requirements. To the best of Exchange Parties' knowledge, no PCBs are used in the WTOD Personal Property.

**6.4. Assumed Contracts.** Exchange Party has delivered a true and complete copy of each WTOD Assumed Contract listed on Schedule 1.3(c) to CCTF. All WTOD Assumed Contracts are valid, binding and enforceable by Exchange Party in accordance with their respective terms, except as limited by laws affecting creditors' rights or equitable principles generally. Exchange Party is in compliance in all material respects with the terms and conditions of the WTOD Assumed Contracts. To the knowledge of Exchange Parties, no other contracting party is in material default under any of the WTOD Assumed Contracts. Subject to the receipt of the consents set forth on Schedule 6.1, and the governmental consents described in Article 7, Exchange Party has full legal power and authority to assign its rights under the WTOD Assumed Contracts to CCTF in accordance with this Agreement, and such assignment will not affect the validity, enforceability and continuity of any of the WTOD Assumed Contracts.

**6.5. Compliance With Laws.** Except as set forth in Schedule 1.3(a)(i), Exchange Parties are in compliance in all material respects with any federal, state or local laws, regulations or orders relating to the operation of WTOD. Without limiting the generality of the foregoing:

(a) Except as set forth on Schedule 1.3(a)(i), the WTOD tower, ground system, transmitting and other equipment to be conveyed hereunder is operating in accordance in all material respects with the terms and conditions of the WTOD FCC Licenses and all underlying construction permits, and the rules, regulations and policies of the FCC, including, without limitation all regulations concerning equipment authorization and human exposure to RF radiation.

(b) All tower registrations required to be filed by Exchange Parties with the FCC in connection with WTOD have been filed. All proofs-of-performance and equipment

measurements that are required to be made by Exchange Parties with respect to WTOD's transmission facilities have been completed and maintained by Exchange Parties.

(c) The WTOD transmitting tower, guy anchors, and ground system are located entirely on the WTOD Real Property and are in conformance with all applicable "set back" lines, easements, covenants, and restrictions. Exchange Parties neither know of, nor have they received any notice of, the need for any material repair, remedy, construction, alteration or installation with respect to the WTOD tower and related ground system. Exchange Parties know of no pending, threatened or contemplated action to take by eminent domain or otherwise to condemn any part of the WTOD Real Property.

**6.6. Insurance.** The WTOD Assets and the WTOD Real Property and associated improvements are, and will be until the Closing Date, insured against loss or damage for full replacement value.

## **ARTICLE 7**

### **GOVERNMENTAL CONSENTS**

#### **7.1. FCC Assignment Applications.**

(a) The assignments of the W264AK FCC Licenses and the WTOD FCC Licenses as contemplated by this Agreement are subject to the prior consent and approval of the FCC. Between the date of this Agreement and the Closing, Exchange Parties shall not directly or indirectly, control the operation of W264AK, and CCTF shall not directly or indirectly, control the operation of WTOD.

(b) No later than five (5) business days after the date of this Agreement, Exchange Parties and CCTF shall each prepare and jointly file complete applications requesting the FCC's consent to the assignment of the W264AK FCC Licenses to Licensing and the assignment of WTOD FCC Licenses to CCTF pursuant to this Agreement (the "*FCC Assignment Applications*," and each an "*FCC Assignment Application*"). CCTF and Exchange Parties shall thereafter prosecute the FCC Assignment Applications in good faith and with all reasonable diligence and otherwise use their best efforts to obtain the grant of the FCC Assignment Applications as expeditiously as practicable, *provided*, however, that neither CCTF nor Exchange Parties shall have any obligation to satisfy any complainant or the FCC by taking any steps which would have an adverse effect upon CCTF or Exchange Parties or upon any affiliated entity, but neither the expense nor inconvenience to a party of defending against a complainant or an inquiry by the FCC shall be considered an adverse effect on such party. If the FCC Consent to either of the FCC Applications imposes any condition on any party hereto, such party shall use its best efforts to comply with such condition; *provided*, however, that no party shall be required to comply with any condition that would have an adverse effect upon it or any affiliated entity. If reconsideration or judicial review is sought with respect to one of the FCC Consents, the party or parties affected shall vigorously oppose such efforts for reconsideration or judicial review,

*provided*, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to **Article 12 (Termination Rights)**.

(c) All FCC filing or grant fees relating to the acquisition of W264AK shall be borne by Exchange Party and any FCC filing or grant fee relating to the acquisition of WTOD shall be borne by CCTF. Each party shall bear its own costs and expenses (including the fees and disbursements of its counsel) in connection with the preparation of the portion of the FCC Applications to be prepared by it and in connection with the processing and defense of such applications.

**7.2 Other Governmental Consents.** Promptly following the execution of this Agreement, the parties shall prepare and file with the appropriate governmental authorities any other requests for approval or waiver that are required from such governmental authorities in connection with the transactions contemplated hereby and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such requests for approval or waiver and all proceedings necessary to secure such approvals and waivers. Each party shall bear its own costs and expenses in connection with the preparation of any filings, documents or requests to be prepared by it in order to obtain such governmental consents, approvals or waivers and in connection with any prosecution or defense by it of such filings, documents or requests.

## **ARTICLE 8** **COVENANTS**

**8.1. Conduct of Business.** Except as expressly permitted by this Agreement or with the prior written consent of the other, between the date of this Agreement and the Closing, CCTF, with respect to W264AK, and Exchange Parties, with respect to WTOD, shall:

(a) comply in all material respects with all laws and contractual obligations applicable to such station or to the conduct of the business and operation of such station;

(b) perform all material obligations relating to the operation and business of such station;

(c) refrain from selling, assigning, leasing or otherwise transferring or disposing of any of the W264AK Assets or the WTOD Assets, as the case may be, except for assets consumed or disposed of in the ordinary course of business, *provided* that such assets are replaced by assets of comparable value and utility;

(d) maintain the W264AK Assets or the WTOD Assets, as the case may be, in customary repair, maintenance and condition, replace all items of equipment at time intervals consistent with prior practice, and repair or replace (subject to **Section 8.6**) any asset that may be damaged or destroyed with items of equal or greater value and utility unless CCTF or Exchange Party, as the case may be, determines in good faith that such a

repair or replacement is not necessary or useful for the continued operation of such station; and

(e) not modify the W264AK FCC Licenses or the W264AK Assumed Contracts, or the WTOD FCC Licenses or the WTOD Assumed Contracts, as the case may be, as of the date of this Agreement.

Notwithstanding anything in the foregoing to the contrary, within ten (10) business days following the filing of the FCC Applications, (i) CCTF will file a contingent application to modify the license of WTOD to designate the station as a non-commercial facility from and after the Effective Time under the procedures of Section 73.3517(a) of the Commission's rules (the "*Non-Commercial Application*"), and (ii) Licensing shall file a contingent application to modify W264AK to relocate the translator to a location identified by Exchange Party (the "*Translator Modification Application*," and together with the Non-Commercial Application, collectively referred to as the "*Contingent Applications*," and each a "*Contingent Application*"). Licensing will provide a written statement to CCTF authorizing the filing of the Non-Commercial Application and CCTF will provide Licensing a written statement authorizing the filing of the Translator Modification Application, as required by FCC rules. After the Contingent Applications are filed with the FCC, each party shall prosecute its respective Contingent Application in good faith and with all reasonable diligence and otherwise use its best efforts to obtain the grant of its Contingent Application as soon as practicable, and to have the FCC order granting its Contingent Application become a Final Order. Each party will promptly provide the other with a copy of any and every pleading, order, or other communication (including e-mails) received or sent which relates to the respective Contingent Application (other than communications between or among the parties and their lawyers and advisors). Each party will use commercially reasonable efforts and otherwise cooperate in responding to any information requested by the FCC related to the Contingent Applications, in submitting any amendment to a Contingent Application that may be requested by the FCC which does not adversely affect such party in a material manner, and in defending against any informal objection, petition for reconsideration, application for review, or other objection that may be filed against a Contingent Application.

The parties hereto acknowledge that Licensing has filed an application to modify the facilities of WTOD (the "*WTOD Modification Application*") to operate from the current transmitting site at a maximum power of 1.5 kW during daytime hours and 0.92 kW during critical hours (FCC File No. BMP-20091104AGS). Licensing will prosecute the WTOD Modification Application in good faith and with all reasonable diligence and otherwise use its best efforts to obtain the grant of the WTOD Modification Application as soon as practicable, and to have the FCC order granting the WTOD Modification Application become a Final Order. Licensing will promptly provide CCTF with a copy of any and every pleading, order, or other communication (including e-mails) received or sent which relates to the WTOD Modification Application (other than communications between or among Licensing and its lawyers and advisors). Licensing will use commercially reasonable efforts and otherwise cooperate in responding to any information requested by the FCC related to

the WTOD Modification Application, in submitting any amendment to the WTOD Modification Application that may be requested by the FCC which does not adversely affect CCTF or Licensing in a material manner, and in defending against any informal objection, petition for reconsideration, application for review, or other objection that may be filed against the WTOD Modification Application.

After the grant of the WTOD Modification Application becomes a Final Order, Licensing shall construct the modified facilities and, as required by the FCC rules and regulations, Licensing shall file an application for license with respect to such modified facilities. In addition, from the date of this Agreement until the earlier of the Closing or the date WTOD is authorized to operate with the facilities specified in the WTOD Modification Application, Licensing shall use commercially reasonable efforts to maintain the existing Special Temporary Authorization (File No. BESTA-20080926AIJ) to enable WTOD to continue to operate in the manner in which it is currently operating.

**8.2. Notification.** Between the date of this Agreement and the Closing, CCTF and Exchange Party shall each promptly notify the other of (a) any pending or, to its knowledge, threatened litigation, arbitration or administrative proceeding that seeks to revoke, cancel, rescind, modify or fail to renew in the ordinary course any of the W264AK FCC Licenses or the WTOD FCC Licenses, as the case may be, or that challenges the transactions contemplated hereby, including any challenges to the FCC Applications; (b) the issuance of any order to show cause, notice of violation, notice of apparent liability or notice of forfeiture with respect to W264AK or WTOD; or (c) the submission, to such party's knowledge, of any material complaint by, against or with respect to W264AK or WTOD.

**8.3. Access.** Between the date hereof and the Closing, CCTF and Exchange Party shall each give, upon prior reasonable notice, the other or its representatives (including consultants and advisors) reasonable access to the W264AK Assets and the WTOD Assets, as applicable. It is expressly understood that, pursuant to this **Section 8.3**, the Acquiring Party, at its sole expense, shall be entitled to make such engineering and other inspections of the W264AK Assets or the WTOD Assets, as applicable, as it may desire, so long as such inspection does not unreasonably interfere with the operation of such station in the other party's reasonable judgment.

**8.4. Third-Party Consents.** Between the date of this Agreement and the Closing, each party shall use reasonable efforts to obtain their respective consents of any third parties necessary for the assignment of any of the W264AK Assumed Contracts or WTOD Assumed Contracts (as set forth on Schedules 5.1 and 6.1, respectively); provided, that neither party shall be obligated to pay any money to obtain their consents. In the event a consent or waiver required with respect to the assignment of any of the W264AK Assumed Contracts or the WTOD Assumed Contracts has not been obtained on or before the Closing, and the other party hereto waives such consent as a condition to Closing, CCTF or Exchange Party, as the case may be, shall use reasonable efforts to provide the other with the benefits of any such assumed contract (including, without limitation, permitting such other party to enforce any rights of CCTF or Exchange Party under such assumed contract), and Exchange



Party and CCTF shall, to the extent it, as the case may be, is provided with the benefits of such assumed contract, perform all obligations of the other party thereunder.

**8.5. Pre-Closing Efforts.** Between the date of this Agreement and the Closing, each party shall use its reasonable efforts to cause the fulfillment at the earliest practicable date of all of the conditions to the obligations of the other party to consummate the sale and purchase under this Agreement. No party shall take any action which is materially inconsistent with his or its obligations under this Agreement or that would materially hinder or delay the consummation of the transactions contemplated by this Agreement. In particular, no party shall take any action that would result in his or its disqualification to hold the W264AK FCC Licenses or the WTOD FCC Licenses, as the case may be, or in any way delay grant of the FCC Applications or consummation of the transactions contemplated by this Agreement. Should either party become aware of any such fact or circumstance, such party shall promptly inform the other.

**8.6. Risk of Loss.** The risk of any loss, damage, impairment, confiscation, or condemnation of any of the W264AK Assets from any cause whatsoever shall be borne by CCTF at all times prior to the Closing. The risk of any loss, damage, impairment, confiscation, or condemnation of any of the WTOD Assets (including the WTOD Real Property) from any cause whatsoever shall be borne by Exchange Party at all times prior to the Closing. If there is any loss, damage, impairment, confiscation, or condemnation of or to any of such assets, CCTF or Exchange Party (the "*Repairing Party*"), as the case may be, shall repair, replace, or restore such assets (the "*Damaged Assets*") to their prior condition as represented in this Agreement as soon thereafter as possible; *provided*, however, that no party shall have any obligation to repair or replace any immaterial or obsolete asset which in its reasonable judgment is no longer necessary or useful for the continued operation of the station consistent with past practice. If the Repairing Party is unable to repair or replace the Damaged Assets by the date on which the Closing would otherwise occur under this Agreement, then the non-Repairing Party may elect to proceed with Closing and complete the restoration and replacement of such Damaged Assets after the Closing Date, in which event the Repairing Party shall assign to the non-Repairing Party the right to receive all insurance proceeds payable in connection with such damage to the Damaged Assets (and any deductible payable under the Repairing Party's insurance policy), and the Repairing Party shall have no other obligation to the non-Repairing Party with respect thereto.

**8.7. Confidentiality.** Exchange Parties and CCTF shall each keep confidential all information obtained by it with respect to the other in connection with this Agreement, except where such information is known or available through other lawful sources or where its disclosure is required in accordance with applicable law. If the transactions contemplated hereby are not consummated for any reason, Exchange Parties and CCTF shall return to the other, without retaining a copy thereof, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transactions contemplated hereby.

**8.8. Relocation of Equipment.** Within one week after the Closing and at CCTF's sole cost and expense, CCTF shall deliver to Exchange Parties at Exchange Parties' studio located at 3225 Arlington Ave, Toledo, OH 43614, the W264AK Personal Property purchased hereunder.

**8.9 Further Assurances.** CCTF and Exchange Parties shall cooperate and take such actions, and execute such other documents, at the Closing or subsequently, as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement.

## **ARTICLE 9**

### **CONDITIONS PRECEDENT**

**9.1. To Exchange Parties' Obligations.** The obligations of Exchange Parties hereunder are subject to the prior grant of the FCC Consents, and, at Exchange Parties' option, subject to satisfaction, at or prior to the Closing Date, of each of the following additional conditions:

**(a) Representations, Warranties and Covenants.**

(i) All representations and warranties made by CCTF in this Agreement shall be true and complete in all material respects on and as of the Closing Date (except to the extent they expressly relate to a specific earlier time, in which case they shall have been true and correct only as of such earlier time) as if made on and as of that date, except to the extent changes are permitted under **Section 8.1** of this Agreement.

(ii) All of the terms, covenants and conditions to be complied with and performed by CCTF under this Agreement on or prior to Closing Date shall have been complied with or performed in all material respects.

**(b) Final FCC Action.** The FCC Consents to the FCC Assignment Applications and the grant of the Translator Modification Application shall have been obtained without the imposition of any condition materially adverse to Exchange Parties and such FCC actions shall have become Final Orders.

**(c) No Injunction.** No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated by this Agreement in accordance with its terms.

**(d) Deliveries.** CCTF shall have made or stand willing to make all deliveries required under **Section 10.1**.

**9.2 To the Obligations of CCTF.** The obligations of CCTF under this Agreement are subject to the prior grant of the FCC Consents, and at the option of CCTF,

subject to satisfaction, at or prior to the Closing Date, of each of the following additional conditions:

(a) **Representations, Warranties and Covenants.**

(i) All representations and warranties made by Exchange Parties in this Agreement shall be true and complete in all material respects on and as of the Closing Date (except to the extent they expressly relate to a specific earlier time, in which case they shall have been true and correct only as of such earlier time) as if made on and as of that date.

(ii) All of the terms, covenants and conditions to be complied with and performed by Exchange Parties under this Agreement on or prior to the Closing Date shall have been complied with or performed in all material respects.

(b) **Final FCC Action.** The FCC Consents to the FCC Assignment Applications shall have been obtained, without the imposition of any condition materially adverse to CCTF, and such FCC Consents shall have become Final Orders.

(c) **Grant of the WTOD Non-Commercial Application and Operation under Program Test Authority.** The FCC shall have granted (i) the Non-Commercial Application and (ii) the WTOD Modification Application without the imposition of any condition materially adverse to CCTF, and such FCC actions shall have become Final Orders. The application for license to operate with the facilities specified in the WTOD Modification Application shall have been filed by Licensing, and WTOD shall be operating under Program Test Authority with such modified facilities.

(d) **No Injunction.** No order of any court or administrative agency shall be in effect which restrains or prohibits the transactions contemplated by this Agreement in accordance with its terms.

(e) **Deliveries.** Exchange Parties shall have made or standing willing to make all the deliveries required under Section 10.2.

**ARTICLE 10**

**DOCUMENTS TO BE DELIVERED AT THE CLOSING**

**10.1. Documents to be Delivered by CCTF.** At the Closing, CCTF shall deliver to Exchange Parties the following:

(a) a copy of the resolution of the board of directors of CCTF, certified by an authorized officer of CCTF, authorizing the execution, delivery and performance of this Agreement;

(b) instruments of conveyance and transfer, in form and substance reasonably satisfactory to counsel to Exchange Parties, effecting the sale, transfer, assignment and conveyance of the W264AK Assets to Exchange Parties, including, but not limited to, the following:

- (i) an assignment of the W264AK FCC Licenses;
- (ii) bills of sale for all W264AK Personal Property; and
- (iii) assignments of the Assumed Contracts, together with all third party consents as provided in **Section 8.4**.

(c) instruments, in form and substance reasonably satisfactory to Exchange Parties and its counsel, pursuant to which CCTF assumes the obligations, liabilities and commitments of Exchange Parties as provided in **Article 3**;

(d) a lease executed by CCTF in the form attached hereto as *Exhibit A*, pursuant to which space is made available on the WTOD Tower for the operation of certain Exchange Party equipment consisting of those items set forth on Schedule 1.3(b)(viii) (at the heights reflected therein), as well as two additional antennas (and related transmission lines), at the election of Exchange Parties, on the WTOD Tower at the heights mutually agreed to by the parties to the lease; and

(e) such other documents as may reasonably be requested by Exchange Parties' counsel.

**10.2. Documents to be Delivered by Exchange Parties.** At the Closing, Exchange Party shall deliver to CCTF the following:

(a) a copy of the resolutions of the board of directors of Exchange Parties, certified by their authorized officers, authorizing the execution, delivery and performance of this Agreement;

(b) instruments of conveyance and transfer, in form and substance reasonably satisfactory to counsel to CCTF, effecting the sale, transfer, assignment and conveyance of the WTOD Assets to CCTF, including, but not limited to, the following:

- (i) an assignment of the WTOD FCC Licenses;
- (ii) bills of sale for all WTOD Personal Property;
- (iii) assignments of the Assumed Contracts, together with all third party consents as provided in **Section 8.4**;

(c) instruments, in form and substance reasonably satisfactory to CCTF and its counsel, pursuant to which Exchange Party assumes the obligations, liabilities and commitments of CCTF as provided in **Article 3**;

(d) a lease executed by Exchange Party in the form attached hereto as *Exhibit B*, pursuant to which Exchange Party will lease to CCTF that certain portion of the WTOD Real Property upon which the current WTOD Tower is located; and

(e) such other documents as may reasonably be requested by CCTF's counsel.

## **ARTICLE 11**

### **INDEMNIFICATION, SURVIVAL**

**11.1. Indemnification by CCTF.** From and after the Closing, CCTF shall indemnify, defend, and hold harmless Exchange Parties and their affiliates and their respective directors, officers, employees, and representatives, and the successors and assigns of any of them, from and against, and reimburse them for, all claims, damages, costs and expenses, including, without limitation, interest, penalties, court costs and reasonable attorneys' fees and expenses, resulting from:

(a) any liabilities or obligations of CCTF or its affiliates not assumed by Exchange Parties under this Agreement;

(b) any untrue representation, breach of warranty, or nonfulfillment of any covenant by CCTF contained in this Agreement or in any certificate, document or instrument delivered to Exchange Parties under this Agreement;

(c) CCTF's operation or ownership of W264AK prior to the Effective Time; and

(d) CCTF's operation or ownership of WTOD after the Effective Time.

**11.2. Indemnification by Exchange Party.** From and after the Closing, Exchange Party shall indemnify, defend and hold harmless CCTF and its affiliates and their respective directors, officers, employees, and representatives, and the successors and assigns of any of them, from and against, and reimburse them for, all claims, damages, costs and expenses, including, without limitation, interest, penalties, court costs and reasonable attorneys' fees and expenses, resulting from:

(a) any liabilities or obligations of Exchange Parties or their affiliates not assumed by CCTF under this Agreement;

(b) any untrue representation, breach of warranty, or nonfulfillment of any covenant by either of Exchange Parties contained in this Agreement or in any certificate, document or instrument delivered to CCTF under this Agreement;

(c) Exchange Parties' operation or ownership of WTOD prior to the Effective Time; and

(d) Exchange Parties' operation or ownership of W264AK after the Effective Time.

**11.3. Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(a) The party seeking indemnification under this **Article 11** (the "*Claimant*") shall give notice to the party from whom indemnification is sought (the "*Indemnitor*") of any claim, whether solely between the parties or brought by a third party, reasonably specifying (i) the factual basis for the claim, and (ii) the amount of the claim if then known. If the claim relates to an action, suit or proceeding filed by a third party against Claimant, notice shall be given by Claimant within fifteen (15) days after written notice of the action, suit or proceeding was given to Claimant. In all other circumstances, notice shall be given by Claimant within thirty (30) days after Claimant becomes, or should have become, aware of the facts giving rise to the claim. Notwithstanding the foregoing, Claimant's failure to give Indemnitor timely notice shall not preclude Claimant from seeking indemnification from Indemnitor if Claimant's failure has not materially prejudiced Indemnitor's ability to defend the claim or litigation.

(b) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have 30 days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purposes of this investigation, the Claimant agrees to make available to the Indemnitor and/or its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension thereof), the Claimant may seek appropriate legal remedy.

With respect to any claim by a third party as to which the Claimant is entitled to indemnification hereunder, the Indemnitor shall have the right at its own expense to participate in or assume control of the defense of the claim with counsel reasonably acceptable to Claimant, and the Claimant shall cooperate fully with the Indemnitor, subject to reimbursement for reasonable expenses incurred by the Claimant as the result of a request by the Indemnitor. If the Indemnitor elects to assume control of the defense of any third-party claim, the Claimant shall have the right to participate in the defense of the claim at its own expense. The Indemnitor shall not be liable for any settlement of any such claim effected without its prior written consent. The Indemnitor shall be subrogated to all rights of the Claimant against any third party with respect to any claim for which indemnity was paid.

#### **11.4. Limitations.**

(a) No Indemnitor shall have any obligation to the other party for any matter described in **Section 11.1** or **Section 11.2**, as the case may be, except upon compliance by the other party with the provisions of this **Article 11**, particularly **Section 11.3**.

(b) No Indemnitor shall be required to indemnify the other party under this **Article 11** unless (i) written notice of a claim under this **Article 11** was received by the party within the pertinent survival period specified in **Section 11.5** and (ii) unless and until the aggregate amount of claims against the party to which the other party (as a Claimant) is entitled to be indemnified under this Agreement exceeds \$5,000, however, once such threshold has been exceeded, the indemnity provided by this Agreement shall apply to all claims for indemnification. The foregoing "deductible" shall not apply to (i) any proration of expenses under **Section 3.3**, and (ii) any obligation to indemnify against third-party claims. Neither party shall have any liability to the other party under any circumstances for special, consequential, punitive or exemplary damages.

#### **11.5. Survival of Representations, Warranties and Covenants.**

(a) Except as specifically otherwise set forth in any document exchanged between the parties to this Agreement, the representations and warranties contained in this Agreement or in any certificate, document or instrument delivered pursuant to this Agreement are and will be deemed and construed to survive the Closing for a period of one year after the Closing Date (the "*Survival Period*"), *provided* that all representations and warranties of the parties as to title and ownership of the assets being conveyed to the other party shall survive indefinitely and any representation or warranty concerning compliance with applicable tax laws shall survive until the expiration of all appropriate statutes of limitation. The covenants and agreements in this Agreement shall survive Closing until performed. No claim may be brought under this Agreement with regard to a breach of representations and warranties 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 Survival Period. In any event such notice is given, the right to indemnification with respect thereto shall survive the Survival Period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

(b) Anything to the contrary in this Agreement notwithstanding, Exchange Party shall be solely and exclusively responsible and liable for all obligations of either of Exchange Parties, and Licensing shall not have or incur any liability whatsoever, arising out of this Agreement, this **Article 11**, or any of the transactions contemplated hereby.

**11.6. Sole Remedy.** After the Closing, the right to indemnification under this **Article 11** shall be the exclusive remedy of any party in connection with any breach or default by another party under this Agreement.



**ARTICLE 12**  
**TERMINATION RIGHTS**

**12.1. Termination.**

(a) This Agreement may be terminated by Exchange Parties, on one hand, or CCTF, on the other, if the party seeking to terminate is not in material default or breach of this Agreement, upon written notice to the other upon the occurrence of any of the following:

(i) if, subject to the opportunity to cure period set forth in Section 12.1(c) below, the other party is in material breach of or default under this Agreement;

(ii) if there shall be in effect any order or decree from the Department of Justice or any judgment, final decree or order that would prevent or make unlawful the Closing or if the FCC shall have released a hearing designation order requiring a formal hearing on either of the FCC Applications; or

(iii) if the Closing has not occurred by the first anniversary of the date of filing of the FCC Applications (the "*Upset Date*").

(b) This Agreement may be terminated by mutual written consent of Exchange Parties and CCTF.

(c) If a party believes the other to be in breach or default of this Agreement, the non-defaulting party shall, prior to exercising its right to terminate under Section 12.1(a)(i), provide the defaulting party with notice specifying in reasonable detail the nature of such breach or default. The defaulting party shall have thirty (30) days from receipt of such notice to cure such default; *provided*, that if the breach or default is due to no fault of the defaulting party and is incapable of cure within such thirty (30) day period, the cure period shall be extended for up to an additional sixty (60) days as long as the defaulting party is diligently and in good faith attempting to effectuate a cure. Nothing in this Section 12.1(c) shall be interpreted to extend the Upset Date.

**12.2. Effect of Termination.** In the event of termination of this Agreement pursuant to Section 12.1, this Agreement (other than Section 8.7 which shall remain in full force and effect) shall forthwith become null and void, and no party hereto (nor any of their respective affiliates, directors, officers or employees) shall have any liability or further obligation, except as provided in this Article 12 and in Articles 11 and 13; *provided that* nothing in this Section 12.2 shall relieve any party from liability for any breach of this Agreement.

**ARTICLE 13**  
**REMEDIES UPON DEFAULT; SPECIFIC PERFORMANCE**

**13.1. Default by CCTF; Specific Performance.** CCTF recognizes that, in the event it defaults in the performance of its obligations under this Agreement, monetary damages alone will not be adequate. In such event, Exchange Parties shall be entitled to obtain specific performance of the terms of this Agreement without being required to post bond or furnish other security, and CCTF agrees that it will not interpose an objection to such request for specific performance on the grounds that Exchange Parties have available an adequate remedy at law. In addition, Exchange Parties shall be entitled to obtain from CCTF court costs and reasonable attorneys' fees and expenses incurred by it in enforcing its rights under this Agreement. As a condition to seeking specific performance, Exchange Parties shall be ready, willing and able to close under the terms of this Agreement.

**13.2. Default by Exchange Parties; Specific Performance.** Exchange Parties recognize that, in the event either defaults in the performance of its obligations under this Agreement, monetary damages alone will not be adequate. In such event, CCTF shall be entitled to obtain specific performance of the terms of this Agreement without being required to post bond or furnish other security, and Exchange Parties agree that they will not interpose an objection to such request for specific performance on the grounds that CCTF has available an adequate remedy at law. In addition, CCTF shall be entitled to obtain from Exchange Party court costs and reasonable attorneys' fees and expenses incurred by it in enforcing its rights under this Agreement. As a condition to seeking specific performance, CCTF shall be ready, willing and able to close under the terms of this Agreement.

**ARTICLE 14**  
**OTHER PROVISIONS**

**14.1. Transfer Taxes and Expenses.** Except as otherwise provided in this Agreement, all recordation, transfer, documentary, excise, sales or use taxes or fees imposed on this transaction shall be shared equally between CCTF and Exchange Party. Except as otherwise provided in this Agreement, each party shall be solely responsible for and shall pay all other costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement.

**14.2. Benefit and Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Neither party may assign its rights under this Agreement prior to the Closing without the prior written consent of the other party hereto, *provided* that either Exchange Parties or CCTF may assign its rights to an entity owned and controlled by Exchange Parties, CCTF or their principals so long as the assignment does not delay or impede the consummation of this Agreement. No assignment hereunder shall relieve any party of its obligations under this Agreement.

**14.3. Entire Agreement; Schedules; Amendment; Waiver.** This Agreement, and the exhibits and schedules hereto and thereto, embody the entire agreement and understanding of the parties hereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein. Any matter that is disclosed in a Schedule to this Agreement in such a way as to make its relevance to the information called for by another Schedule readily apparent shall be deemed to have been included in such other Schedule, notwithstanding the omission of an appropriate cross-reference. No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought. No failure or delay on the part of Exchange Parties or CCTF in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

**14.4. Headings.** The headings set forth in this Agreement are for convenience only and shall not control or affect the meaning or construction of the provisions of this Agreement.

**14.5. Computation of Time.** If after making computations of time provided for in this Agreement, a time for action or notice falls on Saturday, Sunday or a Federal holiday, then such time shall be extended to the next business day.

**14.6. Governing Law; Waiver of Jury Trial.** The construction and performance of this Agreement shall be governed by the laws of the State of Ohio without regard to its principles of conflict of law. Exchange Parties and CCTF hereby acknowledge that they have each been represented by counsel in the negotiation, execution and delivery of this Agreement and that their lawyers have fully explained the meaning of the Agreement. Any question of doubtful interpretation shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the drafter of this Agreement.

**14.7. Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**14.8. Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, addressed to the following addresses, or to such other address as any party may request.

If to CCTF:

Calvary Chapel of Twin Falls, Inc.  
4002 N. 3300 E.  
Twin Falls, ID 83303  
Attention: Mr. Michael Stocklin  
Facsimile: 208-736-1958

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

Lerman Senter PLLC  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006-1809  
Attention: Brian M. Madden, Esq.  
Facsimile: 202-293-7783

If to Exchange Parties:

Cumulus Broadcasting LLC  
3280 Peachtree Road  
Suite 2300  
Atlanta, GA 30305  
Attention: Lewis W. Dickey, Jr.  
Facsimile: 404-949-0740

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

Cumulus Broadcasting LLC  
3280 Peachtree Road  
Suite 2300  
Atlanta, GA 30305  
Attention: Richard S. Denning, Esq.  
Facsimile: 404-949-0740

Any such notice, demand or request shall be deemed to have been duly delivered and received (a) on the date of transmission, if sent by facsimile (but only if a hard copy is also sent by overnight courier), or (b) on the date of a signed receipt, if sent by an overnight delivery service, but only if sent in the same manner to all persons entitled to receive notice or a copy.

**14.9. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

## **ARTICLE 15**

### **DEFINITIONS**

**15.1. Defined Terms.** Unless otherwise stated in this Agreement, the following terms when used herein shall have the meanings assigned to them below (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

*"Acquiring Party"* shall mean CCTF, Exchange Party or Licensing, as required by the context in which such term is used, in its capacity as the party acquiring a station hereunder.

*"Agreement"* shall mean this Asset Exchange Agreement.

*"Assigning Party"* shall mean CCTF, Exchange Party or Licensing, as required by the context in which such term is used, in its capacity as the party assigning a station hereunder.

*"CCTF"* shall have the meaning set forth in the preamble to this Agreement.

*"CCTF's Proration Amount"* shall have the meaning set forth in **Section 3.4**.

*"Claimant"* shall have the meaning set forth in **Section 11.3**.

*"Closing"* shall have the meaning set forth in **Section 1.1**.

*"Closing Date"* shall mean the date on which the Closing is completed.

*"Contingent Application"* or *"Contingent Applications"* shall have the meaning set forth in **Section 8.1**.

*"Damaged Assets"* shall have the meaning set forth in **Section 8.6**.

*"Effective Time"* shall have the meaning set forth in **Section 3.1**.

*"Environmental Laws"* shall mean all applicable local, state and federal statutes and regulations relating to the protection of human health or the environment including the FCC's regulations concerning radio frequency radiation.

*"Exchange Parties"* shall have the meaning set forth in the preamble to the Agreement.

*"Exchange Party"* shall have the meaning set forth in the preamble to the Agreement.

*"FCC"* shall have the meaning set forth in the preamble to this Agreement.

*"FCC Assignment Applications"* shall have the meaning set forth in **Section 7.1**.

*"FCC Consent"* shall mean the action by the FCC granting the applicable FCC Assignment Application.

*"Final Order"* shall mean action by the FCC, with respect to the FCC Applications, (i) which has not been vacated, reversed, stayed, or suspended; (ii) with respect to which no timely appeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion, is pending; and (iii) as to which the time for filing any such appeal request, petition, or similar document or for the reconsideration or review by the FCC on its own motion under the Communications Act of 1934, as amended, and the rules and regulations of the FCC, has expired.

*"GAAP"* shall mean generally accepted accounting principles, consistently applied.

*"Indemnitor"* shall have the meaning set forth in **Section 11.3**.

*"Licensing"* shall have the meaning set forth in the preamble to the Agreement.

*"Liens"* shall mean mortgages, deeds of trust, liens, security interests, pledges, collateral assignments, conditional sales agreements, leases, encumbrances, claims, or other defects of title, but shall not include (i) liens for current taxes not yet due and payable, (ii) other liens imposed by law (such as materialman's, mechanic's, carrier's, worker's and repairman's liens) arising in the ordinary course of business (provided that such liens do not interfere in any material respect with the use of the station's Assets as currently used), and (iii) defects in title or other matters that are not material to the owner or lessee, as the case may be.

*"Non-Commercial Application"* shall have the meaning set forth in **Section 8.1**.

*"Notice of Disagreement"* shall have the meaning set forth in **Section 3.4**.

*"PCB"* shall mean polychlorinated biphenyl.

*"Proration Schedule"* shall have the meaning set forth in **Section 3.4**.

*"Purchase Price"* shall have the meaning set forth in **Section 2.1**.

*"Referee"* shall have the meaning set forth in **Section 3.4**.

*"Repairing Party"* shall have the meaning set forth in **Section 8.6**.

*"Representing Party"* shall have the meaning set forth in **Article 4**.

*"RF"* shall have the meaning set forth in **Section 5.5**.

*“Survival Period”* shall have the meaning set forth in **Section 11.5**.

*“To CCTF’s knowledge,”* or words of similar import, shall mean to the actual knowledge of the president, chief financial officer and/or chief engineer of CCTF.

*“To Exchange Parties’ knowledge,”* or words of similar import, shall mean to the actual knowledge of the president, chief financial officer and/or chief engineer of Exchange Parties.

*“Translator Modification Application”* shall have the meaning set forth in **Section 8.1**.

*“W264AK”* shall have the meaning set forth in the preamble to this Agreement.

*“W264AK Assets”* shall mean the assets to be transferred to Exchange Parties hereunder, as more fully specified in **Section 1.2(a)** of this Agreement.

*“W264AK Assumed Contracts”* shall have the meaning set forth in **Section 1.2(c)**.

*“W264AK FCC Licenses”* shall have the meaning set forth in **Section 1.2(a)(i)**.

*“W264AK Personal Property”* shall have the meaning set forth in **Section 1.2(a)(ii)**.

*“WTOD”* shall have the meaning set forth in the preamble to this Agreement.

*“WTOD Assets”* shall mean the assets to be transferred to CCTF hereunder, as more specifically set forth in **Section 1.3(a)** of this Agreement.

*“WTOD Assumed Contracts”* shall have the meaning set forth in **Section 1.3(a)(iii)**.

*“WTOD Excluded Assets”* shall have the meaning set forth in **Section 1.3(b)**.

*“WTOD FCC Licenses”* shall have the meaning set forth in **Section 1.3(a)(i)**.

*“WTOD Modification Application”* shall have the meaning set forth in **Section 8.1**.

*“WTOD Personal Property”* shall have the meaning set forth in **Section 1.3(a)(ii)**.

*“WTOD Tower”* shall have the meaning set forth in **Schedule 1.3(a)(iii)**.

*“Upset Date”* shall have the meaning set forth in **Section 12.1**.

**15.2. Miscellaneous Terms.** The term "*or*" is disjunctive; the term "*and*" is conjunctive. The term "*shall*" is mandatory; the term "*may*" is permissive. Masculine terms apply to females; feminine terms apply to males. The term "*includes*" or "*including*" is by way of example and not limitation.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]



IN WITNESS WHEREOF, the parties hereto have caused this Asset Exchange Agreement to be duly executed as of the date first written above.

**CALVARY CHAPEL OF TWIN FALLS, INC.**

By:   
Michael Kestler  
President

**CUMULUS LICENSING LLC**

By: \_\_\_\_\_  
Lewis W. Dickey, Jr.  
President

**CUMULUS BROADCASTING LLC**

By: \_\_\_\_\_  
Lewis W. Dickey, Jr.  
President

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**CUMULUS LICENSING LLC**

By: \_\_\_\_\_  
Lewis W. Dickey, Jr.  
President

**CUMULUS BROADCASTING LLC**

By: \_\_\_\_\_  
Lewis W. Dickey, Jr.  
President

## **SCHEDULES**

Schedule 1.2(a)(i)	W264AK FCC Licenses
Schedule 1.2(a)(ii)	W264AK Personal Property
Schedule 1.2(c)	W264AK Assumed Contracts
Schedule 1.3(a)(i)	WTOD FCC Licenses
Schedule 1.3(a)(ii)	WTOD Personal Property
Schedule 1.3(a)(iii)	WTOD Assumed Contracts
Schedule 1.3(b)(viii)	WTOD Excluded Personal Property
Schedule 5.1	CCTF Consents
Schedule 6.1	WTOD Consents

## **EXHIBITS**

Exhibit A	Tower Lease for the benefit of Exchange Parties
Exhibit B	Ground Lease for the benefit of CCTF