

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is made as of this 12th day of December, 2011, by and between Cherokee Nation (“Seller”) and John Brown University (“Buyer”).

Recitals

A. Seller is the holder of a Federal Communications Commission (“FCC”) construction permit for a new noncommercial educational FM radio station to serve the community of Tahlequah, Oklahoma (Facility ID No. 174140, File No. BNPED-20071018ASS) (the “Permit”).

B. Seller has agreed to sell the Permit to Buyer, and Buyer has agreed to purchase the Permit from Seller, on the terms and conditions set forth herein.

Agreements

In consideration of the foregoing, and the mutual covenants and agreements set forth below, Seller and Buyer hereby agree as follows:

1. **Application.** The parties shall cooperate in the prompt preparation and filing of an application with the FCC for consent to the assignment of the Permit from Seller to Buyer. Such application is to be filed within ten (10) business days after the date of this Agreement. The parties shall make commercially reasonable efforts to diligently submit any additional information requested or required by the FCC with respect to such application, and shall take commercially reasonable steps required for the expeditious prosecution of such application to a favorable conclusion.

2. **Assets to be Conveyed.** On the Closing Date, as defined in Section 10 hereof, Seller will sell, assign, transfer, convey and deliver to Buyer:

- a. the Permit; and
- b. any intangible property or property rights of Seller related to the Permit as specified on Schedule 1.

The foregoing assets (the “Purchased Assets”) are to be conveyed through an Assignment of FCC Authorizations in the form attached hereto as Exhibit A, and any other document of transfer (the “Closing Documents”) customary for such purpose and satisfactory in form and substance to Buyer, Seller, and their respective counsel. The Purchased Assets are to be conveyed to Buyer free and clear of any claims, liabilities, mortgages, deeds of trust, assignments, liens, pledges, conditions, exceptions, restrictions, limitations, charges, security interests or other encumbrances of any nature whatsoever (collectively, “Liens”), except for such conditions, restrictions and

limitations expressly applicable to the Permit or generally applicable to FCC construction permits of such type.

3. **Purchase Price.** The Purchase Price (“Purchase Price”) to be paid on the Closing Date by Buyer for the Purchased Assets shall be One Hundred Thirty-Five Thousand Dollars (\$135,000) to be paid to Seller at Closing by wire transfer by Buyer of immediately available funds to Seller or its designee, as directed in a flow of funds and wire instruction document to be executed by Buyer and Seller at the Closing.

4. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer that:

a. Seller is, and as of the Closing Date will be, a federally-recognized Indian tribe. Seller has the requisite power and authority to enter into and fulfill its obligations under this Agreement.

b. The execution by the Principal Chief and delivery of this Agreement and the consummation of the transaction contemplated hereby has been duly authorized by the Council of the Cherokee Nation. No other or further act on the part of Seller is necessary to authorize this Agreement or the consummation of the transaction contemplated hereby. This Agreement constitutes the legal, valid and binding obligation of Seller.

c. Subject to obtaining the approval of the FCC, the execution, delivery and performance of this Agreement (i) does not require the consent of any third party, and (ii) will not conflict with, result in a breach of, or constitute a default under any agreement or instrument to which Seller is a party or by which Seller is bound, or under any law, judgment, order, decree, rule or regulation of any court or governmental body which is applicable to Seller or the Permit.

d. Seller is, and as of the Closing Date will be, in material compliance with all applicable laws, including the Communications Act of 1934, as amended, and the rules and regulations of the FCC in respect to the Permit.

e. The Purchased Assets are, and on the Closing Date will be, in material compliance with all applicable laws.

f. Seller knows of no reason related to its qualifications which would disqualify it from holding the Permit or assigning the Permit to Buyer. The Permit is valid and in full force and effect and constitutes all of the authorizations issued by the FCC in connection with the construction of a noncommercial educational FM station as provided in the Permit. Seller makes no representation or warranty as to the current availability of the transmitter site specified in the Permit.

g. Seller has, and on the Closing Date will have, good and marketable title to all the Purchased Assets, free and clear, of all claims, except to the extent that the FCC does not recognize a property interest in an FCC authorization. None of the Purchased Assets are subject to any restrictions with respect to the transferability thereof, except as imposed by the FCC or as

set forth on the Permit. Seller has complete and unrestricted power and right to sell, assign, convey and deliver the Purchased Assets to Buyer as contemplated hereby. At Closing, Buyer will receive good and marketable title to all the Purchased Assets, free and clear of all Liens of any nature whatsoever, except to the extent that the FCC does not recognize a property interest in an FCC authorization.

5. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller that:

a. Buyer is, and as of the Closing Date will be, a non-profit corporation organized under the laws of the State of Arkansas. This Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms.

b. Buyer knows of no reason related to its qualifications that would disqualify it from acquiring the Permit from Seller.

c. Buyer has the financial resources necessary to consummate the transaction contemplated by this Agreement.

d. Buyer acknowledges that it has reviewed the Permit, and is aware of and willing to accept the conditions set forth therein as permittee, including, but not limited to, Special Condition Number 8, which provides that "Pursuant to 47 CFR Sections 73.7002(c) and 73.7005(b) the permittee/licensee is required to construct and operate for a period of four years of on-air operations technical facilities substantially as proposed and shall not downgrade service to the area on which the preference was based."

6. **Expenses.** The expenses involved in the preparation and consummation of this Agreement shall be borne by the party incurring such expense.

7. **Seller's Closing Conditions.** All obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions which, except for the initial consent of the FCC to the assignment, may be waived in whole or in part by Seller:

a. The FCC shall have consented to the assignment of the Permit to Buyer without any condition materially adverse to Seller, and such consent shall have become a final order, no longer subject to review, reconsideration, appeal or remand under applicable laws and rules (a "Final Order").

b. Buyer shall have delivered the Purchase Price in the manner specified in Section 3 hereof.

8. **Buyer's Closing Conditions.** All obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions which, except for the initial consent of the FCC to the assignment, may be waived in whole or in part by Buyer:

a. The FCC shall have consented to the assignment of the Permit to Buyer without any condition materially adverse to Buyer, and such consent shall have become a Final Order.

b. Seller shall have executed and delivered to Buyer the Closing Documents and conveyed the Purchased Assets to Buyer in accordance with this Agreement.

c. All representations and warranties of Seller made herein shall be true and correct in all material respects as of the Closing Date.

d. As of the Closing Date, Seller shall have complied in all material respects with all covenants and conditions of this Agreement.

9. **Termination.** This Agreement may be terminated by the parties as follows:

a. If either Buyer or Seller shall be in material breach of this Agreement, and such breach is not cured after thirty (30) days' written notice from the other party, then the other party, if not then in material breach itself, may terminate this Agreement. In the event of a claim by Buyer against Seller for monetary damages, Seller's liability under this Agreement shall not exceed the amounts received by Seller from Buyer pursuant to this Agreement. In the event of termination of this Agreement by Seller as a result of an uncured breach of this Agreement by Buyer, Seller's sole and exclusive remedy shall be the payment by Buyer to Seller of the amount of Twenty-Seven Thousand Dollars (\$27,000) as liquidated damages, payable in cash within seven (7) business days of Seller's demand. In the event of a dispute hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the other party.

b. If the FCC or a court shall have issued an order or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting or making the transaction not feasible, and such order or other action is finally determined, then either party may terminate this Agreement provided, however, that the right to terminate this Agreement under this Section 9(b) shall not be available to a party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in, such order or action.

c. If the Closing has not occurred within twelve (12) months after the date of this Agreement, then either party may terminate this Agreement, provided, however, that the right to terminate this Agreement under this Section 9(c) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in unreasonable delay in the Closing.

10. **Closing.** The Closing, or the Closing Date, as used throughout this Agreement, shall take place on a date selected by Buyer (with reasonable written notice to Seller) within ten (10) business days after the FCC shall have consented to the assignment of the Permit to Buyer and such consent shall have become a Final Order, subject to satisfaction of or waiver of the other conditions precedent set forth above.

11. **Control of the Permit.**

a. Prior to the Closing Date, Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Permit. Such operations shall be the sole responsibility of Seller until this Agreement is consummated.

b. Seller hereby grants its consent for Buyer to file in Buyer's name, pursuant to Section 73.3517(a) of the FCC's rules, an application to modify the facilities authorized under the Permit. The application shall be prepared and filed at Buyer's expense and in accordance with applicable FCC rules and shall request that the grant thereof be contingent upon approval and consummation of the assignment of the Permit to Buyer. The grant of such a contingent modification application is not a condition precedent of Buyer's obligation to close hereunder.

12. **Survival.** The representations and warranties of Buyer and Seller set forth above shall survive the Closing Date for a period of twelve (12) months (the "Survival Period") and no claims 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 Survival Period. In the event such notice is given, the right to indemnification with respect thereto under this provision shall survive the applicable Survival Period until such claim is finally resolved and any obligations with respect thereto are fully satisfied.

13. **Entire Agreement.** This Agreement, together with all exhibits and schedules hereto, constitute the entire agreement between the parties and supersede all prior agreements.

14. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on the permitted successors and assigns of the parties hereto. Notwithstanding the foregoing, no party may assign its rights or obligations under this Agreement without prior written consent of the other party, except that (a) Seller may, without such consent, assign its rights and obligations under this Agreement to a person or entity that the FCC has approved to be the permittee of the Permit pursuant to an application on FCC Form 316, provided, however, such assignment shall not release Seller from its liabilities hereunder and, provided, further, that such assignment would not delay the FCC consent to the assignment of the Permit to Buyer, and (b) Buyer may, without such consent, assign its rights and obligations under this Agreement to a person or entity that the FCC has approved to replace Buyer as permittee pursuant to an application on FCC Form 316 or by minor amendment to the application for FCC consent to the assignment of the Permit to Buyer, provided, however, such assignment shall not release Buyer from its liabilities hereunder and, provided, further, that such assignment would not delay the FCC consent to the assignment of the Permit to Buyer. Furthermore, Seller may assign its rights or obligations under this Agreement in whole or in part, effective immediately prior to Closing in a manner that will not require FCC consent, to a designated entity, without prior written consent of Buyer.

15. **Cooperation.** Both before and after the Closing, Seller and Buyer shall each cooperate, take such commercially reasonable actions and execute and deliver such

commercially reasonable documents as may be reasonably requested by the other party in order to carry out the provisions of this Agreement.

16. **Notices.** All notices hereunder shall be delivered in writing and shall be deemed to have been duly given if delivered and received by certified or registered mail, return receipt requested, or by expedited courier service, to the following addresses or such other addresses as any party may provide by written notice:

To Seller: Cherokee Nation
Office of the Attorney General
P.O. Box 948
Tahlequah, OK 74465

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

Repp Law Firm
1629 K Street, Suite 300
Washington, DC 20006-1631
Attention: Marissa G. Repp, Esq.

To Buyer: John Brown University-- KLRC Radio
2000 W. University Street
Siloam Springs, AR 72761
Attention: Sean Sawatzky, General Manager

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

Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
Arlington, VA 22209
Attention: James P. Riley, Esq.

17. **Exclusivity.** While this Agreement is in effect, Seller agrees not to engage in any discussions or negotiations concerning any potential sale of the Purchased Assets to any party other than Buyer or its assigns.

18. **Counterparts.** This Agreement may be signed in counterparts with the same effect as if the signature on each counterpart were upon the same instrument. Executed copies of this Agreement transmitted by facsimile or other electronic means shall be valid and binding.

[The remainder of this page has been intentionally left blank. Signatures appear on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CHEROKEE NATION

Bill John Baker
By: Bill John Baker
Principal Chief

JOHN BROWN UNIVERSITY

By: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CHEROKEE NATION

By: _____

JOHN BROWN UNIVERSITY

By: Kimberly M Hadley
Vice President for Finance & Adm