

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is entered into as of the 20th day of February 2015, by and between 4-K’s, LLLP, a Colorado Limited Liability Partnership (“Seller”) and Marco Broadcasting Corporation, a Colorado corporation (“Buyer”).

### **Background**

WHEREAS, Seller is the licensee (BMML-20140131ART) of KDCO(AM) Golden, Colorado, (Facility ID No. 161314) and the licensee (BLFT-20150128AUQ) of K231BQ, Golden, Colorado (Facility ID No. 142150), (the “Stations”) with the Federal Communications Commission (“FCC”) and

WHEREAS, subject to the FCC Consent, Seller wishes to sell to Buyer the FCC licenses authorizing Seller to operate the Stations and Seller’s rights to the application pending before the FCC for Station KDCO (the “Licenses”) and certain other assets relating thereto, and Buyer wishes to receive the same from Seller.

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

#### **1. Assignment and Sale of the Licenses.**

a. Subject to the terms and conditions set forth in this Agreement, Seller agrees to convey, transfer and assign to Buyer at Closing (as defined in Section 3 below) all of Seller’s right, title and interest in and to the Licenses for the Stations (copies of which are annexed hereto in Schedule 1). Other than Seller’s rights in and to the Stations’ call letters, the files, documents, records, and books of account (or copies thereof) relating to the operation of the Stations, including the KDCO local public files, and studies, blueprints, technical information and engineering data, advertising studies, marketing and demographic data, sales correspondence and sales list, lists of advertisers, credit and sales reports, and logs and those assets listed on Schedule 2, there are no other assets relating to the Stations being sold. The Licenses, the Tower Site Leases (as defined in Section 9(k) below), the foregoing assets and the assets on Schedule 2 are collectively referred as the “Assets”.

b. Buyer shall pay Seller EIGHT HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (\$875,000.00) (the “Purchase Price”) for the Stations according to the following schedule:

(i). Upon execution of this agreement, Buyer shall pay to Escrow Agent by wire transfer of immediately available funds a deposit of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) (the “Deposit”). This Deposit shall be nonrefundable to Buyer, except it shall be returned to Buyer, along with any interest earned thereon: (i) in the event the FCC does not approve the assignment of Stations within one year from the date of this Agreement, and that the delay of the assignment is not caused by the fault of the Buyer in any way; (ii) in the event Seller breaches this Agreement and Buyer is not then in breach hereunder

or (iii) in the event that Seller fails or refuses to close or a delay of the FCC Consent within one year of the date of this Agreement is the result or fault of Seller in any way. The Deposit shall be held and distributed in accordance with the terms of the Escrow Agreement among Seller, Buyer and Escrow Agent in substantially the form attached as Schedule 3.

(ii). At Closing, Buyer and Seller shall jointly direct Escrow Agent to deliver the Deposit to Seller by bank cashier's check or wire transfer.

(iii). At Closing, Buyer shall pay to Seller the sum of SEVEN HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS (\$775,000.00) by bank cashier's check or wire transfer.

c. Prorations and Adjustments. At Closing, Seller and Buyer shall prorate all pre-paid expenses and deposits, and all expenses for which liability has accrued but whose payment is not yet due as of the Closing Date, including but not limited to the annual FCC regulatory fees for the Stations, the tower site rents, and utilities. Any amounts allocated to Seller shall be deducted from the Purchase Price and any amounts allocated to Buyer shall be added to the Purchase Price. If the amount of the fee due for the 2015 regulatory fee is not known at the time of Closing, the parties shall base the amount of the 2014 regulatory fees for the Stations.

**2. FCC Consent.** Within seven (7) business days of the execution of this Agreement, the parties shall file an application (the "Assignment Application") for FCC consent to the assignment of the Licenses (the "FCC Consent"). Each party shall be responsible for its own costs relating to the preparation of the Assignment Application. Buyer and Seller agree to proceed expeditiously and with due diligence to use their best efforts to cooperate with each other in seeking the FCC's approval of the transaction contemplated herewith. The FCC filing fees for the Assignment Application shall be shared equally by Buyer and Seller. Seller shall, at its expense, give due notice of the filing of the Assignment Application as may be required by the rules, regulations and policies of the FCC (the "FCC Rules").

**3. Closing.** Within ten (10) business days after the FCC Consent has become a Final Order, as defined below, the parties shall consummate the transaction contemplated by this Agreement at a closing ("Closing"). At Closing, Seller shall deliver to Buyer a Bill of Sale and an Assignment of the Licenses, executed consents and estoppels from each lessor of the Tower Site Leases, and any other documents of conveyance reasonably requested by Buyer and necessary to consummate the transaction contemplated by this Agreement. At Closing, Buyer shall deliver any documents of conveyance reasonably requested by Seller. Buyer may elect to consummate this transaction prior to the FCC Consent becoming a Final Order and Seller shall cooperate with Buyer if Closing is accelerated. If Closing occurs prior to the FCC Consent becoming a Final Order, and the FCC Consent is reversed or otherwise set aside, and there is a Final Order of the FCC (or court of competent jurisdiction) requiring the re-assignment of the Licenses to Seller, then the purchase and sale of the Assets shall be rescinded. In such event, Buyer shall re-convey to Seller the Assets, and Seller shall repay to Buyer the Purchase Price and reassume any contracts and leases assigned and assumed at Closing. "Final Order" means a written action or order issued by the FCC, setting forth an FCC Consent and: (a) which has not been reversed, stayed, enjoined, set aside, annulled or suspended, and (b) with respect to which

(i) no requests have been filed for administrative or judicial review, reconsideration, appeal or stay, and the time for filing any such requests and for the FCC to set aside the action on its own motion has expired, or (ii) in the event of review, reconsideration or appeal, that does not result in the FCC Consent being reversed, stayed, enjoined, set aside, annulled or suspended, and the time for further review, reconsideration or appeal has expired.

**4. Pre-Closing Covenants.** Should Buyer wish to modify the Licenses prior to Closing, Seller will cooperate in the filing of such applications in Seller's name and account or provide written permission to Buyer for filing with the FCC, as necessary; however, Buyer shall be responsible for the payment of all legal and engineering costs associated with such filings. Seller shall: operate the Stations in the ordinary course in accordance with the Licenses and standard industry practice, including but not limited to maintaining casualty and liability insurance; keep the Assets in good operating condition and repair; not without Buyer's prior written consent sell, lease or dispose of any of the Assets or create or permit to exist any liens or encumbrances on any of the Assets; or, except as provided in this Agreement, modify the Licenses or amend or modify the Tower Site Leases. The parties will cooperate fully with each other in fulfilling their respective obligations under this Agreement, including using their respective reasonable best efforts to obtain the required FCC Consent. Consistent with the FCC Rules, control, supervision and direction of the operation of the Stations prior to Closing shall remain the responsibility of Seller as the holders of the Licenses. The risk of loss of or damage to any of the Assets shall remain with Seller at all times until 12:01 a.m. local time on the day of Closing, and prior to Closing Seller shall repair and replace any lost or damaged Assets.

**5. Conditions Precedent to Closing.** The parties acknowledge and agree that: (a) the FCC Consent to the assignment of the Licenses from Seller to Buyer and (b) the assignment by Seller and the assumption by Buyer of the Tower Site Leases, as defined in Section 9(k) below, are conditions precedent to Closing.

**6. Representations and Warranties.**

a. **Joint Representations and Warranties.** Seller and Buyer, respectively, represent and warrant that: (i) it is duly organized and in good standing in the jurisdiction in which it is organized and is qualified to do business in each jurisdiction in which any of the Assets are located; (ii) it has the full power and authority to enter into and execute this Agreement; (iii) the execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Seller and Buyer and do not require any further authorization or consent of any party or approval or authorization, or filing with, any third party or any court or governmental authority except the FCC; (iv) this Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Seller and Buyer respectively enforceable in accordance with their respective terms; (v) subject only to the FCC Consent, there is no constraint upon any party's legal ability to perform its responsibilities hereunder; and (vi) no broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action of Seller or Buyer or any party acting on behalf of Seller or Buyer.

b. Seller Representations and Warranties. Seller represents and warrants to Buyer that: (i) the Licenses were validly issued by the FCC, that they are in full force and effect, that they constitute all of the authorizations issued by the FCC in connection with the Stations and are not subject to any restriction or condition that would limit the operation of the Stations, other than such restrictions or conditions to which similar facilities are routinely subject or that are set forth in the Licenses; (ii) there is not pending or, to Seller's knowledge, threatened any action by or before the FCC to revoke, suspend, cancel, rescind or modify (except as provided for in this Agreement) any of the Licenses (other than proceedings relating to the FCC Rules of general applicability), and there is no order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint pending or, to Seller's knowledge, threatened against Seller or either of the Stations by or before the FCC; (iii) that Seller and the Stations are in compliance in all material respects with the Licenses; the Communications Act of 1934, as amended (the "Act") and the FCC Rules; (iv) that the Stations are operating at full power in accordance with their respective FCC licensed parameters, the Act, the FCC Rules and applicable FAA rules and regulations; (v) that all required annual regulatory fees have been timely paid and all reports and filings required to be filed with the FCC with respect to the Stations have been timely filed and are accurate and complete; (vi) the Assets shall be conveyed free and clear of any claims or encumbrances of any kind or nature; (vii) all of the tangible personal property included in the Assets is in good operating condition and repair (ordinary wear and tear excepted), is free from material defect or damage, is functioning in the manner and purposes for which it was intended and has been maintained in accordance with industry standards; (viii) Seller has good and marketable title to the Assets, free and clear of liens, claims or encumbrances of any kind or nature.

c. Buyer Representations and Warranties. Buyer represents and warrants to Seller that: Buyer is legally, financially and otherwise qualified to acquire, own and operate the Stations and to hold the FCC Licenses under the Communications Act and the FCC Rules. There are no facts relating to Buyer under existing law and the existing FCC Rules, regulations, policies and procedures that (i) could reasonably be expected to prevent or delay the FCC from granting the FCC Consent or (ii) would disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Stations. No waiver of any FCC rule or policy relating to Buyer is necessary for the FCC Consent to be obtained. There is no action, suit or proceeding pending or, to Buyer's knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

d. Change in Representations or Warranties. Prior to Closing, either party will notify the other in writing in a timely manner as provided for herein if either party has knowledge of any representations or warranties contained in Section 6 that are no longer true and correct or of any fact, occurrence, event, or circumstance that would constitute a breach of any such representation or warranty as of Closing.

## **7. Indemnification.**

a. From and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages") incurred by Buyer arising out of or

resulting from: (i) any breach by Seller of its representations and warranties under this Agreement; (ii) any default by Seller of its covenants and agreements under this Agreement; (iii) without limiting the foregoing, the business or operation of the Stations prior to Closing (including any third party claim arising from such operations).

b. From and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from: (i) any breach by Buyer of its representations and warranties under this Agreement; (ii) any default by Buyer of its covenants and agreements under this Agreement; (iii) without limiting the foregoing, the business or operation of the Stations after Closing (including any third party claim arising from such operations).

c. Procedures.

(i) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by a third party that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations, except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced.

(ii) The indemnifying party shall have the right to undertake the defense, opposition, compromise or settlement of such Claim ("Defense") with counsel reasonably satisfactory to the parties. In the event that the indemnifying party does not undertake such Defense in a timely manner, the indemnified party may undertake the Defense of such Claim with counsel selected by it at the indemnifying party's cost.

(iii) Notwithstanding anything herein to the contrary: (A) the indemnified party shall have the right, at its own cost and expense, to participate in the Defense of any Claim, and shall have the right to consult with the indemnifying party and its counsel concerning any Claim, and the indemnifying party and the indemnified party shall cooperate in good faith with respect to any Claim; and (B) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include a release of the indemnified party from all liability in respect of such Claim.

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

a. by mutual written consent of Buyer and Seller at anytime or by either Buyer or Seller if FCC Consent has not become a Final Order within twelve (12) months of the date on which Assignment Application is filed; or

b. by written notice from a party that is not then in material breach of this Agreement if the other party has failed to cure its material breach of any of its representations, warranties or covenants under this Agreement within thirty (30) days after receipt of written notice of such breach from the party not in material breach. If the Tower Site Leases, as defined in Section 9(k) below, cannot be assigned to Buyer due to any action by Buyer, such failure to

assign the Tower Site Leases shall not be considered a breach of this Agreement on the part of Seller.

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

**9. Miscellaneous.**

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

**If to Buyer:**

Marc Paskin, President  
Marco Broadcasting Corporation  
8550 El Paseo Grande  
La Jolla, CA 92037

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

Nathaniel J. Hardy, Esq.  
Marashlian & Donahue, LLC  
1420 Spring Hill Road, Suite 401  
McLean, VA 22102

**If to Seller:**

Gregory Merilatt  
4-K's, LLLP  
1713 Whistlepig Lane  
Broomfield, Colorado 80020

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

Kathleen Victory, Esq.  
Fletcher Heald & Hildreth, PLC  
1300 17<sup>th</sup> Street N, 11<sup>th</sup> Floor  
Arlington, VA 22209

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

b. Assignment and Binding Effect. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, which shall

not be unreasonably withheld, except that Buyer may assign its rights and obligations under this Agreement without the prior consent of Seller to any business entity which owns and controls Buyer, which Buyer owns and controls or which is owned and controlled by the same entity which owns and controls Buyer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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

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

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

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

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

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

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

j. Expenses. Except as otherwise provided herein, each party shall be solely responsible for all fees and expenses each party incurs in connection with the transaction contemplated by this Agreement, including, without limitation, legal fees incurred in connection herewith.

k. Contracts. Buyer agrees to accept and Seller agrees to assign all rights and obligations under: (i) that certain Lease Agreement, dated June 15, 2012, as amended October 30, 2013, by and between Mauna Towers, LLC and Mountain Plains Industrial Center, LLC, as assigned to Seller by the Assignment and Assumption of Lease dated February 2, 2015, by and between Mauna Towers, LLC and Seller (the "KDCO Tower Lease") and (ii) that certain Tower Lease Agreement, dated February 1, 2015, by and between Seller and Mauna Towers,

LLC (the "K231BQ Tower Lease," together with the KDCO Tower Lease, the Tower Site Leases). Complete and current copies of the Tower Site Leases are provided in Schedule 9(k), hereto.

l. Severability. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement 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.

m. Arbitration. Any dispute arising out of or related to this Agreement that Seller and Buyer are unable to resolve by themselves shall, at the election of either party (by written notice to the other), be settled by arbitration. Within seven (7) business days from the date of the notice of such election, Seller and Buyer shall each designate one independent representative, and within 21 calendar days thereafter the two representatives so designated shall select the arbitrator. The person selected as arbitrator need not be a professional arbitrator or one listed on any panel of trained arbitrators, and a person such as a lawyer, broadcaster, accountant, broadcast broker or banker shall be acceptable, provided that the arbitrator shall be knowledgeable concerning the radio broadcast industry and have at least ten years experience working therein or with clients in the industry and shall be independent of either Seller or Buyer. If, following issuance of a notice electing arbitration, the party receiving such notice fails to designate its representative to select the arbitrator within the time allotted, or if either party's representative fails to proceed in good faith to select the arbitrator, then the party whose representative is acting in good faith may select a disinterested arbitrator unilaterally. Before undertaking to resolve the dispute, the arbitrator shall be duly sworn faithfully and fairly to hear and examine the matters in controversy and to make a just award according to the best of his or her understanding. The arbitration hearing shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association then in effect, except that the parties shall not be required to notify the AAA of the arbitration and the parties' representatives shall not be required to appoint an arbitrator suggested or approved by the AAA, and the parties shall have no duty to pay any fee to the AAA in connection with such arbitration. Any notices required under the AAA rules to be given by the AAA shall be given by the parties themselves, their representative or by the arbitrator, as appropriate. The written decision of the arbitrator shall be final and binding on Seller and Buyer. The costs and expenses (including the fees of the arbitrator and the parties' reasonable attorneys' fees) of the arbitration proceeding shall be assessed between Seller and Buyer in a manner to be decided by the arbitrator pursuant to the provisions hereof, and the assessment shall be set forth in the decision and award of the arbitrator along with an order of specific performance (where appropriate). If the award is not paid and performed within thirty (30) days, then judgment on the award may be entered in any court having jurisdiction over the matter. If either party has elected arbitration, no proceeding based upon any claim arising out of or related to this Agreement shall be instituted in any court by Seller or Buyer against the other except (i) an action to compel arbitration pursuant to this Section, and (ii) an action to confirm and/or enforce the award of the arbitrator rendered in accordance with this Section 9(m).

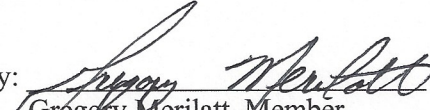
--SIGNATURE PAGE FOLLOWS--



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

**SELLER:**

**4-K'S, LLLP**

By:   
Gregory Merilatt, Member

**BUYER:**

**MARCO BROADCASTING CORPORATION**

By: \_\_\_\_\_  
Marc Paskin, President

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

**SELLER:**

**4-K'S, LLLP**

By: \_\_\_\_\_  
Gregory Merilatt, Member

**BUYER:**

**MARCO BROADCASTING CORPORATION**

By:  \_\_\_\_\_  
Marc Paskin, President

## **SCHEDULE 1**

### **FCC LICENSES**

<u>License</u>	<u>File Number</u>	<u>Expiration Date</u>
KDCO(AM) Golden, Colorado Pending modification app.	BMML-20140131ART BP- 20150205AEL	April 1, 2021
K231BQ, Golden, Colorado	BLFT-20150128AUQ	April 1, 2021

## **SCHEDULE 2**

### **EQUIPMENT**

#### K231BQ transmitter site

Nicom 500 Watt FM Transmitter  
Nicom BKG 77 one bay custom directional antenna  
Scala MF950B STL receive two-foot dish  
120 feet Andrew LDF4-50 transmission line  
Orban 8200 audio processor  
ISDN decoder

#### KDCO Transmitter site

Sage EAS encoder/decoder  
Nautel ND-1 AM transmitter  
Orban AM processor  
Belar AM modulation Monitor  
Potomac Instruments two tower Antenna Monitor  
Burk ARC 16 remote control with phone interface  
Custom Relay switching panel  
2 – Rohn 45G 150 foot guyed towers with base insulators  
2 – custom antenna tuning units  
Custom two tower phasor  
Delta Common Point meter  
250 feet of Andrew LDF5-50A transmitter line  
250 feet of Andrew LDF4-50A transmission line  
500 feet of Andrew sample lines  
12' x 8' modular transmitter shelter

**SCHEDULE 3**  
**ESCROW AGREEMENT**

**SCHEDULE 9(k)**  
**TOWER SITE LEASES**