

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of January \_\_, 2004, by and among LAKE AREA EDUCATIONAL BROADCASTING FOUNDATION, a Missouri Charitable Trust ("Seller"), CUMULUS BROADCASTING, LLC., a Nevada limited liability company ("Buyer"), and CUMULUS LICENSING LLC., a Nevada limited liability company ("License Co." and together with Buyer being hereinafter sometimes referred to as "Buyers").

### W I T N E S S E T H:

**WHEREAS**, Seller is the owner of the radio broadcast station KCVK-FM, (FCC ID# 83870) serving the Otterville, Missouri market (the "Station").

**WHEREAS**, Seller operates the Station pursuant to certain authorizations held by it and issued by the Federal Communications Commission (the "FCC") and Seller owns or leases certain assets used and/or useful in connection with the operation of the Station; and

**WHEREAS**, Seller agrees to the sale, assignment, and transfer of the Station, the FCC authorizations for the Station, and the assets and business of the Station, and Buyers desire to acquire the Station, and such FCC authorization, assets and business, all on the terms and subject to the conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, representations, and warranties herein contained, and upon the terms and subject to the conditions hereinafter set forth, the parties hereto hereby agree as follows:

### DEFINITIONS

**"Agreement"** has the meaning set forth in the preamble hereto.

**"Allocation Schedule"** has the meaning set forth in Section 2.5 hereof.

**"Assignment"** has the meaning set forth in Section 3.1(a) hereof.

**"Assignment and Assumption Agreement"** has the meaning set forth in Section 2.7 hereof.

**"Assignment Application"** has the meaning set forth in Section 3.1(a) hereof.

**"Authorizations"** means collectively, the Commission Authorizations and the Other Authorizations.

**“Balance Sheet Date”** has the meaning set forth in Section 4.11 hereof.

**“Buyer”** has the meaning set forth in the preamble hereto.

**“Buyer Documents”** has the meaning set forth in Section 5.2 hereof.

**“Buyers”** has the meaning set forth in the preamble hereto.

**“Closing”** has the meaning set forth in Section 8.1 hereof.

**“Closing Date”** means the date on which the Closing occurs.

**“Closing Payment”** has the meaning set forth in Section 2.4 hereof.

**“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commission Authorizations”** means all licenses, permits, approvals, construction permits, and authorizations issued or granted by the FCC for the operation of, or used and/or useful in connection with the operation of the Station (and any and all auxiliary and/or supportive transmitting and/or receiving facilities, boosters, and repeaters associated with the Station), including, without limitation, all of those listed in Schedule 4.6(b)(i) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto.

**“Communications Act”** means the Communications Act of 1934, as amended.

**“Compliance Information”** has the meaning set forth in Section 6.14(iii) hereof.

**“Contingent Applications”** has the meaning set forth in Section 6.18 hereof.

**“Contracts”** means all contracts, agreements, orders, commitments, arrangements and understandings, written or oral, to which the Station or Seller or any affiliate or predecessor of Seller, in connection with the operation of the Station are a party, including, without limitation, all leases, program licenses, contracts to broadcast programs on the Station, employment, confidentiality and indemnification agreements, Real Property Leases and Personal Property Leases.

**“Cure Period”** has the meaning set forth in Section 10.1(b) hereof.

**“Documentation”** means all documentation, records, and software, whether in electronic or print form, in the possession or under the control of Seller evidencing, representing, or containing or relating to any Program or used in or necessary to the operation of the Station, including, without limitation, any manuals, functional and design specifications, user and programmer instructions, coding, testing notes, error reports and logs, patches and patch instructions, itemizations of development tools, and all other writings which would be necessary or helpful to a skilled programmer to understand, maintain, and enhance any Program.

**“Environmental Audit”** has the meaning set forth in Section 6.15 hereof.

**“Environmental Complaint”** means any complaint, order, citation or other communication, whether from a governmental authority, citizens group, employee or other person with regard to Environmental Liabilities or any environmental, health, or safety matter affecting or relating to any of the Real Property or the operation of the Station.

**“Environmental Liabilities”** means any loss, liability, claim, damage, deficiency, cleanup or remediation obligation, injury, fine, penalty, cost (including cleanup or remediation costs) or expense (including attorneys’ fees) arising from or in connection with (i) the use, management, treatment, handling, disposal, transport, storage, spill, escape, leakage, emission, release, discharge or presence of any Hazardous Substance, including, without limitation, gasoline, oil or other petroleum products, asbestos, explosives, radioactive materials and related and similar material or any other material or substance defined as hazardous, toxic or polluting by any federal, state or local law, ordinance, rule or regulation on, at, from or under any of the Real Property prior to the Closing Date; (ii) the failure to obtain any license or permit required in connection with any such Hazardous Substance prior to the Closing Date; or (iii) any noncompliance with any Environmental Requirement, and/or any Environmental Complaint prior to the Closing Date.

**“Environmental Requirement”** means any federal, state, local or foreign laws rules, order or regulations relating to pollution or protection of human health or the environment (including, without limitation, any ambient air, surface water, ground water, wetlands, land surface, subsurface strata and indoor and outdoor workplace), including laws and regulations relating to emissions, discharges, releases, or threatened releases of any Hazardous Substance or the importation, manufacture, processing, formulation, testing, distribution, use, treatment, storage disposal, transport or handling of Hazardous Substances.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“Escrow Agreement”** has the meaning set forth in Section 2.9 hereof.

**“Escrow Amount”** means Sixty-Five Thousand United States Dollars (US \$65,000.).

**“Escrow Agent”** means Media Services Group.

**“Excluded Assets”** has the meaning set forth in Section 2.2 hereof.

**“Excluded Contracts”** means all Contracts other than the Real Property Lease.

**“Excluded Liabilities”** has the meaning set forth in Section 2.7 hereof.

**“FCC”** has the meaning set forth in the recitals hereto.

**“FCC Logs”** has the meaning set forth in Section 2.1(j) hereof.

**"FCC Rules"** means the rules of the FCC codified in Title 47 of the Code of Federal Regulations.

**"Final Order"** means an action of the FCC which is not reversed, stayed, enjoined, annulled, set aside or suspended, and with respect to which no timely request for stay, reconsideration, review, rehearing, or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the FCC, and for any reconsideration, stay, or setting aside by the FCC on its own motion or initiative, has expired.

**"Financial Statements"** has the meaning set forth in Section 4.4 hereof.

**"Hazardous Substance"** has the meaning set forth in Section 4.13(a) hereof.

**"Initial Order"** has the meaning set forth in Section 3.1(a) hereof.

**"Insurance Proceeds"** means all insurance proceeds and rights thereto derived from loss, damage, or destruction of or to any Purchased Assets, to the extent not utilized prior to the Closing to repair or replace the lost, damaged, or destroyed items.

**"Intangibles"** means the call letters of the Station, and all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, applications for any of the foregoing, telephone numbers and listings, trade secrets, confidential or proprietary information, and other intangible property used or held for use and/or useful by or for the Station and/or Seller in connection with the business or operation of the Station and any and all universal resource locators ("URLs"), web sites, domain names, of or maintained by or for the Station, and any web site or home page of or maintained by or for the Station, and all property and assets (tangible or intangible) used or necessary to create and publish any such web site or home page (collectively, the "Site") and all goodwill associated with any of the foregoing.

**"License Co."** has the meaning set forth in the preamble hereto.

**"Liens"** means any liens, pledges, claims, charges, mortgages, security interests, restrictions, easements, liabilities, claims, title defects, encumbrances or rights of others of every kind and description.

**"LMA"** has the meaning set forth in Section 2.11 hereof.

**"Non-Compete Agreement"** has the meaning set forth in Section 2.10 hereof.

**"Other Authorizations"** means all licenses, permits, variances, franchises, certifications, approvals, construction permits, and authorizations issued or granted by any administrative body or licensing authority or governmental or regulatory agency, other than Commission Authorizations, used or useful in connection with the operation of any of the Station and/or the ownership and/or use of the Purchased Assets, including, without limitation, all of those listed in Schedule 4.6(b)(ii) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto.

**"Permitted Liens"** means liens for Taxes not yet due and payable.

**“Personal Property Leases”** has the meaning set forth in Section 4.8(b) hereof.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, estate or unincorporated organization.

**“Programs”** means all computer systems (including without limitation, management information and order systems, hardware, software, servers, computers, printers, scanners, monitors, peripheral and accessory devices, and the related media, manuals, documentation, and user guides) of or used by or in the operation of the Station, all related claims, credits, and rights of recovery and set-off with respect thereto, and all of the right, title, and interest (including by reason of license or lease) of Seller or the Station in or to any software, computer program, or software product owned, used, developed, or being developed by or for any of the Station, whether for internal use or for sale or license to others, and any software, computer program, or software product licensed by Seller for use by the Station, and all proprietary rights of Seller or the Station, whether or not patented or copyrighted, associated therewith.

**“Purchase Price”** has the meaning set forth in Section 2.3 hereof.

**“Purchased Assets”** has the meaning set forth in Section 2.1 hereof.

**“Real Property”** means all land, buildings, improvements, fixtures, and transmitting towers (to the extent they constitute fixtures or other interests in real property and not Tangible Personal Property) and other real property, and all leaseholds and other interests in real property and the buildings and improvements thereon and appurtenances thereto, including, without limitation, easements, variances, air rights, and the like, and all security deposits with respect to any of the foregoing, used, or held for use, and/or useful, by or for the Station and/or Seller in connection with the operation of the Station.

**“Real Property Lease”** means that certain Tower Use License between Mesa Communications Group LLC and Don Cook d/b/a Devon Broadcasting, dated October 21, 1999.

**“Receivables”** means all accounts receivable of Seller in respect of the Station and/or generated in respect of air time broadcast prior to 12:00 a.m. on the Closing Date.

**“Seller”** has the meaning set forth in the preamble hereto.

**“Seller Documents”** has the meaning set forth in Section 4.2 hereof.

**“Station”** has the meaning set forth in the preamble hereto.

**“Tangible Personal Property”** means all tangible personal property owned, leased, used or held for use and/or useful by or for the Station and/or Seller in connection with the business or operation of the Station, including, but not limited to, all physical assets and equipment, leasehold improvements, machinery, vehicles, furniture, fixtures, transmitters, antennae, transmitting towers (to the extent they do not constitute Real Property) office materials and supplies, spare parts, and music libraries, including, without limitation, those listed in Schedule 4.8(c) hereto, together with all replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date.

“**Taxes**” or “**Tax**” has the meaning set forth in Section 4.18 hereof;

“**Transferred Employees**” means any employee of the Station who, at Buyer's sole discretion, is offered employment by Buyer and accepts such employment.

“**Trustee**” means James McDermott, the trustee of Seller.

## **PURCHASE AND SALE OF BUSINESS AND ASSETS; PURCHASE PRICE PAYMENT; ASSUMPTION OF OBLIGATIONS**

Purchased Assets. Subject to and upon the terms and conditions of this Agreement, Seller hereby covenants and agrees to sell, transfer, convey, assign, grant and deliver to Buyers, and Buyers hereby covenant and agree to purchase, free and clear of any Liens, except for the Permitted Liens, all right, title and interest in and to all business, properties, assets, machinery, equipment, furniture, fixtures, franchises, goodwill and rights of Seller, of every nature, kind and description, tangible and intangible, owned or leased, wheresoever located and whether or not carried or reflected on the books or records of Seller, to the extent used, held for use and/or useful in connection with the operation of the Station and any replacements of or additions to such assets made between the date of this Agreement and Closing, and excluding only the Excluded Assets. All of the foregoing are herein collectively referred to as the “Purchased Assets” and include, without limitation, all of Seller' rights, title and interest in and to the following (it being understood that License Co. shall acquire all right, title and interest in and to the Commission Authorizations and Buyer shall acquire all of the other Purchased Assets):

all Commission Authorizations;

all Other Authorizations;

all Tangible Personal Property;

the Real Property Lease;

all Intangibles;

all Insurance Proceeds;

all Programs;

all Documentation;

all FCC logs, public files, and similar records that relate to the operation of the Station (“FCC Logs”); and

all goodwill in and going concern value of the Station.

Excluded Assets. The Purchased Assets shall not include the following (the “Excluded Assets”):

All cash, certificates of deposit, or similar investments of Seller, Treasury bills, and other marketable securities on hand and/or in banks, and unearned insurance premiums and security deposits;

The Seller's organizational documents, and such books and records as pertain solely to the organization and existence of Seller;

The Receivables; and

The Excluded Contracts.

Purchase Price. Subject to and upon the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants, and agreements of Seller contained herein, and in full payment for the sale, conveyance, assignment, transfer and delivery of the Purchased Assets as described herein by Seller, Buyer shall pay to Seller the aggregate sum of Six Hundred Fifty Thousand United States Dollars (US \$650,000) (the "Purchase Price"), payable as provided in Section 2.4 below.

Closing Payment. At Closing, the Purchase Price, minus the Escrow Amount, plus or minus any adjustments pursuant to Section 2.6 hereof (the "Closing Payment"), shall be paid in cash, in immediately available funds by Buyer by wire transfer pursuant to written wire transfer instructions of Seller delivered by Seller to Buyer no later than two (2) days prior to Closing or such other means as Seller and Buyer shall agree.

Allocation. Seller and Buyer agree to allocate the Purchase Price among the Purchased Assets in accordance with the allocation schedule to be attached hereto as Schedule 2.5, which allocation schedule will be determined prior to or at the Closing (the "Allocation Schedule"). If the parties are unable to agree on the final Allocation Schedule prior to Closing, a third-party appraiser mutually acceptable to Buyer and Seller, the fees of which shall be borne equally by Buyer and Seller, shall resolve the allocation of the consideration to any items with respect to which there is a dispute between the parties. Seller and Buyer will each file an IRS Form 8594 consistent with the Allocation Schedule.

Certain Closing Prorations and Adjustments. All utilities charges, personal property taxes and real property taxes, if any, shall be prorated between Seller and Buyer as of 11:59 p.m. on the day prior to the Closing Date, and the net amount resulting from the foregoing in favor of Buyer or Seller, as the case may be, shall be credited against or added to the Closing Payment. Additionally, Buyer shall receive a credit at such Closing against the Closing Payment for a pro-rata portion of all accrued but unused vacation or sick time for any Transferred Employees.

Assumed Obligations. Buyer shall at the Closing, execute and deliver to Seller an assignment agreement (the "Assignment Agreement"), substantially in the form of Exhibit 2.7 hereto pursuant to which Seller shall assign to Buyer its rights in and under the Real Property Lease. Except for obligations arising under the Real Property Lease from and after the Closing Date (and not out of any prior breach or default thereunder or other state of facts existing in respect thereof prior to the Closing Date), Buyer shall not and does not assume any liability or obligation of any nature, known or unknown, fixed or contingent, legal, statutory, contractual or otherwise, disclosed or undisclosed, of Seller or otherwise relating to or arising from the Purchased Assets or the Station, or the ownership or operation thereof (collectively the

“Excluded Liabilities”), all of which shall be retained and discharged by Seller. Excluded Liabilities will include, without limitation, (i) all Environmental Liabilities; (ii) any and all violations of Contracts, laws, rules, regulations, codes or orders by Seller, which exist at or as of the Closing Date or which arise after the Closing Date but which are based upon or arise from any act, transaction, circumstance, sale or providing of air time, goods or services, state of facts or other condition which occurred or existed, or the content of any program, advertisement or transmission broadcast or aired, on or before the Closing Date, whether or not then known; (iii) any debt, trade payable or accounts payable of Seller; (iv) any obligations or liabilities of Seller to any employees or to any other Person under any collective bargaining agreement, employment contract or benefit plan, or for wages, salaries, or other compensation or employee benefits or with respect to compliance with applicable federal, state or local laws, rules or regulations relating to minimum wages, overtime rates, labor or employment; (v) any litigation arising from or relating to facts or circumstances existing as of the Closing Date or any conduct of Seller; (vi) all liabilities in respect of or arising out of any and all Taxes of Seller; (vii) all liabilities existing as of or arising prior to the Closing Date or in respect of periods on or prior to the Closing Date under the Real Property Lease, or arising in connection with Excluded Contracts; and (viii) any other liabilities of Seller related to the Station or the Purchased Assets. Except as expressly provided by the Assignment Agreement, Buyer shall not be required to defend any suit or claim arising out of any act, event, or transaction occurring on or prior to the Closing Date in connection with the ownership or operations of or otherwise relating to the Purchased Assets, the Station or Seller.

Certain Payables and Expenses. On or prior to the Closing, Seller shall pay and discharge all liabilities and obligations of Seller owing or pertaining to all vendors and other persons and entities with which Buyer reasonably expects to maintain business relations at any time after such Closing.

Escrow Agreement. Seller and Buyers covenant and agree to enter into at the Closing an escrow agreement substantially in the form of Exhibit 2.9 hereto (the "Escrow Agreement"). At Closing, Buyer shall pay to the Escrow Agent the Escrow Amount.

Non-Compete. Seller covenants and agrees to execute and to deliver, and to cause each person listed on Schedule 7.1(i) hereto to execute and deliver, at the Closing an executed Agreement Ancillary to Sale of Business substantially in the form attached hereto as Exhibit 2.10 (each a “Non-Compete Agreement”).

Local Marketing Agreement. Seller and Buyer covenant and agree to enter into at the Closing a local marketing agreement substantially in the form of Exhibit 2.11 hereto (the "LMA").

## **APPLICATION TO AND CONSENT BY FCC**

### Application for FCC Consent.

Seller and Buyers agree to use their commercially reasonable efforts and to cooperate with each other in preparing, filing and prosecuting an assignment (the



“Assignment”) of the Commission Authorizations to License Co. and in causing the grant by the FCC of its approval, without any condition which the Buyers reasonably determine is adverse to Buyers, of such assignment (the “Initial Order”) and in causing the Initial Order to become a Final Order. The parties hereto shall cooperate with each other to file the appropriate FCC application form (the “Assignment Application”) along with all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application within ten (10) business days after the execution of this Agreement. Each party further agrees to expeditiously prepare and file with the FCC any amendments or any other filings required by the FCC in connection with the Assignment Application whenever such amendments or filings are required by the FCC or its rules. For purposes of this Agreement, each party shall be deemed to be using its reasonable efforts with respect to obtaining the Initial Order and causing it to become a Final Order, and to be otherwise complying with the foregoing provisions of this Section 3.1, so long as it truthfully and promptly provides information necessary in completing the application process, timely provides its comments on any filing materials, and uses its reasonable efforts to oppose attempts by third parties to petition to deny, to resist, modify, or overturn the grant of the Assignment Application without prejudice to the parties' termination rights under this Agreement, it being further understood that neither Seller nor Buyers shall be required to expend any funds or efforts contemplated under this Article 3 unless the other of them is concurrently and likewise complying with its obligations under this Article 3.

Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of its respective portion of the Assignment Application. All filing fees and grant fees imposed shall be paid one-half (½) by Seller and one-half (½) by Buyer. Buyer hereby agrees to pay all such filing fees when due and Seller shall reimburse Buyer for one-half (1/2) of such filing fees at the Closing by deducting such amount from the Closing Payment, or upon termination of this Agreement for any reason prior to Closing.

Buyer and Seller, each at their own respective expense, shall use their respective commercially reasonable efforts to oppose any efforts or any requests by third parties for reconsideration or review of the Initial Order (or, as the case may be, the Final Order) by the FCC or a court of competent jurisdiction.

Notice of Application. Seller shall, at its expense, give public notice of the filing of the Assignment Application by such means as may be required by the rules and regulations of the FCC.

## **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer that:

Organization, Standing and Qualification. Seller is a charitable trust organized and validly existing and in good standing under the laws of the State of Missouri, and is qualified to conduct business and relative to the operation of the Station is in good standing in each jurisdiction where the character of its respective properties owned or held under the lease or the

nature of its respective business activities make such qualifications necessary. Seller is not required to be qualified to do business in any other jurisdiction in connection with the operation of the Station. Seller has all requisite capacity, power and authority and is entitled to own, lease, and operate its properties and to carry on its business and that of the Station as and in the places such properties are now owned, leased, or operated and where such business is presently conducted. None of the business, assets, properties or rights related to Station are held, owned or used by any party other than Seller.

Authority. Trustee has all requisite capacity, power and authority, as applicable, to execute, deliver, and perform this Agreement and each other agreement, document, and instrument to be executed, delivered, or performed by Seller in connection with this Agreement (the "Seller Documents") and to carry out the transactions contemplated hereby and thereby. This Agreement constitutes, and, when executed and delivered at the Closing, each other Seller Document will constitute, the legal, valid, and binding obligation of Seller enforceable in accordance with its terms. Any action required to be taken by Seller or Trustee relating to the execution, delivery, and performance of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby has been duly taken.

No Conflict; Consents. Except for the filing of the Assignment Application and the granting of the Initial Order and its becoming a Final Order, the execution, delivery and performance of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or violate any provision of the organizational documents of Seller, (ii) with or without the giving of notice or the passage of time, or both, result in a breach of, or violate, or be in conflict with, or constitute a default under, or permit the termination of, or cause or permit acceleration under, any agreement or instrument of any debt or obligation to which Seller is a party or to or by which he or any of the Purchased Assets is subject or bound, or result in the loss or adverse modification of any of the Authorizations or Intangibles, (iii) require the consent of any party to any agreement or commitment to which Seller is a party, or to or by which he or the Purchased Assets is subject or bound, (iv) result in the creation or imposition of any Lien upon any of the Purchased Assets, or (v) violate any law, rule or regulation or any order, judgment, decree or award of any court, governmental authority or arbitrator to or by which Seller or any of the Purchased Assets is subject or bound. No consent, approval or authorization of, or declaration, filing or registration with, or notice to, any governmental or regulatory authority or any other third party is required to be obtained or made by Seller in connection with the execution, delivery and performance of this Agreement or the Seller Documents or the consummation of the transactions contemplated hereby and thereby.

Financial Statements. Seller will provide Buyer with copies of the financial statements for the Station if requested.

Litigation. There is no action, suit, proceeding, arbitration, claim or investigation pending, or to the knowledge of Seller threatened, against or affecting Seller or its operation of the Station or any assets, properties, business or employees of the Station or the transactions contemplated by this Agreement, nor to Seller's knowledge is there any basis therefor. There is not outstanding any order, writ, injunction, award or decree of any court or arbitrator or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality to which the Station or Seller in connection with their operation of the Station are

subject or otherwise applicable to the Station or the Purchased Assets or any employee of the Station.

Compliance; Authorizations.

Seller and the Station have complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to Seller in respect of the Station, any of the employees thereof, and/or any aspect of the Station's operations.

Seller holds all Commission Authorizations (all of which are identified in Schedule 4.6(b)(i) hereto) and all Other Authorizations (all of which are identified in Schedule 4.6(b)(ii) hereto). Such Commission Authorizations are validly existing authorizations for the operation of the facilities described therein under the Communications Act. The Commission Authorizations identified in Schedule 4.6(b)(i) hereto constitute all of the licenses and authorizations required under the Communications Act or the current rules, regulations, and policies of the FCC in connection with the operation of the Station as currently operated. The Commission Authorizations are in full force and effect, have not been revoked, suspended, canceled, rescinded, or terminated, have not expired, and are unimpaired by any act or omission of Seller or any partners, officers, directors, employees, or agents of Seller. There are no conditions imposed by the FCC as part of any Commission Authorization that are neither set forth on the face thereof as issued by the FCC nor contained in the rules and regulations of the FCC applicable generally to Station of the type, nature, class or location of the Station. FCC regulatory fees for the Station are not required inasmuch as Seller is a nonprofit licensee of the Commission Authorizations, and the broadcast tower from which the Station operates have been duly registered with the FCC by the owner of such tower, Mesa Communications Group, LLC. There is no action pending nor, to the knowledge of Seller, threatened by or before the FCC or other body to revoke, refuse to renew, suspend, or modify any of the Commission Authorizations, or any action which may result in the denial of any pending application, the issuance of any cease and desist order, or the imposition of any administrative sanction with respect to the Station or its operation, except for the Assignment Application before the FCC to transfer the Commission Authorizations pursuant hereto. There is not pending to the knowledge of Seller, any investigation, by or before the FCC, or any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint by, before or with the FCC against Seller or officers, directors, stockholders or affiliates of Seller nor, to the knowledge of Seller, are any of the foregoing threatened. The Station is, and for the last three (3) years has been, operating in all material respects, in compliance with the Commission Authorizations, the Communications Act, and the current rules, regulations, and policies of the FCC. Seller has timely filed all reports, forms and statements required to be filed with the FCC. All applications for the Authorizations submitted by Seller were true and correct when made. Seller has not received any notice with respect to any of the Commission Authorizations or the Station's compliance with the Communications Act, and the Seller has no reason to believe that the FCC might not to consent to the assignment by Seller of the Commission Authorizations as contemplated by this Agreement. All Other Authorizations have been validly issued and are validly existing and Seller is in compliance therewith.

Title to Assets. Except for the assets and properties leased to Seller pursuant to the leases identified in Schedule 4.8(b) hereto, Seller has good and marketable title to all of the Purchased Assets. Seller has good leasehold title to all Purchased Assets which are leased. Except as set

forth on Schedule 4.7 hereto, none of the Purchased Assets is subject to any Lien except for the Permitted Liens. The Purchased Assets are in good operating condition and repair, reasonable wear and tear excepted, and are adequate and sufficient for the operations of the Station as currently conducted. The Purchased Assets comprise all of the assets required to operate the business of the Station as conducted by the Seller as of the date hereof.

#### Properties.

Seller owns no Real Property used or useful in connection with the operation of the Station, The Real Property Lease is the only lease or sublease of Real Property related to Station under which Seller holds any leasehold or other interest or right to the use thereof, or pursuant to which Seller has leased, assigned, sublet or granted any rights therein or with respect thereto. All improvements on the Real Property comply with applicable laws, ordinances, regulations and orders, including those applicable to zoning, land use and building codes. No law, ordinance, regulation, order, restriction or agreement, including any zoning law, prohibits the use of any Real Property in the manner currently used by the Seller, or to the knowledge of Seller, any planned expansion or alteration of or addition to the structures located on the Real Property. All antenna structures located on the Real Property that are required to be registered with the FCC have been so registered by the tower owner and such structures comply with the painting and lighting requirements promulgated by the Federal Aviation Administration. Each parcel of Real Property has unencumbered and unrestricted vehicular and pedestrian access to a publicly dedicated road either directly or indirectly by virtue of an easement not terminable by the grantor thereof, or by his heirs, personal representatives, successors or assigns. Each parcel of Real Property has all utility service, including without limitation gas, water, electricity, telephone and sanitary sewer service, required for the operation of the Real Property for its current use, and all such utilities enter such parcel of Real Property from a publicly dedicated right-of-way either directly or indirectly by virtue of an easement not terminable by the grantor thereof, or by his heirs, personal representatives, successors or assigns. With respect to each parcel of Real Property, the improvements, buildings and other structures, including all towers, transmitter buildings and guy wires, located on such parcel are located and contained completely within the boundaries of such parcel of Property and none of such improvements, buildings or other structures, including towers, transmitter buildings and guy wires, creates an encroachment over, across or upon the boundary lines of such parcel or any rights of way or easements. The design and as-built conditions of each parcel of Property are such that surface and storm water do not accumulate on such parcel and such water does not drain from such parcel of Property across land of adjacent property owners. No portion of any parcel of Property is located within a flood plain.

Schedule 4.8(b) contains a true, complete and accurate list of all items of machinery, equipment, vehicles, furniture, fixtures, transmitting towers, transmitters, antennae, office materials and supplies, spare parts, music libraries and other Tangible Personal Property owned, leased or used by the Seller in connection with the operation of the Station and included in the Purchased Assets, except for items having a value of less than \$1,000 which do not, in the aggregate, have a total value of more than \$5,000, setting forth with respect to all such listed property all leases relating thereto (the "Personal Property Leases").

4.9 Contracts. A true and complete copy of the Real Property Lease, together with any and all amendments thereto, has been delivered to Buyer. The Real Property Lease is in full force

and effect. There is not under the Real Property Lease existing any default by Seller, or to Seller's knowledge, any other party thereto, or any existing event which, after notice or lapse of time, or both, would constitute a default or result in a right to accelerate or loss of rights.

4.10 Insurance. The properties and assets of Seller, which are of an insurable character and are used or useful in the operation of the Station, are insured at full replacement cost against loss or damage by fire or other risks, and Seller maintains liability insurance, to the extent and in the manner and covering such risks as is customary for companies engaged in a business similar to the business of Seller or owning assets similar to the Purchased Assets. The coverage under each such policy of insurance is in full force and effect, all premiums due and payable thereon have been paid, and no notice of cancellation or nonrenewal with respect to, or disallowance of any claim under, any such policy has been given to Seller.

4.11 Absence of Changes or Events since Balance Sheet Date. Except as set forth in Schedule 4.11 hereto, since December 31, 2002 (the "Balance Sheet Date") Seller has conducted the business of the Station only in the ordinary course in a manner consistent with past practices. Without limiting the foregoing, since such date, none of Seller in respect of the Station or otherwise has not, except as set forth on said Schedule 4.11:

incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, except current liabilities for trade or business obligations incurred in the ordinary course of business and consistent with its prior practice;

mortgaged, pledged or subjected to lien, charge, security interest or any other encumbrance or restriction any of the Purchased Assets;

sold, transferred, leased to others or otherwise disposed of any of the Purchased Assets other than inoperable or obsolete items;

received any notice of actual or threatened termination of the Real Property Lease, or suffered any damage, destruction, or loss, which adversely affects the Purchased Assets;

had any material change in its relations with his employees, agents, landlords, advertisers, customers or suppliers or any governmental regulatory authority or self-regulatory authorities;

encountered any labor union organizing activity, had any actual or threatened employee strikes, disputes, work stoppages, slow downs or lockouts, or had any material change in its relations with his landlords or any governmental regulatory authority or self-regulatory authorities;

made any change or changes in the rate of compensation, commission, bonus or other direct or indirect remuneration payable, conditionally or otherwise, and whether as bonus, extra compensation, pension or severance or vacation pay or otherwise, to any director, officer, employee, salesman, distributor or agent relative to the Station;

made any capital expenditures or capital additions or betterment in respect of the Station in excess of an aggregated \$10,000.00.

instituted, settled, or agreed to settle any litigation, action, or proceeding before any court or governmental body;

entered into any transaction, contract, or commitment other than in the ordinary course of business on customary terms and conditions; or

changed accounting practices, methods or principles used other than as required by generally accepted accounting principles; or

entered into any agreement or made any commitment to take any of the types of actions described in any of subsections (i) through (xi) above.

#### 4.12

Intangibles. Seller owns or possesses all rights necessary to use the call letters "KCVK-FM" together with all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, and other proprietary rights and Intangibles of or used by Seller currently in connection with or necessary to the operation of the Station as presently operated, free and clear of any Liens. All such foregoing rights and Intangibles are fully transferable to Buyer without any consent. Seller has no knowledge of any infringement or unlawful, unauthorized or conflicting use of any of the foregoing, or of the use of any call letters, slogan, logo or other intangible property rights by any broadcast Station in the areas served by the Station which may be confusingly similar to any of the call letters, domain names, slogans, logos or other intangible property rights currently used by the Station. Seller is not infringing upon or otherwise acting adversely, nor has Seller received notice that it is infringing upon or otherwise acting adversely, to any copyrights, trademarks, trademark rights, service marks, service mark rights, trade names, service names, slogans, call letters, logos, jingles, licenses, or any other proprietary rights owned by any other person or entity. Schedule 4.12 lists all trademarks, trademark registrations, and applications therefor, service marks, service mark registrations, and applications therefor, service names, trade names, patents and patent applications, copyright registrations, and applications therefor, domain names, and names of sites, wholly or partially owned, held or used by Seller and related to the Station.

#### 4.13 Environmental Matters.

(a) No Hazardous Substance (as hereinafter defined) has been stored (in a manner which may require correction or remediation action under or pursuant to an Environmental Requirement), treated, released, disposed of or discharged on, onto, about, from, under or affecting any of the Real Property, there is not presently and has never been an underground storage tank on any of the Real Property, and Seller has no liability which is based upon or related to the environmental conditions under or about any of the Real Property, to the best of Seller's knowledge. Seller has all permits required, if any, by any Environmental Requirement necessary for the operation and have complied with all Environmental Requirements applicable to the Real Property and there are no PCBs located on any of the Real Properties. The term "Hazardous Substance" as used in this Agreement shall include, without limitation, oil and other petroleum products, explosives, radioactive materials, chemicals, pollutants, contaminants, wastes, toxic substances, genetically modified organisms, and related and similar materials, and any other substance or material defined as a hazardous, toxic or polluting substance or material by any federal, state or local law, ordinance, rule or regulation, including polychlorinated

biphenyls, asbestos and asbestos-containing materials.

(b) Seller has not (i) given any report or notice to any governmental agency or authority involving the use, management, handling, transport, treatment, generation, storage, disposal, spill, escape, seepage, leakage, spillage, emission, release, discharge, remediation or clean-up of any Hazardous Substance on or about any of the Real Property or caused by Seller or any of their affiliates; (ii) received any, or to the knowledge of Seller is threatened to receive any Environmental Complaint and Seller is in compliance with notification, reporting and registration provisions of any Environmental Requirement, including without limitation, the Toxic Substance Control Act and the Federal Insecticide, Fungicide and Rodenticide Act.

4.14 Employees. Seller has no employees. Schedule 4.14 lists the names and current annual salary rates and commission schedules of all persons (including independent commission agents) employed or engaged at or relative to the Station, and showing separately for each such person the amounts paid or payable as salary, bonus payments and direct and indirect compensation for the year ending December 31, 2003. Schedule 4.14 also lists all employment agreements with any employees listed thereon.

4.15 Employee Benefits.

(a) Seller has no pension, retirement, profit-sharing, deferred compensation, stock option, employee stock ownership, severance pay, vacation, bonus or other incentive plan; any medical, vision, dental or other health plan; any life insurance plan or any other employee benefit plan or fringe benefit plan, maintained, sponsored in whole or in part, or contributed to, for the benefit of, providing any remuneration or benefits to, or covering any current or former employee or retiree, any dependent, spouse or other family member or beneficiary of such employee or retiree, or any director, independent contractor, member, officer or consultant of the Station.

(b) No Purchased Assets are subject to any lien under Section 412(n) of the Code or Section 4068 of ERISA.

(c) The consummation of the transaction contemplated by this Agreement will not entitle any employee to severance pay, accelerate the time of payment of compensation due to any employee, result in an excess parachute payment within the meaning of Section 280G(b) of the Code or constitute a prohibited transaction under ERISA.

4.16 Labor Matters. Within the last three (3) years, Seller has not been the subject of any union activity or labor dispute, nor has there been any strike of any kind called or threatened to be called against it in respect of the Station.

4.17 Absence of Undisclosed Liabilities. Except as and to the extent reflected or reserved against on the Balance Sheet as at December 31, 2003 included in the Financial Statements (excluding the notes thereto), neither Seller in connection with the Station, nor the Station have any material debts, liabilities or obligations (whether absolute, accrued, contingent or otherwise) relating to or arising out of any act, transaction, circumstance or state of facts which has heretofore occurred or existed, other than current liabilities permitted under clause (i) of Section 4.11 hereof arising since the date of such Balance Sheet.

4.18 Taxes. All taxes, fees, assessments and charges, including, without limitation, income, property, sales, use, franchise, added value, employees' income withholding and social security taxes, imposed by the United States or by any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing authority, which are due and payable by the Seller, or for which the Seller may be liable, and all interest and penalties thereon (collectively, "Taxes" or "Tax"), have been paid in full, all Tax returns required to be filed in connection therewith have been accurately prepared and filed, and all deposits required by law to be made by the Seller with respect to employees' and other withholding Taxes have been duly made. No deficiency for any Tax or claim for additional Taxes has been proposed, asserted, or assessed against the Seller, and the Seller has not granted any waiver of any statute of limitations in respect of Taxes or agreed to any extension of time with respect to Tax assessment or deficiency. Seller has not been a United States real property holding corporation within the meaning of Code §897(c)(2).

4.19 Records. The FCC Logs of the Station are complete and correct, and there have been no transactions involving the Station which properly should have been set forth therein and which have not been accurately so set forth.

4.20 Disclosure. No representation or warranty by Seller contained in this Agreement nor any written statement or certificate furnished or to be furnished by or on behalf of Seller to Buyers or any of its representatives in connection with this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make the statements herein or therein contained, under the circumstances under which made, not misleading or necessary in order to provide a prospective purchaser of the Purchased Assets and the Station with adequate information as to the Station and the Purchased Assets. The representations and warranties contained in this Agreement or any document delivered in connection with this Agreement shall not be affected or deemed waived by reason of the fact that Buyers and/or any of their representatives knew or should have known that any such representation or warranty is or might be inaccurate in any respect.

4.21 Brokerage or Finder's Fee. Except for the broker fee payable to Media Services Group, which fee shall be the sole responsibility of Buyer, no person or entity is entitled to any brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement as a result of any action taken by Seller or any of Seller's affiliates, officers, directors, or employees.

## **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that:

Organization and Standing. Each of Buyer and License Co. is a limited liability company validly existing and in good standing under the laws of the State of Nevada.

Authority of Buyers. Buyers have all requisite corporate power and authority to enter into this Agreement and each other agreement, document, and instrument to be executed or delivered by Buyers in connection with this Agreement (the "Buyer Documents") and to carry out the transactions contemplated hereby and thereby. This Agreement constitutes, and, when



executed and delivered at the Closing, each other Buyer Document will constitute, the legal, valid, and binding obligation of Buyers. All limited liability company proceedings and action required to be taken by Buyers relating to the execution, delivery, and performance of this Agreement and the Buyer Documents and the consummation of the transactions contemplated hereby and thereby shall have been duly taken by the time of Closing.

Litigation. As of the date hereof, there is no action, suit or proceeding pending, or to the knowledge of Buyers, threatened against Buyers, which adversely affects the ability of Buyers to consummate the transactions contemplated hereby.

## **CERTAIN COVENANTS**

Conduct of Business. During the period from the date of this Agreement to and including the Closing Date, Seller shall cause the Station to be operated and conducted in the ordinary and usual course of business and consistent with past practices. Without limiting the foregoing, prior to the Closing, Seller, without the prior written consent of Buyer, shall not and shall not permit the Station to:

by any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms any of the Authorizations, or give the FCC grounds to institute any proceeding for the revocation, suspension, or modification of any of the Authorizations, or fail to prosecute with due diligence any pending application with respect to any of the Authorizations;

dissolve, liquidate, merge, or consolidate or sell, transfer, lease, or otherwise dispose of any of the Purchased Assets, other than supplies consumed in the ordinary and customary course of business, or obligate themselves to do so;

amend, modify, change, alter, terminate, rescind, the Real Property Lease;

fail to maintain the Purchased Assets in good repair and condition, reasonable and ordinary wear and tear excepted; or cancel or fail to renew any of the current insurance policies or any of the coverage thereunder maintained for the protection of any of the Real Property, the Station, or Purchased Assets; and

perform, take any action, or incur or permit to exist any of the acts, transactions, events, or occurrences of the type described in Section 4.11 hereof which would have been inconsistent with the representations and warranties set forth in Section 4.11 hereof, had the same occurred after the Balance Sheet Date and prior to the date hereof.

Operations. During the period from the date of this Agreement to the Closing Date, Seller shall have sole responsibility for the Station and its operations, and during such period, Seller shall:

operate the Station in accordance with the rules and regulations of the FCC and Authorizations and file all ownership reports, employment reports, applications, responses, and other documents required to be filed during such period and maintain and promptly deliver to Buyer true and complete copies of the Station's required filings;

deliver to Buyer within five (5) days after filing thereof with the FCC copies of any and all reports, applications, and/or responses relating to the Station which are filed with the FCC on or prior to the Closing Date, including a copy of any FCC inquiries to which the filing is responsive (and in the event of an oral FCC inquiry, Seller will furnish a written summary thereof); and

maintain in full force and effect all material permits which are presently held and are required for the operation of the Station as presently conducted.

Changes in Information. During the period from the date of this Agreement to the Closing Date, Seller shall give Buyer prompt written notice of any material change in, or any of the information contained in, the representations and warranties made in or pursuant to this Agreement or of any event or circumstance which, if it had occurred on or prior to the date hereof, would cause any of such representations or warranties not to be true and correct.

Restrictions on Buyers. Nothing contained in this Agreement shall give Buyers any right to control the programming or operations of the Station prior to the Closing Date and Seller shall have complete control of the programming and operation of the Station between the date hereof and the Closing Date and shall operate the Station in conformity with the public interest, convenience and necessity and with all other applicable requirements of law.

Going Off the Air. If the Station goes off the air for any engineering reason, act of God, or any other reason not caused by Buyer, Seller shall immediately notify Buyer and shall take all reasonable steps to begin broadcasting as soon as possible. If such Station is unable to begin and to continue broadcasting on a normal and customary basis within one hundred twenty (120) hours, Buyer may, at its option, terminate this Agreement without incurring any liability to Seller.

Access to Information. During the period from the date of this Agreement to the Closing Date, Buyer and its accountants, counsel, and other representatives, shall upon prior written or telephone notice be given reasonable and continuing access during normal business hours to all of the facilities, properties, books, and records of Seller relating to the Station, and they shall be furnished with such documents and information with respect to the affairs of the Station as from time to time may reasonably be requested, and in furtherance thereof, Buyer may retain, at its expense, an engineering firm of its own choosing to conduct engineering studies regarding the Station.

Sales and Other Taxes. Seller shall pay all sales taxes, transfer taxes, and intangibles taxes and similar government charges, filing fees, and recording and registration fees applicable to the transactions contemplated by this Agreement, including, without limitation, all taxes and similar charges, if any, payable upon the transfer of title to any Purchased Assets. The foregoing shall not apply to taxes, governmental charges, or fees incurred upon the granting or recording of mortgages or deeds of trust by Buyer to Buyer's lenders, which shall be the responsibility of Buyer. Buyer and Seller will cooperate to prepare and file with the proper public officials, as and to the extent necessary, all appropriate sales tax exemption certificates or similar instruments as may be necessary to avoid the imposition of sales, transfer, and similar taxes on the transfer of Purchased Assets pursuant hereto. The provisions of this Section 6.7 shall not apply to filing and

grant fees associated with the Assignment Application. The payment of such fees shall be governed by Section 3.1(b) hereof.

No Shop. Seller agrees that from after the date hereof and until the termination of this Agreement, Seller will not sell, transfer, or otherwise dispose of any assets (except for dispositions of assets in the ordinary course of business as expressly permitted elsewhere in this Agreement) of Seller to be included in the Purchased Assets and Trustee will not agree to sell, transfer, or otherwise dispose of any direct or indirect interest in Seller, and neither Seller nor Trustee will respond to inquiries or proposals, or enter into or pursue any discussions, or enter into any agreements (oral or written), with respect to the sale, lease or other disposition of all or any portion of the assets, business, rights or Authorizations of Seller or the Station. The provisions of this Section 6.8 shall not be deemed to limit or negate any other obligations of Seller under this Agreement.

Bulk Transfer Laws. The parties do not believe that any bulk transfer or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyers therefore waive compliance by Seller with the requirements of any such statutes, and Seller agrees to indemnify and hold Buyers harmless against any claim by any creditor of Seller or claimant against either or both of Buyers as a result of a failure to comply with any such statute.

Preservation of Business. During the period from the date of this Agreement to the Closing Date, Seller shall use its best efforts to preserve intact the goodwill and staff of Seller relative to the Station and of the Station, and the relationships of Seller with advertisers, customers, suppliers, employees, contracting parties, governmental authorities and others having business relations with Seller relative to the Station.

Satisfaction of Liens. At the Closing, Seller shall cause all Liens other than Permitted Liens on or relating to any of the Purchased Assets, to be released, extinguished, and discharged in full and shall deliver to Buyer instruments releasing, extinguishing, and discharging all such Liens, and all rights and claims of any holder(s) of any of such Liens with respect to any of the Purchased Assets, all in such form and substance as Buyer shall reasonably require.

Nonsolicitation. For a period of one (1) year from the Closing Date, neither Seller nor James McDermott, an individual resident of the State of Missouri, shall and neither shall permit any Person directly or indirectly (alone or together with others) controlling or controlled by, or affiliated with or employed or engaged by either Seller or James McDermott, without the express prior written consent of Buyer, to employ or attempt to employ or knowingly arrange or solicit to have any other Person employ any Transferred Employee in a position involving services for a radio broadcast station.

COBRA. Seller shall comply with all applicable requirements (including requirements concerning the furnishing of notices) of health care coverage continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (contained in Sections 601 through 608 of ERISA and section 4980B of the Code), with regard to the termination of employment prior to, or in connection with, the transaction contemplated by this Agreement.

Environmental Audits. Prior to the Closing, Buyer may, at Buyer's expense, perform a Phase I and/or Phase II environmental audit (the "Environmental Audit") of each of the Real Property sites.

Public Announcements. Seller shall not announce or issue a press release in connection with the transactions contemplated hereunder, without the express prior written consent from Buyer.

Closing Conditions. Seller hereby covenants and agrees to work diligently towards and use all commercially reasonable efforts necessary to meet and fulfill all closing conditions described in Article 7 hereof in an expeditious manner and in any event prior to the grant of the Initial Order.

Contingent Applications. Seller acknowledges that Buyer desires certain changes to be made to the facilities of the Station to enable Buyer to implement its plans with respect to the Shawnee Station, and Seller hereby covenants and agrees to make such changes to the Station in accordance with the following conditions:

Prior to Closing, Buyer shall prepare at its cost and expense mutually contingent applications under Section 73.3517(e) of the FCC's Rules for the Station and the Shawnee Station (as well as for other stations if necessary or desirable in Buyer's opinion) (the "Contingent Applications").

Each of the Contingent Applications shall advise the FCC that such application is mutually contingent upon the grant by the FCC of the other(s) of the Contingent Applications, and such mutual contingency shall at all times remain the posture of the Contingent Applications for the duration of their respective pendencies before the FCC. Each of the Contingent Applications shall request that the FCC grant both (or all) of the applications together at the same time. The parties acknowledge that a copy of this Agreement, with the price terms redacted, will be filed with the FCC along with the Contingent Applications.

Seller shall (i) provide a written statement pursuant to Section 73.3517(a) of the FCC's Rules authorizing the filing of the application for the Station and any amendments thereto; (ii) cooperate with Buyer in connection with the Contingent Applications and take no action to interfere with, delay, or prevent the grant, by Final Order, of the Contingent Applications; and (iii) provide any additional information regarding such applications as may be reasonably requested by the FCC.

## **CLOSING CONDITIONS**

Conditions Precedent to the Obligations of the Buyers. The obligations of the Buyers under this Agreement to consummate the transactions contemplated hereby are subject to the satisfaction at or prior to Closing of each of the following conditions all of which may be waived, in whole or in part, by Buyer for purposes of consummating such transactions, but without prejudice to any other right or remedy which Buyers may have hereunder as a result of any misrepresentation by or breach of any covenant or warranty of Seller contained herein or any other certificate or instrument furnished by or on behalf of the Seller hereunder:

no action, suit, or proceeding shall have been instituted against Seller or against any of Buyers by, in or before any court, tribunal, or governmental body or agency, and be unresolved, and no order shall have been issued, to restrain, prevent, enjoin, or prohibit, or to obtain substantial damages by reason of, any of the transactions contemplated hereby;

the representations and warranties of Seller contained in this Agreement, and any exhibits hereto, or any certificates or documents delivered in connection with this Agreement shall be true and correct when made, and shall also be true and correct in all material respects at the time of Closing with the same force and effect as though such representations and warranties were made at that time;

each covenant, agreement, and obligation required by the terms of this Agreement to be complied with and performed by Seller, at or prior to the Closing shall have been duly and properly complied with and performed, and an officer of Seller shall deliver a certificate dated as of the Closing Date certifying to the fulfillment of this condition and the condition set forth under Section 7.1(b) above;

the Initial Order shall have been granted and the Initial Order shall not include any condition which Buyers reasonably determine to be adverse to Buyer, and it shall have become a Final Order and License Co. shall be entitled to be the holder of the Commission Authorizations and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, shall have been approved by all regulatory authorities whose approvals are required by law;

the Assignment Agreement shall have been duly executed and delivered to Buyer;

there shall have been no material adverse change in the assets, liabilities, business, results of operations, financial condition or prospects of the Station since December 31, 2002, other than changes in the general economy affecting similar radio companies in a like manner;

Buyer shall have received an opinion of Seller's corporate counsel dated the Closing Date, addressed to Buyer (and Buyer's lenders if so requested by Buyer) in form and substance reasonably satisfactory to Buyer;

Buyers shall have received an opinion of Seller's FCC counsel dated the Closing Date and addressed to Buyers (and Buyers' lenders if so requested by Buyer), in form and substance reasonably satisfactory to Buyer;

Buyer shall have received the Non-Compete Agreement for Seller and each Person identified on Schedule 7.1(i) hereto;

the results of the Environmental Audits shall be satisfactory to Buyer in its sole discretion; and

Seller shall have delivered to Buyer all other transfer documents and all other documents necessary to consummate the transactions contemplated in this Agreement as requested by Buyer or otherwise provided for herein.

Seller' Conditions Precedent. The obligations of Seller under this Agreement to proceed with the transactions contemplated hereby are subject to the satisfaction at or prior to Closing of each of the following conditions, all of which may be waived in whole or in part by Seller for purposes of consummating such transactions, but without prejudice to any other right or remedy which Seller may have hereunder as a result of any misrepresentation by or breach of any covenant or warranty of Buyer contained herein or any other certificate or instrument furnished by or on behalf of Buyer hereunder:

the representations and warranties of Buyer contained in this Agreement or any exhibits hereto or any certificates or documents delivered by them to Seller in connection with this Agreement shall be true and correct when made and shall also be true and correct in all material respects at the time of the Closing with the same force and effect as though such representations and warranties were made at that time;

each covenant, agreement, and obligation required by the terms of this Agreement to be complied with and performed by Buyers at or prior to the Closing shall have been duly and properly complied with and performed, and an officer of Buyer shall deliver a certificate dated as of the Closing Date certifying to the fulfillment of this condition and the condition set forth under Section 7.2(a) above;

the Initial Order shall have been granted and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, shall have been approved by all regulatory authorities whose approvals are required by law; and

Buyer shall have delivered to Seller all other transfer documents and all other documents necessary to consummate the transactions contemplated in this Agreement as requested by Seller or otherwise provided for herein.

## **CLOSING**

Closing. The closing under this Agreement (the "Closing") shall take place by facsimile or via Federal Express overnight delivery, within ten (10) business days after the Initial Order has become a Final Order, on the date designated by Buyer in writing, provided all conditions precedent described in Sections 7.1 and 7.2 hereof have either been satisfied or waived, or if later, on the date designated by Buyer in writing within ten (10) business days after the date on which all such conditions precedent have been satisfied or waived; provided, however, that, at Buyer's option, exercisable upon written notice to Seller and deliverable any time after the Initial Order is granted but prior to its becoming a Final Order, the Closing shall take place on the date designated by Buyer in writing, provided all conditions precedent described in Sections 7.1 and 7.2 hereof have either been satisfied or waived, or if later, on the date designated by Buyer in writing after the date on which all such conditions precedent have been satisfied or waived, unless the parties hereto shall mutually agree upon another date, place or time. The Closing shall be effective as of 12:01 a.m. on the Closing Date. All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

Further Assurances. At any time and from time to time after the Closing, at Buyer's request, and without further consideration, Seller will execute and deliver such other instruments of sale, transfer, conveyance, assignment, and confirmation, and take such actions, as Buyer may reasonably deem necessary or desirable in order more effectively to transfer, convey, and assign to Buyers, and to confirm Buyer's title to, all of the Purchased Assets, to put Buyers in actual possession and operating control thereof, and to assist Buyers in exercising all rights with respect thereto.

## **SPECIFIC PERFORMANCE**

Seller agrees that the Purchased Assets include unique property that cannot be readily obtained on the open market and that Buyers will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyers shall have the right specifically to enforce the performance of Seller under this Agreement without the necessity of posting any bond or other security, and Seller hereby waives the defense in any such suit that Buyers have an adequate remedy at law and agree not to interpose any opposition, legal, or otherwise, as to the propriety of specific performance as a remedy. The remedy of specifically enforcing any or all of the provisions of this Agreement in accordance with this Article 9 shall not be exclusive of any other rights and remedies which Buyers may otherwise have under this Agreement or otherwise, all of which rights and remedies shall be cumulative.

## **TERMINATION**

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

by mutual written consent of Buyer and Seller;

by written notice from Buyer or Seller if they are not then in material breach of this Agreement, if the other party has continued in material breach of this Agreement for thirty (30) days after written notice of such breach from the terminating party is received by the other party, and such breach is not cured (but only of such breach is capable of cure) by the earlier of (i) the last day of such 30-day period if such breach is capable of cure, or (ii) the fifth (5<sup>th</sup>) business day after the Initial Order has become a Final Order (the "Cure Period");

by Buyer, in the event that the Closing is not consummated within eighteen (18) months of the date hereof;

as provided in Section 6.5; or

as provided in Article 11.

Effect of Termination.

If this Agreement is terminated prior to Closing by either Seller or Buyer for any other reason than pursuant to Section 10.1(b), no party to this Agreement shall have any

liability to any other party to this Agreement except as otherwise expressly provided herein, and this Agreement shall be deemed null and void and of no further force and effect (except for the provisions of Sections 12.5 and 12.15, which shall survive termination).

If Buyer terminates this Agreement pursuant to and in accordance with Section 10.1(b) hereof prior to Closing, Buyer shall retain all rights and remedies available to it in respect of such termination.

If Seller terminates this Agreement prior to Closing pursuant to and in accordance with Section 10.1(b) hereof, or in the event of a wrongful termination of this Agreement by Buyer pursuant to Section 10.1(b) hereof, then Seller shall be entitled to receive, and Buyer shall pay to Seller, the amount of Thirty Two Thousand Five Hundred Dollars (\$ 32,500) as the sole and exclusive remedy and as liquidated damages. It is understood and agreed that such liquidated damages amount represents Buyer's and Seller's reasonable estimate of actual damages and does not constitute a penalty.

## **RISK OF LOSS**

The risk of loss, damage or destruction to the Purchased Assets and/or the Real Property from fire or other casualty or cause, shall be borne by Seller at all times up to the Closing. It shall be the responsibility of Seller to repair or cause to be repaired and to restore the affected property to its condition prior to any such loss, damage or destruction. In the event of any such loss, damage or destruction, the proceeds of any claim for any loss payable under any insurance policy with respect thereto shall be used to repair, replace or restore any such property to its former condition subject to the conditions stated below. In the event that property reasonably required for the normal operation of any of the Station is not repaired, replaced, or restored prior to the Closing, Buyer, at its sole option, upon written notice to Seller: (a) may elect to postpone the Closing until such time as the property has been repaired, replaced, or restored, or (b) may elect to consummate the Closing and accept the property in its then condition, in which event Seller shall assign to Buyer all proceeds of insurance theretofore, or to be, received, covering the property involved; and if Buyer shall extend the time for Closing pursuant to clause (a) above, and the repairs, replacements, or restorations are not completed within sixty (60) days after the date on which Initial Order has become a Final Order, Buyer may terminate this Agreement by giving written notice thereof to Seller.

## **MISCELLANEOUS**

Binding Agreement. All the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

Assignment. This Agreement and all rights of Buyers shall be assignable by Buyers only upon prior written consent of Seller, which consent will not be unreasonably withheld. This



Agreement shall not be assignable by Seller without the prior written consent of Buyer. No assignment shall relieve the assigning party of its obligations hereunder.

Law To Govern. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Missouri, without regard to principles of conflict of laws.

Notices. All notices shall be in writing (including facsimile transmission) and shall be deemed to have been duly given if delivered personally, when received by facsimile communications equipment or when deposited in the mail if mailed via registered or certified mail, return receipt requested, postage prepaid to the other party hereto at the following addresses:

***if to Seller, to:***

Lake Area Educational Broadcasting Foundation  
Lake Road 5-92  
Camdenton, MO 65020  
Attn: Mr. James McDermott  
Phone: (573) 346-3200  
Fax: (573) 346-1010

***with a copy to:***

Larry Perry, Esq.  
11464 Saga Lane Suite 400  
Knoxville, TN 37931-2819  
Phone: (865) 927-8474  
Fax: (865) 927-4912

***if to any of Buyers, to:***

Cumulus Broadcasting LLC  
3535 Piedmont Rd.  
Building 14, 14<sup>th</sup> Floor  
Atlanta, Georgia 30305  
Attn: Richard S. Denning, General Counsel  
Phone: (404) 260-6600  
Fax: (404) 443-0742

***with a copy to:***

Jones Day  
3500 SunTrust Plaza

303 Peachtree Street  
Atlanta, Georgia 30308-3242  
Attn: John E. Zamer, Esq.  
Phone: (404) 521-3939  
Fax: (404) 581-8330

or to such other addresses as any such party may designate in writing in accordance with this Section 12.4.

Fees and Expenses. Except as expressly set forth in this Agreement, each of the parties shall pay its own fees and expenses with respect to the transactions contemplated hereby.

Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, sets forth the entire understanding of the parties hereto in respect of the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement signed by all of the parties hereto. This Agreement supersedes all prior agreements and understandings among the parties with respect to such subject matter.

Waivers. Any failure by any party to this Agreement to comply with any of its obligations hereunder may be waived by Seller in the case of a default by any of Buyers and by Buyer in case of a default by Seller. No waiver shall be effective unless in writing and signed by the party granting such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

Severability. Any provision of this Agreement which is rendered unenforceable by a court of competent jurisdiction shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate or otherwise render ineffective any or all of the remaining provisions of this Agreement.

No Third-Party Beneficiaries. Nothing herein, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than the parties hereto, any rights, remedies or other benefits under or by reason of this Agreement or any documents executed in connection with this Agreement.

Affiliate. For purposes of this Agreement, the term "affiliate" when used with respect to any person or entity, shall mean any person or entity which directly or indirectly, alone or together with others, controls, is controlled by or is under common control with such person or entity.

Drafting. No party shall be deemed to have drafted this Agreement, but rather this Agreement is a collaborative effort of the undersigned parties and their attorneys.

Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

Headings. The Section and paragraph headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said Sections and paragraphs.

Use of Terms. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the words “include” or “including” in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof. Unless otherwise indicated, reference in this Agreement to a “Section” or “Article” means a Section or Article, as applicable, of this Agreement. When used in this Agreement, words such as “herein”, “hereinafter”, “hereof”, “hereto”, and “hereunder” shall refer to this Agreement as a whole, unless the context clearly requires otherwise. The use of the words “or,” “either” and “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

Survival. The representations, warranties, indemnities, covenants and agreements of each of the parties hereto shall survive the Closing indefinitely without limitation.

12.16 Limitations on Liability. Anything to the contrary in this Agreement notwithstanding, Buyer shall be solely and exclusively responsible and liable for all obligations of any of Buyers, and License Co. shall not incur any liability whatsoever, arising out of this Agreement or any transaction contemplated hereby.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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

**CUMULUS BROADCASTING, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CUMULUS LICENSING LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LAKE AREA EDUCATIONAL BROADCASTING FOUNDATION**

By: \_\_\_\_\_  
Name: James McDermott  
Title: President

\_\_\_\_\_  
JAMES McDERMOTT, for purposes of making the representations and warranties contained in, and agreeing to be bound by the provisions of Sections 4.1, 4.2, 4.3, 4.7, 4.9, 6.8, 6.12, and 6.17 only.

\_\_\_\_\_  
JAMES McDERMOTT, Trustee, for the purposes of making the representations and warranties contained in, and agreeing to be bound by the provisions of Sections 4.2 and 6.8 only.



## **EXHIBITS**

Exhibit 2.7	Form of Assignment Agreement
Exhibit 2.9	Form of Escrow Agreement
Exhibit 2.10	Form of Non-Compete Agreement
Exhibit 2.11	Form of LMA