

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (this “Agreement”) is dated as of October 2, 2020, by and between 4-K’s LLLP, a Colorado limited liability limited partnership (the “Seller”), and Rocky Mountain Public Broadcasting, Inc., a Colorado nonprofit corporation (the “Buyer”).

WITNESSETH:

WHEREAS, Seller is the licensee of and owns and operates FM Translator Station K284CI, Facility ID Number 33475, Denver, Colorado (the “Station”), pursuant to authorizations issued by the Federal Communications Commission (the “FCC”);

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Buyer, and Buyer desires to acquire from Seller, certain assets owned and held by Seller and used solely in connection with the operation of the Station.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Sale of Assets.** On the Closing Date (as defined in Section 4), Seller agrees to sell, transfer, assign, convey and deliver to Buyer, and Buyer agrees to purchase and assume, all of the right, title and interest of Seller in and to certain assets and properties of Seller owned or held by Seller and used solely in the operation of the Station as identified below (the “Assets”) free and clear of liens, claims and encumbrances:

(a) **FCC Authorizations.** All FCC licenses, permits and authorizations to operate the Station (the “FCC Authorizations”) together with all licenses, permits and authorizations issued by any other governmental authority in connection with the operation of the Station, as set forth on Schedule 1(a);

(b) **Personal Property.** Certain equipment, supplies, spare parts, records required by the FCC to be created and retained by the Station, and other tangible personal property owned or held by Seller and used in connection with the operation of the Station (the “Personal Property”), as set forth on Schedule 1(b).

(c) **Tower Lease Agreement.** Buyer shall assume all of Seller’s rights and obligations under the Tower Lease Agreement, dated August 21, 2017, between 4-K’s LLLP, and Mauna Towers for the tower and building on Lookout Mountain I, as set forth in Schedule 1(c).

(d) **No Assumed Contracts or Leases.** Unless otherwise agreed in writing by the parties, there are no other assumed contracts or assumed leases.

(e) **Excluded Assets.** Further, Seller shall retain any bank accounts, cash, cash equivalents and securities and other investments owned by Seller as of the Closing Date. All

accounts receivable of the Station and notes receivable in favor of Seller in existence as of the Closing Date shall remain the property of the Seller. This transactions shall exclude any and all assets owned or leased by Seller and used or useful in connection with its ownership and operation of Standard Broadcast Station KDCO (Facility ID 34585), Denver, CO.

2. **Purchase Price: Escrow Deposit**

(a) In consideration of the sale, transfer, assignment, conveyance and delivery of the Assets to Buyer, Buyer shall pay to Seller a total cash purchase price of Six Hundred Eighty Thousand Dollars (\$680,000.00) (the “Purchase Price”), paid as set forth below.

(b) Within three (3) days of the execution of this Agreement, Buyer shall pay an escrow deposit in the amount of Forty Thousand Eight Hundred Dollars (\$40,800.00)(the “Escrow Deposit”) in immediately available funds to the Escrow Agent designated as Clifton Gardiner Company in the Escrow Agent’s deposit account, which entire Escrow Deposit shall be applied as a credit toward Buyer’s payment of the Purchase Price at Closing. The form of the agreement creating the escrow shall be substantially in the form of the agreement set forth in Schedule 2(b).

(c) On the Closing Date, Buyer shall pay Seller, by wire transfer, the remaining amount of the Purchase Price or Six Hundred Thirty-Nine Thousand Two Hundred Dollars (\$639,200.00) (the “Balance Due”).

(d) Seller may elect to treat the difference between the Purchase Price and the Fair Market Value of the Station as a charitable contribution to the Buyer. The Fair Market Value shall be determined by Seller pursuant to IRS standards and policies; Seller shall provide documentation of such Fair Market Value and charitable contribution amount to Buyer for its business purposes.

3. **FCC Consent: Assignment Application: Modification Application.**

(a) Seller and Buyer expressly agree that the assignment of the FCC Authorizations is subject to the prior consent of the FCC (“FCC Consent”).

(b) Within three (3) business days after execution of this Agreement, Seller and Buyer shall jointly prepare and file with the FCC an application for assignment of the FCC Authorizations (the “Assignment Application”) from Seller to Buyer. Seller and Buyer shall thereafter prosecute the Assignment Application with all reasonable diligence and otherwise use their best efforts to obtain the grant of the Assignment Application as expeditiously as practicable. Any filing fees for the Assignment Application shall, if applicable, be paid by the Seller and the Purchase Price shall be adjusted accordingly at the Closing.

4. **Closing.** The closing (the “Closing”) of the transactions contemplated by this Agreement shall occur on a date (the “Closing Date”) mutually agreed upon by Buyer and Seller within ten (10) business days after the FCC grant of the Assignment Application, subject to the satisfaction of the other conditions precedent to this Agreement. Notwithstanding the foregoing sentence, the parties shall use their best efforts in good faith, assuming that the FCC Consent has been obtained, to ensure that the Closing occurs before the application for renewal of the Station’s license is due on December 1, 2020 (the “Renewal Application Deadline”). The parties understand that if the Closing does not occur prior to the Renewal Application Deadline, then the

Closing will not occur until after the FCC grants the renewal application.

5. **Seller's Representations, Warranties and Other Obligations.** Seller represents and warrants that:

(a) Seller is a limited liability limited partnership, duly organized, validly existing and in good standing under the laws of the State of Colorado.

(b) Seller has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement. This Agreement constitutes a valid and binding agreement of the Seller, enforceable in accordance with its terms. The execution, delivery, and performance of this Agreement by Buyer do not conflict with or result in the breach of, or constitute a default of or violate, Buyer's governing documents.

(c) Seller is the authorized legal holder of the FCC Authorizations. The Station is on-air and operating in accordance with its FCC license, unless Seller and Buyer have otherwise agreed in writing to the Station's on-air and operational status. Notwithstanding the foregoing, the parties understand and agree that in the event that Seller station KDCO is sold prior to the Closing under this Agreement, the Station will be taken silent and, if necessary, Seller will file a request for special temporary authority to remain silent.

(d) Seller has good and marketable title to the Assets. Schedule 1(b) contains an accurate and complete list in all material respects of the Personal Property as of the date hereof. The Personal Property listed on Schedule 1(b) constitute all of the assets and properties required for the operation of the Station's transmission facilities as currently operated by Seller. The Assets are free of all liens, encumbrances or hypothecations. On the Closing Date, each item comprising the Assets shall be working order and in the same operating condition in all material respects as on the date of execution of this Agreement, ordinary wear and tear excepted.

(e) **Claims and Litigation.** There is no judgment outstanding or any claim or litigation or proceeding pending or, to Seller's knowledge, threatened regarding the title or interest of Seller to or in any of the Assets or the Station's operations, or which could prevent or adversely affect the ownership, use, or operation of the Station by Buyer. Except as indicated on Schedule 5(e) there is (i) no complaint or other proceeding pending, outstanding, or to Seller's knowledge threatened, before the FCC as a result of which an investigation, notice of apparent liability or order of forfeiture may be issued from the FCC relating to the Station, (ii) no FCC notice of apparent liability or order of forfeiture pending, outstanding, or to Seller's knowledge threatened, against Seller or the Station, and (iii) no investigation pending, outstanding, or to Seller's knowledge threatened, with respect to any violation or alleged violation of the Communications Act of 1934, as amended, or any FCC rule, regulation or policy by Seller.

6. **Buyer's Representations and Warranties.** Buyer represents and warrants that:

(a) Buyer is a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the State of Colorado.

(b) Buyer has the right, power and authority, and has taken all necessary action, to enter into this Agreement and to fully perform all of its obligations under this Agreement. This Agreement constitutes a valid and binding agreement of the Buyer, enforceable

in accordance with its terms. The execution, delivery, and performance of this Agreement by Buyer do not conflict with or result in the breach of, or constitute a default of or violate, Buyer's governing documents.

(c) Buyer is qualified to hold the FCC Authorizations. Buyer is financially qualified to perform this transaction.

7. **Further Assurances.** After Closing, each party shall, from time to time at the request of, and without further cost or expense to the other, execute and deliver such other instruments and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

8. **Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent:

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

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Seller.

(iv) On the Closing Date, Buyer shall have delivered the Balance Due and authorized disbursement of the Escrow Deposit to Seller.

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent:

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

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date.

(iii) The FCC Consent shall have been issued without any condition that would have a material adverse effect upon Buyer.

(iv) The Station shall be on-air and operating in accordance with its FCC license.

9. **Closing Deliveries.** At the Closing, the parties shall deliver to each other such documents, instruments and agreements as either party shall request and as shall be reasonably

necessary to consummate the transactions contemplated by this Agreement, each in form and substance reasonably satisfactory to the requesting party or the requesting party's counsel.

10. **Assignment.** No party shall assign or attempt to assign any of the rights or obligations under this Agreement without the prior written consent of the other party hereto.

11. **Indemnification.**

(a) **Indemnification by Seller.** Seller shall indemnify and hold harmless Buyer and any of Buyer's officers, trustees, employees, agents, successors and permitted assigns against and in respect of any and all liabilities, obligations, claims, and demands (including reasonable expenses of investigation and attorney's fees) (hereinafter collectively "Claims") arising out of or related to (i) Seller's operation of the Station or ownership of the Assets prior to the Closing Date (including, but not limited to, Claims related to compliance with FCC rules and regulations); (ii) any failure by Seller to perform any covenant or obligation of Seller in this Agreement; and (iii) any inaccuracy in or breach of any representation, warranty, or covenant made by Seller herein.

(b) **Indemnification by Buyer.** Buyer shall indemnify and hold harmless Seller and any of Seller's officers, trustees, employees, agents, successors and permitted assigns against and in respect of any and all Claims arising out of or related to (i) Buyer's operation of the Station or ownership of the Assets after the Closing Date (including, but not limited to, Claims related to compliance with FCC rules and regulations); (ii) any failure by Buyer to perform any covenant or obligation of Seller in this Agreement; and (iii) any inaccuracy in or breach of any representation, warranty, or covenant made by Buyer herein.

12. **Risk of Loss.** Risk of loss, damage, or destruction to the Assets to be sold and conveyed hereunder shall be upon the Seller until Closing Date, and after Closing upon the Buyer.

13. **Specific Performance.** The parties recognize that if Seller refuses to perform under the provisions of this Agreement or otherwise breaches its obligation to consummate this Agreement, monetary damages alone would not be adequate to compensate Buyer for its injury. Buyer shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

14. **Termination.**

(a) **Termination by Seller.** This Agreement may be terminated by Seller and the purchase and sale of the Assets abandoned, if Seller is not then in material default, upon written notice to Buyer, upon the occurrence of any of the following:

(i) **Conditions.** If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Buyer set forth in this Agreement have not been satisfied or waived in writing by Seller.

(ii) **Judgments.** If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Seller, that would prevent or make unlawful the Closing.

(iii) **Material Breach by Buyer.** If the Buyer defaults by material breach of this Agreement and such material default is not rectified with thirty (30) days of

the effective date of the written notice referenced above.

(b) Termination by Buyer. This Agreement may be terminated by Buyer and the purchase and sale of the Assets abandoned, if Buyer is not then in material default, upon written notice to Seller, upon the occurrence of any of the following:

(i) Conditions. If, on the date that would otherwise be the Closing Date, any of the conditions precedent to the obligations of Seller set forth in this Agreement have not been satisfied or waived in writing by Buyer.

(ii) Judgments. If there shall be in effect on the date that would otherwise be the Closing Date any judgment, decree, or order, not caused by Buyer, that would prevent or make unlawful the Closing.

(iii) Material Breach by Seller. If the Seller defaults by material breach of this agreement and such material default is not rectified with thirty (30) days of the effective date of the written notice referenced above.

(c) Termination by Either Party. This Agreement may be terminated by either party, if the terminating party is not then in material default, upon written notice, if the Closing shall not have occurred within nine (9) months after public notice of the FCC's acceptance for filing of the Assignment Application.

(d) Effect of Termination.

(i) Upon termination: (A) if neither party is in material breach of any provision of this Agreement, the parties shall not have any further liability to each other, and the Escrow Deposit shall be returned to Buyer; or (B) if either party shall be in material breach of any provision of this Agreement, the other party shall have the rights and remedies available at law, including for Seller the right to retain the Escrow Deposit as liquidated damages and including for Buyer the right of specific performance provided in Section 13 above. Any and all provisions of this Agreement notwithstanding, neither Seller nor Buyer shall be liable to the other for punitive or consequential damages.

(ii) In the event of a default by either party that results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses (whether incurred in arbitration, at trial, or on appeal).

## 15. Miscellaneous.

(a) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their heirs, successors, executors, legal representatives and permitted assigns.

(b) Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

(c) The construction and performance of this Agreement shall be governed by the laws of the State of Colorado, without regard to its conflict of law provisions. The venue for any dispute arising under this Agreement shall be in the courts of the jurisdiction where the

transmission facility is located.

(d) This Agreement embodies the entire agreement and understanding of the parties hereto relating to the matter provided for herein, and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

(e) No amendment, waiver of compliance with any provision or condition hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of any waiver, amendment, change, extension or discharge is sought.

(f) The representations, covenants, and warranties herein shall survive the Closing Date for a period of six (6) months.

(g) Buyer and Seller shall bear their respective costs and expenses for attorneys, accountants, brokers and advisors retained by or representing them in connection with their respective negotiation and execution of this Agreement and the performance of their respective obligations hereunder. In particular, Seller shall be responsible for any costs, expenses or fees owed to Seller's broker, Clifton Gardiner & Company and Buyer shall be responsible for any costs, expenses or fees owed to Buyer's broker, Guest Technology.

16. **Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered one (1) business day after having been sent by national overnight courier service and addressed as set forth in Schedule 17 (or to such other address as any party may request by written notice).

17. **Counterparts.** This Agreement may be signed in counterpart originals, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Agreement may be signed and exchanged by facsimile or email (PDF) transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

18. **Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

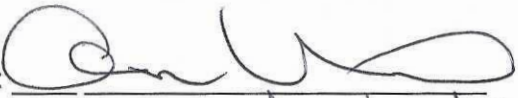
*[Remainder of Page Intentionally Blank]*

[Signature Page to K284CI Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**BUYER:**

**Rocky Mountain Public Broadcasting, Inc.**

By:   
Name: Gregory K. Merilatt  
Title: President & CEO

**SELLER:**

**4-K's LLLP**

By: \_\_\_\_\_  
Name: Gregory K. Merilatt  
Title: General Partner



[Signature Page to K284CI Asset Purchase Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**BUYER:**

**Rocky Mountain Public Broadcasting, Inc.**

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

**SELLER:**

**4-K's LLLP**

By:   
Name: Gregory K. Merilatt  
Title: General Partner

**SCHEDULE 1(a)**

**FCC Authorizations**

<u>Call Sign</u>	<u>Facility ID Number</u>	<u>Location</u>	<u>File Number</u>	<u>Authorization Expiration Date</u>
K284CI	33475	Denver, CO	BLFT-20190227AAO	04/01/2021

**SCHEDULE 1(b)**

**Personal Property**

Type text here

**Inventory**

Elenos 300 watt FM transmitter  
Scala CA-2-CP FM antenna  
Orban FM processor  
Marti STL receiver  
Scala STL receive antenna

**Miscellaneous**

FCC and other records relating to Station K284CI

**SCHEDULE 2(b)**

[Form of Escrow  
Agreement]

**SCHEDULE 1(c)**

Site Lease

## TOWER LEASE AGREEMENT

This Agreement, made this 21<sup>st</sup> day of August 2017, between Mauna Towers, LLC, a Wyoming limited liability company, with its principal offices located at 87 Jasper Lake Road, Loveland, Colorado 80537, hereinafter designated LESSOR, and 4-K's, LLLP, with its principal offices located at 1713 Whistlepig Lane, Broomfield, CO 80020, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

### WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. PREMISES. LESSOR hereby leases to LESSEE for the operation of Translator K284CI licensed to Denver, Colorado, Facility ID 33475 a portion of that certain space ("the Tower Space") on LESSOR's tower, hereinafter referred to as the "Tower", located at 21190 Cedar Lake Road, Golden, CO 80401, aka Lookout Mountain I, the entirety of the property upon which the Tower is located is referred to hereinafter as the "Property" together with the non-exclusive right ("the Right of Way") for ingress and egress, seven (7) days a week, twenty four (24) hours a day, on foot or motor vehicle, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a right-of-way extending from the nearest public right-of-way to the Tower Space; and together with any further rights-of-ways (the "Further Rights of Way"), if any, over and through the property for installation and maintenance of utility wires, poles, cables, conduits, and pipes. The Tower Space, Right of Way and Further Rights of Way, if any, are collectively referred to hereinafter as the "Premises". LESSEE's equipment on the Premises is further described on the attached Exhibit A.

2. TERM; RENTAL; ELECTRICAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for ten (10) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of Eight Thousand Four Hundred and 00/100 Dollars (\$8400.00), to be paid in equal monthly installments of Seven Hundred and 00/100 (\$700.00) Dollars (plus any additional electrical surcharge if applicable) on the first day of the month, in advance, to LESSOR or to such person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 18 below. The Agreement shall commence on August 21, 2017 (the "Commencement Date").

b. LESSEE shall have the right to install utilities, at LESSEE's expense, and to improve the present utilities on or near the premises (including, but not limited to, the installation of emergency back-up power). Subject to LESSOR's approval of the location, LESSEE shall have the right to place utilities on (or bring utilities across) LESSOR's property in



order to service the premises and Lessee's equipment. Upon LESSEE's request, LESSOR shall execute recordable easement(s) evidencing this right.

If Lessee desires, Lessor is willing to provide Lessee with electric utility service for an additional monthly surcharge. Lessee is responsible to pay for all utilities associated with the operation of Lessee's equipment at the Premises including a proportionate share of air conditioning and general lighting expenses. The initial electric surcharge, based upon tenant's estimated continuous power draw, will be Twenty-Five and 00/100 (\$25.00) Dollars per month. This electric surcharge is also subject to the annual 4% increase. Should Lessor at any time during the initial term or any renewal term of this lease, and to the best of Lessor's ability to do so, determine that this electric surcharge does not fully compensate Lessor for Lessee's use of power at the site, Lessor may, without prior written notice, increase this surcharge. Lessor cannot guarantee the uninterrupted supply of this electric service, but will promptly seek to repair any service interruptions that might be experienced from time to time.

3. EXTENSIONS. This Agreement shall automatically be extended for one (1) additional ten (10) year terms unless LESSOR or LESSEE terminates it at the end of the then current term by giving the other Party written notice of the intent to terminate at least one hundred and twenty (120) days prior to the end of the then current term. The initial term and all extensions shall be collectively referred to as the "Term".

4. EXTENSION RENTALS. On the anniversary of the Commencement Date and on each subsequent anniversary during the Term of this Agreement, the annual rent shall be equal to one hundred four percent (104%) of the annual rent for the immediate preceding year.

5. EQUIPMENT AND TAXES. Any equipment installed by LESSEE shall remain the property of LESSEE and shall bear the identifying name of LESSEE as owner thereof. LESSOR reserves the right of access to LESSEE's equipment as may be necessary to ensure the sound maintenance and safe operation of all facilities at the Premises and to inspect same as provided herein. Any taxes levied upon or allocated to the equipment or other personal property owned or held by LESSEE and located on the Premises shall be paid by LESSEE. Any taxes levied against LESSEE's equipment at the Premises are the sole responsibility of the LESSEE.

LESSOR shall provide LESSEE the space for the equipment listed in Exhibit A to this agreement. LESSOR shall not be limited by Exhibit A for future equipment installations to the extent such installations do not interfere with LESSEE's operations.

Future antenna and tower loadings not listed in Exhibit A of this Agreement shall be proposed, in writing, by LESSEE for review by LESSOR. Any additions or modifications approved by LESSOR are subject to possible rent increases.

6. USE. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas and conduits along with all costs of installation shall be at LESSEE's expense. All construction, operations and activities of the Parties hereunder shall be



conducted in accordance with all applicable laws and with the rules, regulations, and orders of any governmental agency having jurisdiction. LESSEE is responsible for applying for and acquiring, at its sole expense, all governmental permits and licenses necessary for its operations at the Premises.

7. INDEMNIFICATION. Subject to Paragraph 8 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the operations or activity of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

8. INSURANCE. LESSEE agrees, at its own cost and expense, to maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$2,000,000 for damage or destruction to property in any one occurrence. LESSEE agrees that it will include LESSOR as an additional insured.

Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying insurance of LESSEE, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve LESSEE from any obligations under this Agreement.

9. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraph 8, neither Party shall be liable to the other, or any of their respective agents, representatives or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract tort (including negligence), strict liability or otherwise.

10. ACCESS TO PREMISES. LESSEE shall have free access to the Premises at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access or the purpose of ingress and egress to the Premises. It is agreed, however, that only authorized engineers, employees or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said Premises.

11. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with the then existing industry standards to any equipment of LESSOR or other lessees on the Tower which existed on the Tower prior in time to LESSEE's equipment. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including, but not limited to, powering down such equipment and later powering up such equipment for intermittent testing. Upon failure of LESSEE to cure said interference, LESSOR may at its option terminate this Agreement by



giving thirty (30) days written notice to LESSEE, and LESSEE shall promptly cease its operations hereunder and remove all facilities from said Premises.

LESSOR agrees that LESSOR and/or any other tenants or users of the Tower who currently have or in the future take possession of space on the Tower will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE.

12. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its antenna(s), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage expected. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of all personal property are completed.

13. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

14. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR either holds title to the Property or is seized of good and sufficient leasehold interest in the Property and has full authority to enter into and execute this Agreement. LESSOR covenants that there are no liens, judgments or impediments on the site that could impair the LESSEE's use of the site as contemplated herein.

15. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of the Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

16. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

17. ASSIGNMENT. This Agreement may be sold, assigned or transferred by LESSEE without any approval or consent of LESSOR to LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without written consent of LESSOR, which such consent will not be unreasonable withheld, delayed or conditioned.

18. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provide further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to sender by notice):

LESSOR: Victor A. Michael, Jr.  
Mauna Towers, LLC  
87 Jasper Lake Road  
Loveland, CO 80537

LESSEE: Gregory Merilatt, Partner  
4-K's, LLLP  
1713 Whistlepig Lane  
Broomfield, CO 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

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

19. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

20. CASUALTY. In the event of damage by fire or other casualty to the Tower or Premises that cannot reasonably be expected to be repaired within sixty (60) days following same or, if Property is damaged by fire or other casualty so that damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than sixty (60) days, then LESSEE may, at any time following such fire or casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of



termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

21. CONSTRUCTION LIENS. LESSEE will not permit any construction liens to be placed upon the towers, building, or land for any labor or material furnished to LESSEE or to LESSEE's agent or contractor in connection with work of any character performed or claimed to have been performed at the Premises by or at LESSEE's direction or LESSEE's contractor's direction. LESSEE shall have the right to contest the validity or amount of any lien or claimed lien provided LESSEE gives LESSOR such reasonable security as may be demanded by LESSOR to insure payment of said lien and prevent any sale, foreclosure, or forfeiture of the Premises by reason of such non-payment, such security not to exceed one and one-half times the amount of the lien or claimed lien. On final determination of any contested lien or contested claim for lien, LESSEE shall immediately pay any judgment rendered, plus all reasonable related costs and charges, and LESSEE will have the lien released or judgment satisfied at its own expense.

22. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY.

The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

23. APPLICABLE LAWS. During the Term, LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to improvements being made by LESSEE in the Premises.

24. SURVIVAL. The provisions of this Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

25. ENVIRONMENTAL LAWS. LESSEE represents warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws (as defined below). LESSOR represents warrants and agrees that it will conduct its activities on the Property in compliance with all applicable Environmental Laws.



LESSEE agrees to defend, indemnify and hold LESSOR harmless from and against any and all claims, causes of action, costs, expenses, assessments, penalties, fines, losses, judgements and attorney's fees that LESSOR may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from LESSEE's activities on the Property.

LESSOR agrees to defend, indemnify and hold harmless from and against any and all claims, causes of action, costs, expenses, assessments, penalties, fines, losses, judgements and attorney's fees that LESSEE may suffer due to the existence or discovery of any Hazardous Substance on the Property or the migration of any Hazardous Substance to other properties or released into the environment, that relate to or arise from LESSOR's activities on the Property.

The indemnification in this section specifically includes reasonable costs incurred in connection with any investigation of site conditions or any cleanup, removal, remedial or restoration required by any governmental authority.

As used in this Agreement, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, health and/or the environment, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. SS 6901, et seq., the Clean Air Act, 42 U.S.C. SS 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. SS 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. SS 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. SS 2601, et seq., the Toxic Substance Control Act, 15 U.S.C. SS 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. SS 2701, et seq. and Colorado State Laws, or any other comparable local, state or federal status or ordinance pertaining to the environment or natural resources and all regulations pertaining thereto.

As used in this Agreement, "Hazardous Substance" means any hazardous or toxic substances as defined by the comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time, any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, any and all material waste or substance defined as hazardous pursuant to any federal, state or local laws or regulations or order, and any substance which is or becomes regulated by any federal, state or local governmental authority, any oil, petroleum products and their by-products. This definition also includes all federal, state or local land use laws dealing with environmental sensitivity including, but not limited to, laws regulating wetlands, steep slopes, aquifers, critical or sensitive areas, shorelines, fish and wildlife habitat, or of historical archeological significance.

26. DEFAULT. Failure by LESSEE to make any payment which is required by this Agreement when due shall not constitute a default under this Agreement unless LESSEE shall fail to cure such delinquency within fifteen (15) days of written notice from LESSOR specifying the failure to timely pay. Failure by either Party to comply with any other term or condition of this Agreement shall not constitute a default, unless the non-complying Party is given written notice specifying such failure to comply by the other Party and the non-complying Party fails to cure such failure within thirty (30) days of written notice. In the event that a non-monetary

default cannot reasonably be cured within the aforementioned thirty (30) day period, the non-complying Party will not be in default if it commences its cure efforts within the thirty (30) day period and diligently pursues such cure efforts until completion.

In the event that a noticed default is not cured within the designated cure period, the non-defaulting Party shall be entitled to terminate this Agreement upon ten (10) days written notice to the other Party, in addition to pursuing any other available remedies at law or in equity.

27. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, and all of which when combined shall constitute one and the same instrument. If this Agreement is executed in counterparts, this Agreement shall become operative when each Party has executed and transmitted at least one counterpart hereof to the other Party.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first written above.

**LESSOR:**

Mauna Towers, LLC  
A Wyoming limited liability company

By: 

Victor A. Michael, Jr.  
Sole Member

Date: 8-21-2017

**LESSEE:**

4-K's, LLLP

By: 

Gregory Merrillatt  
Partner

Date: 8-21-2017

## **EXHIBIT A**

### **Equipment, Antennas, and Appurtenances**

**Equipment installed in the building:**

**(1) Elenos 300 Watt transmitter**

**(1) Orban FM processor**

**(1) Marti STL receiver**

**Antenna and Appurtenances mounted on the tower (including height above ground):**

**(1) Scala CA-2-CP FM antenna mounted 14 meters above ground level**

**(1) Scala STL receive antenna mounted at 5 meters above ground**

**SCHEDULE 5(f)**  
**Claims and Litigation**

None

## **SCHEDULE 16**

### **Notices**

Notices to Seller:

4-K's LLLP  
1713 Whistle Pig Lane  
Broomfield, CO 80020  
303-650-1795  
MERILATT@MILESHIGHSPORTS.COM  
Attention: Gregory Merilatt, Co-managing  
partner

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

Fletcher Heald &  
Hildreth, PLC  
1300 N. 17th Street, Suite 1100  
Arlington, VA 22209  
703-812-0473  
Attention: Kathleen Victory, Esq.  
victory@fhhlaw.com

Notices to Buyer:

Amanda Mountain  
President & CEO  
Rocky Mountain Public Media  
2101 Arapahoe St.  
Denver, CO 80205  
[amandamountain@rmpbs.org](mailto:amandamountain@rmpbs.org)  
303-620-5758

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

Margaret L. Miller, Esq.  
2233 Wisconsin Ave. NW,  
Suite 226  
Washington, DC. 20007