

# BROADCAST TOWER USE LEASE AGREEMENT

This BROADCAST TOWER USE LEASE AGREEMENT ("Lease") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2004 by and between **OKLAHOMA LAND COMPANY, LLC**, ("Lessor") and **SHAWNEE BROADCASTING, INC.** ("Lessee").

## WITNESSETH:

**WHEREAS**, pursuant to the terms of an "Asset Purchase Agreement" ("Purchase Agreement") dated April 16, 2004, Lessor was sold by Lessee the assets and licenses associated with Television Station KQOK (TV), Shawnee, Oklahoma

**WHEREAS**, as part of that Purchase Agreement, Lessor acquired a tower for Television Station KQOK, and said tower is located in Norman, Oklahoma, with Geographical Coordinates of: North Latitude 35-16-58 by West Longitude 97-20-18 (the ATower@); and

**WHEREAS**, the Lessee presently holds the license for low powered television station KDSA-CA, Norman, Oklahoma ("LPTV"). This LPTV station presently has its antenna at the \_\_\_\_\_ foot level on the Tower, taking up approximately \_\_\_\_\_ feet of lower space, together with associated transmission line cable; and

**WHEREAS**, Lessee desires to obtain a tower use leasehold interest which will permit the continued location of the antenna and associated transmitter building space at its present location on the Tower; and

**WHEREAS**, the agreement of Lessor to grant Lessee such leasehold interest is a condition of the aforementioned Purchase Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions contained in this Lease, the parties intending to be legally bound, agree as follows:

**1. LEASEHOLD INTEREST.** Lessor lets to Lessee, and the Lessee leases from Lessor the following:

(a) That section of the Tower which is necessary for operation by Lessee's LPTV broadcast facility, including the antenna system, transmission lines, cables, wires,

devices, appliances and such related equipment as is required for the efficient and effective operation of LPTV.

(b) Right-of-way space on the Tower for the connection, and passage by cables, wires and transmission lines and any transmission equipment on the ground.

(c) Unrestricted access to the Tower for the purpose of operating broadcast equipment owned or operated by Lessee located there.

(d) Lessee agrees to keep its transmitting and related equipment used for its LPTV which is located in the Lessor's transmitter building in a restricted "caged" segregated area of said building. The Lessee shall, at its sole costs and expense, construct a "cage" and exterior entrance to Lessee's "caged" area. The location and specifications of the "cage" and entrance must be approved by Lessor's engineer, prior to commencing construction. Such "cage" and entrance shall be completed within 45 days of the date of this Lease. Lessor shall have unrestricted access to Lessee's "cage" area.

(e) Lessor can use, and or lease to a third party any other portion of the Tower for broadcasting operations or other compatible communications operations, provided, however, that such new antennas shall not cause improper interference to Lessee's broadcast signal.

(f) Lessee shall operate its LPTV Station in material compliance with all FCC Rules and Regulations.

(g) Lessor shall have the right to require the relocation of the Lessee on the Tower due to technical engineering reasons associated with the FCC compliant operations of KQOK (TV) as currently operated or as proposed under the pending FCC construction permit application. Specifically, in the event that it is determined that due to repair, enhancement, or replacement of Lessor's broadcasting transmitting equipment the Tower fails wind-loading and/or weight-loading specifications, the LPTV Station causes interference, or the Station can not meet FCC required operations under its current FCC Licenses or Construction Permit Authorizations or as proposed under the pending FCC construction permit application, Lessor can relocate the Lessee on the Tower. Should such

a move be necessary, the cost of said move on the Tower shall be borne by Lessor, and the Parties agree to use reasonable efforts to relocate the LPTV to a Tower location which has the least possible negative impact on the Lessee's broadcast signal, while still eliminating any interference and or other technical issues with KQOK (TV).

(h) If Lessee cannot be reasonably relocated on the Tower due to the wind-loading; weight-loading failures; interference issues with KQOK (TV) as currently operated or under the pending construction permit application; or FCC required operations as set forth under the Station's current Licenses or Construction Permits (including the pending construction permit application), the Lessor can, in these cases, terminate this Lease and Lessee's property will be removed from the Tower. However, in all other cases, Lessor shall reimburse Lessee for an amount equal to market based rent for a relocated site for the remaining term of this lease and incur the cost to relocate Lessee's equipment to a comparable site at a relocation cost not to exceed \$200,000.00.

(i) In the event the Lessee wishes to modify its present broadcasting system, it must obtain prior written consent of the Lessor. It is agreed and understood that Lessor may require Lessee to undertake a tower study/ engineering study prior to any approval of said modification. All changes must be in full compliance with FCC Rules and Regulations.

**2. TERM OF LEASE.** The term of this lease shall be for ten (10) years commencing on the first day following closing as defined in the Purchase Agreement..

**3. RENT.** Lessee shall pay the Lessor rent in the amount of 1.00 per year.

**4. ASSIGNMENT.** The Lessee shall have the right to assign this Lease and its rights under the Lessee to any affiliate or subsidiary of the Lessee, without prior written approval of the Lessor. In the event of a sale of the LPTV to any other party this Lease is not assignable however, the Lessor agrees to entertain a new commercially reasonable Lease with that third party.

**5. REPAIRS AND MAINTENANCE.** Lessor shall be responsible for all maintenance and repair of the Tower and the Tower supporting structures.

**6. PAYMENT OF TAXES.** Lessor shall be responsible for the personal property taxes imposed against the Tower, supporting structures. Lessee shall be responsible for the payment of any personal property taxes imposed against the fixtures or equipment on the leased premises owned by Lessee.

**7. UTILITIES.**

(a) Lessor shall pay when due all Tower lighting or other electric utility charges made against the Leased Premises during the term of this Lease.

(b) Lessee shall pay its separately metered electrical charges in connection with the operation of its transmitter and other equipment, and all telephone line charges associated with the exclusive operation of Lessee's transmitter, antenna, and related equipment.

**8. INSURANCE.** Lessor shall maintain adequate insurance coverage against fire, storm or other casualty loss or damage to Lessor's property, as well as liability insurance against personal injury or property damage. Such insurance shall specifically provide for coverage for the repair and replacement of all structures, machinery and equipment owned by Lessor located on or adjacent to, the Tower

Lessee shall maintain adequate insurance coverage against fire, storm or other casualty loss or damage to Lessee's property, as well as general liability insurance against personal injury of not less than two million dollars (\$2,000,000) Evidence of said insurance shall be provided to Lessor upon request of Lessor. Failure to maintain said general liability policy by Lessee shall result in the immediate termination of this Lease.

**9. DAMAGE TO OR DESTRUCTION OF THE TOWER.**

(a) If the Tower or any part thereof, or any equipment thereon shall be wholly or materially damaged or destroyed, at the sole option of the Lessor, the Lessor may repair, restore and/or replace the same, at the expense of Lessor, to the condition which existed immediately prior to the occurrence of such the casualty.

(b) However, in the event the damage to the Tower or any part thereof, or any equipment thereon, cannot be repaired within sixty (60) days (as reasonably estimated

by Lessor as soon as practicable after the occurrence of such damage) Lessor or Lessee may terminate this Lease as of the date of such damage.

**10. EMINENT DOMAIN.** If the Tower location shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall be terminated as of the date of such taking and Lessee shall thereupon be released from any further liability hereunder. The date of such taking shall be the date on which legal title shall vest in the condemning authority.

**11. ACCESS TO LEASED PREMISES.** It is mutually understood and agreed between the parties that each shall maintain broadcast apparatus on the Tower. Lessor and Lessee shall have the right to full and unrestricted access to the Tower for the purpose of operating, maintaining, inspecting and repairing such broadcast apparatus.

**12. USE OF TOWER.**

(a) Lessee shall not take any action which will cause or permit electrical interference to the broadcast signal of KQOK (TV), or which would otherwise impair the signal of KQOK (TV).

(b) Lessee shall be liable to Lessor and shall indemnify Lessor for any loss or damage to Lessor's equipment, or for destructive electrical interference to the broadcast signals of Lessor consequential or otherwise occasioned by, growing out of, or arising from any act or failure to act by Lessee, its agents or employees.

(c) Lessor shall not allow other Tower tenants to cause electrical interference to the broadcast signal of KDSA-LP. In the event that such interference occurs, the Lessor shall take the necessary steps to require the other interfering Tower tenant to correct the situation. Should a correction not be possible, the interfering Tenant shall be required to move off the Tower.

(d) Lessor shall be liable to Lessee and shall indemnify Lessee for any loss or damage to Lessee's equipment, growing out of, or arising from any act or failure to act by Lessor, its agents or employees.

(e) Any material breach by either party of the other party's right of use of the Tower as defined herein, shall confer upon the nonbreaching party, the right to immediately terminate this Lease. Such rights shall be in addition to, and exclusive of such other rights contained in this Lease or such rights at law or equity which Lessee may possess.

**13. INDEMNIFICATION OF PARTIES.** Lessor shall have no liability for any loss or damage due to personal injury, property damage, libel or slander, or electrical interference, and Lessee will indemnify and save Lessor harmless from any loss, damage or liability, consequential or otherwise occasioned by, growing out of, or arising, or resulting in connection with, Lessee or any act or failure to act by Lessee, its agents, or employees.

**14. LAND LEASE CONTINGENCY.** The parties agree and understand that this Lease is contingent upon a land lease on which the tower is presently located. In the event Lessor's land lease is terminated, then this Lease automatically terminates.

**15. AUTHORIZATION.** Lessor and Lessee respectively represent and warrant to the other that all necessary corporate action has been duly taken to authorize the execution and delivery of this Lease and the performance or observance of the provisions of this Lease.

**16. NO WAIVER.** Failure or delay on the part of either Lessor or Lessee to exercise any right, power, or privilege hereunder shall not operate as a waiver thereof.

**17. NOTICE.** Any and all notices, demands or other communications required by this Lease or by law, or desired to be given hereunder, by any party shall be in writing and shall be validly given or made to another party if served either personally or if deposited in the United States mail, certified, postage prepaid, return receipt requested. If such notice, demand or other communication be given by mail, such shall be conclusively deemed given as of the date shown on the return receipt if the same is deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

***If to Lessor:***

Ty A. Tyler, Vice Operating Manager  
Oklahoma Land Company, LLC  
5101 S. Shields Blvd.  
Oklahoma City, OK 73129

*with copy to:*

John C. Trent, Esq.  
Putbrese Hunsaker & Trent, P.C.  
200 S. Church Street  
Woodstock, VA 22664

***If to Lessee:***

Lori Withrow, Secretary  
Shawnee Broadcasting, Inc.  
#1 Shackleford Drive  
Suite 400  
Little Rock, AR 72211

With a copy to:

Jason Roberts, Esq.  
Shawnee Broadcasting, Inc.  
#1 Shackleford Drive  
Suite 400  
Little Rock, AR 72211

Any party hereto may change its address for the purpose of receiving notice, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party or parties hereto.

**18. AGENTS AND PARTIES.** From time to time Lessor or Lessee by notice as aforesaid may appoint one or more agents to act for them.

**19. BENEFIT.** The parties hereto understand and agree that this Lease shall be binding on and inure to the benefit of the parties hereto, their successors and assigns.

**20. OTHER DOCUMENTS.** The parties shall execute such other documents as may be necessary and desirable to the implementation and consummation of this Lease.

**21. ATTACHMENTS, SCHEDULES AND EXHIBITS.** All Exhibits, Appendices and Schedules attached to this Lease shall be deemed part of this Lease and incorporated herein, where applicable, as if fully set forth herein. Each page of each Exhibit or other attachment hereto shall be initialed by the parties to this Lease. If any provision in any

Exhibit conflicts with or is not consistent with the provisions of this Lease, the terms of this Lease shall govern.

**22. DEFAULT AND ATTORNEYS' FEES.** In the event that either party hereto materially defaults in the performance of any of its obligations hereunder, and shall fail to cure said default within ten (10) days after receiving written notice of such default by the complaining party (except where the defaulting party is required under the provisions of this Lease to perform within a shorter period of time, or if not curable within ten (10) days, than shall either party fail to take affirmative steps to cure such default within said period), and should the complaining party thereafter refer such matter to an attorney, then whether or not suit or action is instituted with respect to such matter, the other party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such matter, provided the other party is not also in material breach of this Lease.

**23. COUNTERPARTS.** This Lease may be signed by any number of counterparts with the same effect as if the signature of each such counterpart were upon the same instrument.

**24. HEADINGS.** The headings of the paragraphs of this Lease are inserted as a matter of convenience and for reference purposes only and in no way define, limit or describe the scope of this Lease or the intent of any paragraph hereof.

**25. ENTIRE AGREEMENT.** This Lease is the only Agreement between the parties hereto and contains all of the terms and conditions agreed upon with respect to the subject matter hereof.

**26. MODIFICATION OR AMENDMENT.** No amendment, change or modification of this Lease shall be effective unless in writing stating that it amends this document and signed by each of the parties hereto.

**27. GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Oklahoma.

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the day and year first above written.

**LESSOR:**

**OKLAHOMA LAND COMPANY, LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Ty A. Tyler, Vice Operating Manager

**LESSEE:**

**SHAWNEE BROADCASTING, INC.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Lori Withrow, Secretary