

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, hereinafter Lease Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 2016, for a period beginning \_\_\_\_\_, 2016, (hereafter Effective Date) by and between **STRUTHERS CITY SCHOOL DISTRICT BOARD OF EDUCATION**, a political subdivision of the State of Ohio, hereinafter designated as Lessor, and \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, hereinafter designated as Lessee.

### RECITALS:

**WHEREAS**, Lessor owns real property located in the City of Struthers, Mahoning County, Ohio on which is located a radio broadcast tower for WKTL-FM along with adjacent school building space in which is located the WKTL-FM transmitter (collectively referred to herein as “Real Property”); and

**WHEREAS**, Lessee has purchased from Lessor the broadcast tower (“Broadcast Tower”) located on the Real Property and desires to, simultaneously with such purchase, lease the the Real Property; and

**WHEREAS**, Lessor has determined that the Real Property is not currently needed for school purposes of Lessor and that Lessor desires to lease the Real Property to Lessee on the terms and conditions stated herein.

**NOW THEREFORE, IN CONSIDERATION** of the Recitals which are incorporated herein by reference, and the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### **1. LEASE OF REAL PROPERTY AND ACCESS.**

A. Lessor hereby leases to Lessee and Lessee leases from Lessor that specific land and school building space, hereinafter called "Real Property", identified and described in attached **Exhibit “A”** which is located on real property of Lessor for the term, and at the rent, and upon all of the conditions

and agreements set forth herein. Excluding circumstances and/or events beyond the control of Lessor, nonexclusive access to the Broadcast Tower on the Real Property including ingress and egress from public roads through property owned by Lessor will be available 24 hours a day, 7 days a week by foot or by motor vehicle, and nonexclusive access to the transmitter room in the school building will be available during school hours or as arranged by prior notice to and permission from Lessor.

By taking possession of the Real Property, Lessee accepts it in the condition in which it may then be, and waives any right or claim against Lessor arising out of the Real Property before the Effective Date of this Lease Agreement, including, the improvements thereon, the appurtenances thereto, the equipment thereof as well as environmental concerns. Lessee is responsible for the cleanup or disposal of environmental contamination, hazardous waste, or other environmental contaminants which are caused by Lessee.

## **2. TERM.**

The Lease of the Real Property shall be for an initial term of five (5) years beginning on \_\_\_\_\_, 2016 (hereafter "Effective Date"). Lessee shall have the option to extend the Lease of the Real Property for two (2) additional five (5) year terms (the "Initial Term"). The Lease shall automatically extend unless Lessee gives Lessor written notice of its intent not to extend the Lease at least six months prior to expiration of the then current term. Subsequent to the expiration of the third (3<sup>rd</sup>) five-year term and at Lessor's sole discretion, Lessee may extend the Lease Agreement of the Real Property for additional terms (hereinafter "Additional Term") as may be negotiated by Lessor and Lessee on or before six (6) months prior to the expiration of the third (3<sup>rd</sup>) five (5)-year term. . Covenants, terms and conditions to be renegotiated for the Additional Term. Lessee shall give Lessor written notice of its request to extend at least twelve (12) months prior to expiration of the then current term. Lessor shall respond to the request for an Additional Term as soon as practical.

If at the end of the third (3<sup>rd</sup>) 5 year term, if Lessor has not agreed to the Additional Term, this Lease Agreement shall terminate at the expiration of its then current Term

Early Termination by Lessor. Lessor may terminate this Lease Agreement at any time as

provided in Section 7. C.

**3. RENTAL PAYMENT.**

3.1 Beginning on the Effective Date, Lessee agrees to pay Lessor, promptly on the first day of each month in advance, during the Initial Term of the Lease, a monthly rental payment of Five Hundred Dollars (\$500.00).

3.2 Late Charges. In the event Lessee fails to pay any installment of rent (within five (5) days of when due or in the event Lessee fails to make any other payment for which Lessee is obligated under this Lease within five (5) days of when due, then Lessee shall pay to Lessor a late charge equal to five percent (5%) of the amount(s) due to compensate Lessor for the extra costs incurred as a result of such late payment.

3.3 Except as may be provided herein, the utilities for building services such as electricity, natural gas, and water and sewage charges are included in the foregoing rent.

**4. USE OF PROPERTY.**

Lessee agrees to use the Real Property solely for the purposes of maintaining, repairing, operating, constructing and removing the Broadcast Tower on the land area of the Real Property, and the transmitter equipment in the adjacent school building space, and uses appurtenant thereto.

All materials furnished for work done on the Real Property by Lessee shall be at Lessee's sole cost and expense. Lessee agrees to protect the Real Property, and Lessor, from all claims of contractors, laborers and materialmen. Lessee covenants and agrees that the maintenance and operation of the Broadcast Tower by Lessee and associated appurtenances will not irreparably damage the Real Property and will not damage adjacent Lessor owned property.

**5. MAINTENANCE AND INSPECTION.**

Lessee shall at all times during the term of the Lease Agreement maintain the Broadcast Tower and all appurtenances and related equipment in good repair at Lessee's sole cost and expense. Lessee shall also maintain the leased land, the shelters and their electrical system and cooling systems as needed at Lessee's sole cost and expense. (If Lessee desires to install a power generator to serve the

equipment, it shall be done at Lessee's cost and expense, subject to prior written approval of Lessor.) Lessee shall take the necessary steps to ensure the ongoing structural integrity of the Broadcast Tower. Lessee shall also maintain the Broadcast Tower in compliance with standards contained in applicable local building codes and any other applicable federal or state standards as may be amended from time to time.

The Broadcast Tower must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency with the authority to regulate towers and antennas. If such standards and regulations are changed, then the Lessee shall bring the condition of the Broadcast Tower into compliance as soon as possible but in no event later than the compliance date as provided for by the changed standard or regulation.

Lessor shall at all times have the right to inspect the Property and any associated facilities or appurtenances for compliance with the terms and conditions of this Lease Agreement and for compliance with any such zoning or other ordinances or regulations as may be applicable. If on inspection the Broadcast Tower or other associated appurtenances fail to comply with such codes and standards and/or is deemed to constitute a potential danger to persons or property, then upon notice, Lessee shall immediately take the steps necessary to come into compliance and shall come into compliance in no event later than the compliance time frame as provided for by the code or standard and/or according to the requirements of the Lease Agreement. Failure to do so shall constitute a default as provided for in Section 9A.(ii) of this Lease Agreement.

## **6. PERMITS AND APPROVALS.**

Lessee shall abide by all zoning and other procedural requirements governing the siting of such Real Property. Lessee shall, at its sole cost and expense, obtain all Federal, State and local authorizations required in order to operate, or otherwise implement its use of the Real Property.

It is understood and agreed that Lessee's ability to use the Real Property is contingent upon its obtaining all of the certificates, permits and other approvals that may be required by any federal, state or

local authority. In the event that any of such applications should be finally rejected or any certificate, permit, license or approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority, Lessee and Lessor shall have the right to terminate this Lease Agreement under the terms and conditions provided in Section 8.

**7. TERMINATION.**

**A. Expiration of Lease Agreement.**

At the expiration of the term of the Lease of the Real Property and any extension thereof, the Broadcast Tower shall at the option of the Lessee revert to the ownership and possession of Lessor, provided Lessor agrees at such time to accept the ownership of the Broadcast Tower. In the event Lessee elects to transfer ownership of the Broadcast Tower to Lessor but Lessor does not desire to accept ownership at such time, Lessee shall be required to remove it and to comply with the provisions of Section 11 of this Lease Agreement. Lessee shall remove its personal property and fixtures and restore the Real Property to its original condition.

**B. Termination by Lessee.**

Notwithstanding anything herein to the contrary, this Lease Agreement may be terminated by Lessee on sixty (60) days prior written notice under the following circumstances:

- (i) If Lessee is unable to occupy and utilize the Property due to public condemnation;
- (ii) If Lessee cannot obtain or maintain any license, permit or other approval necessary for the operation of Lessee's equipment; or
- (iii) If Lessee is unable to occupy and utilize the Property due to an action of the FCC or other agency having jurisdiction.

Notice of Lessee's exercise of its right to terminate shall be given to Lessor in writing by certified mail, return-receipt requested, and shall be effective upon receipt of such notice by Lessor as evidenced by the return receipt. All rentals paid to said termination date shall be retained by

Lessor. Upon such termination, and the subsequent satisfactory Lessee compliance with the provisions of Section 11 of this Lease Agreement, this Lease Agreement shall become null and void and all the parties shall have no further obligations, including the payment of money, to each other.

**C. Termination by Lessor.**

Lessor may terminate this Lease Agreement under the following circumstances:

(i) At the end of the current Term if notified of Lessee's intent to not renew the lease of the Real Property in accordance with Section 2 of this Lease Agreement;

(ii) At any event of default under the terms and conditions and through the procedures as indicated in Section 8 of this Lease Agreement.

(iii) At any time upon six (6) months notice to Lessee that the Lessor needs to use all or any part of the Real Property for its school purposes.

**8. DEFAULT AND EFFECT OF DEFAULT.**

**A. Default.**

Each of the following events shall constitute a default of this Lease Agreement by Lessee:

(i) If Lessee fails to pay rent or other sums herein specified within ten (10) days of the date such rent or sums are due and such failure continues for a period of twenty (20) days after written notice is given to Lessee;

(ii) If Lessee fails to perform or comply with any of the conditions or covenants of this Lease Agreement and such failure continues for a period of thirty (30) days after written notice thereof, unless the performance cannot be reasonably completed within the thirty-day period and Lessee has commenced good faith efforts to perform and is diligently proceeding to complete performance and has provided Lessor with a date certain by which performance will be completed and/or compliance achieved.

**B. Effect of Default.**

Lessor shall have the right, while any default continues for more than thirty (30) days after written notice, to provide notice to Lessee of its immediate termination of the Lease Agreement. Lessor may remove at Lessee's expense or require Lessee to remove Lessee's equipment, property and structures from the Property, without prejudice to any other remedy which Lessor might be entitled to pursue. Payment of rent shall continue until such time as the tower structure and any other appurtenances are removed and the premises are restored to a condition as approved by the Lessor as set forth in Section 11 of this Lease Agreement.

**9. LIABILITY AND INDEMNITY.**

Lessor shall not be liable to Lessee, or to any other person or entity whatsoever for any damages or injury from any cause whatsoever, during the term of and with respect to the scope of this Lease Agreement except for any injury caused by Lessor as may be permitted by Ohio Sovereign Immunity Law. Lessee agrees to indemnify, defend and save Lessor harmless from and against any and all third-party claims of whatever nature, arising from Lessee's use of the Real Property, and adjacent right of way, and any other adjacent and/or adjoining property to which Lessee has been granted access; and the construction, use, maintenance, or operation of the Broadcast Tower, including ingress and egress. This indemnification shall include all costs, expenses and liabilities incurred in connection with any claim or proceeding brought, including the reasonable expense of investigating and defending any such claim.

**10. INSURANCE.**

**A. Required Insurance.**

Lessee shall at all times during the term hereof and at Lessee's sole cost and expense, maintain in force, insurance, to the extent as determined to be reasonably adequate by Lessor to protect Lessee, its agents, employees and Lessor, its agents, officials and employees, from all liability in connection with the use, operation or condition of the Real Property, any adjacent right of way and any adjoining

and adjacent property to which Lessee has access, as well as to additional appurtenances as detailed in Section 4, Use Of Property. Lessee shall provide evidence of such insurance to Lessor, the provisions of which Lessor has the right to review and approve. Lessee shall cause Lessor to be named as an additional insured on such policy of insurance. The policy or policies of coverage shall be issued by reputable, credit worthy carrier(s) licensed to provide insurance in the State of Ohio. Lessee shall assure that all subcontractors carry adequate insurance individually and that Lessee and Lessor be named as an additional insured on the policies of subcontractors.

In no event shall the limits of the policy or policies be considered as limiting the liability of Lessee under this Lease Agreement.

Such required insurance shall be primary and shall include:

- (i) Worker's Compensation Insurance covering Lessee's employees; and
- (ii) Commercial General Liability Insurance with combined single limits of \$2,000,000 per occurrence, naming Lessor as an additional insured with respect to any construction, use of the Real Property leased by Lessee from Lessor, maintenance, operation or other liabilities associated with the Broadcast Tower.

## **11. PROPERTY REMOVAL, PROCEDURES IN THE EVENT OF ABANDONMENT.**

### **A. Property Removal.**

At termination by Lessor, termination by Lessee, expiration of the term of the Lease Agreement and any extension thereof, at abandonment or *in* any circumstances *in* which the Lease Agreement shall cease, the Broadcast Tower and any related facility to *include* on site property and equipment of Lessee shall, within two (2) months of written notification by Lessor, be removed by Lessee at Lessee's sole expense. Lessee shall also remove its personal property and fixtures and shall restore the Real Property to as near as practical to its original above grade condition. Lessor acknowledges and agrees that all equipment, towers and trade fixtures placed upon the Real Property by the Lessee shall remain the property of Lessee and shall not be deemed fixtures upon



the property. When this Lease Agreement shall cease through termination, cancellation, abandonment or expiration, or for any other reason, Lessee will leave the foundation, landscaping and security fence, if any, to remain property of Lessor. Otherwise, all fixtures shall be removed and the Property shall be restored as near as practical to its original condition within two (2) months of the effective date of termination.

**B. Abandonment.**

If the Broadcast Tower is not operated in fulfillment of the purposes to which it was intended and as described in Section 4, for a continuous period of six (6) months, it shall be considered abandoned. Within the context of this Lease Agreement, abandoned shall mean that, at a minimum, the Lessee is not using the tower for its intended purposes. In the event of such abandonment, the Lease Agreement shall be canceled as provided in Sections 8 and 12. Lessee shall be under a duty to remove such abandoned tower and any other structures or equipment considered to be a part of the Broadcast Tower facility in a manner as required by Section 12A. Lessor may pursue all legal remedies available to it to ensure that any personal property of Lessee is removed and reimbursement of the expense of removal is obtained.

**12. TAXES.**

Lessee is solely responsible for any and all taxes assessed against the Real Property, if any, and Lessee shall be responsible for any taxes on the Broadcast Tower, its separate personal property, equipment and fixtures, which taxes shall be paid promptly when due by Lessee.

**13. SALE SUBJECT TO LEASE AGREEMENT.**

Should Lessor at any time during the term of this Lease Agreement, decide to sell all or any part of the Real Property which includes the parcel of Property leased by Lessee herein and/or the right of way thereto to a purchaser other than Lessee, such sale shall be under and subject to this Lease Agreement and Lessee's rights hereunder.

**14. PEACEFUL POSSESSION.**

Lessor covenants that Lessee, upon the payment of rent and the performance of the covenants

shall peaceably and quietly have, hold and enjoy the Property for the term of the Lease Agreement and any renewal terms.

**15. ALL AGREEMENTS.**

It is agreed and understood that this Lease 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 Lease Agreement shall be void and ineffective unless made in writing and signed by the parties.

**16. GOVERNING LAW.**

This Lease Agreement shall be governed, interpreted and construed according to the laws of the State of Ohio and exclusive venue shall lie in the Mahoning County, Ohio.

**17. ASSIGNMENT AND SUBLETTING.**

**A. Assignment.**

Lessee may not assign, or otherwise transfer all or any part of its interest in this Lease Agreement or in the Property without the prior written consent of Lessor unless such transfer or assignment is made contemporaneously with a transfer or sale of the license for the operation of Radio Station WKTL-FM which consent shall not be unreasonably denied. Such consent shall be requested 120 days in advance of the anticipated transfer and shall include such information as the Lessor in its sole judgment may deem essential. The prior consent of the Lessor shall not be required with respect to solely intracorporate transfers or reorganizations between or among wholly owned or controlled subsidiaries of Lessee to the extent any such transaction does not involve a change in the actual working control of the company, but the Lessor will be given ninety (90) days written notice of any such transaction and Lessee will provide such information related to the transaction as may be reasonably requested by the Lessor.

**B. Subletting.**