

**Assignment Application  
Agreements for Sale of Station**

The Asset Purchase Agreement is being provided to the Commission. Certain schedules and exhibits to the Asset Purchase Agreement are not being submitted with this application pursuant to Commission policy and practice. *See* LUJ, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 16980 (2002). The omitted schedules contain information that is proprietary, not germane to the Commission's evaluation of the application, or already in the Commission's possession. The schedules will be provided to the Commission upon request. The excluded schedules are as follows:

Schedule 1.1(a)	FCC Licenses
Schedule 1.1(b)	Tangible Personal Property
Exhibit A	Form of Escrow Agreement

EXECUTION

**ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is made as of August \_\_\_\_, 2021, between **Richard J. Samson, as Receiver** (“Seller”), **Desert Mountain Broadcasting LLC**, a Montana limited liability company (“DMB”), **Desert Mountain Broadcasting Licenses LLC**, a Montana limited liability company (“DMBL” and, together with DMB, “Buyer”).

**RECITALS**

A. Seller is the Receiver of Reier Broadcasting Company, Inc., and as such owns and operates the following radio broadcast stations (the “Stations”) pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”):

1. KBOZ(AM), Bozeman, Montana (Facility ID No. 16775),
2. KBOZ-FM, Bozeman, Montana (Facility ID No. 55676),
3. KOBB(AM), Bozeman, Montana (Facility ID No. 55677),
4. KOBB-FM, Bozeman, Montana (Facility ID No. 16776), and
5. KOZB(FM), Livingston, Montana (Facility ID No. 16777).

B. Pursuant to the terms and subject to the conditions set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Assets (as defined in **Section 1.1**).

C. Buyer and Seller have entered into a Time Brokerage Agreement of even date herewith regarding the Stations (the “TBA”).

D. The sale of the Stations by Seller is authorized by order of the Montana Eighteenth Judicial District Court, Gallatin County.

**AGREEMENT**

**NOW, THEREFORE**, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the parties, intending to be legally bound, hereby agree as follows:

**ARTICLE 1: PURCHASE OF ASSETS**

**1.1 Assets.** On the terms and subject to the conditions hereof, at Closing (as defined in **Section 1.7**), except as set forth in **Sections 1.2** and **1.3**, Seller shall sell, assign, transfer, convey, and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all right, title, and interest of Seller in and to all of the assets and properties used or useful in the operation of the Stations (the “Assets”), including without limitation the following:

(a) all licenses, permits, and other authorizations issued to Seller by the FCC with respect to the Stations (the “FCC Licenses”), including those described on **Schedule 1.1(a)**, including any renewals or modifications thereof between the date hereof and Closing;

(b) Seller's equipment used or useful in the operation of the Stations, including without limitation as the Stations' transmission equipment and the Stations' towers (except for KOZB's tower, which is not owned by or under Seller's control) and such other equipment as described on **Schedule 1.1(b)** (collectively, the "Tangible Personal Property"), except for any retirements or dispositions thereof made between the date hereof and Closing in accordance with **Article 4**; and

(c) Seller's intangible personal property used or useful in the operation of the Stations, including but not limited to rights in the Stations' call letters, any trademarks, trade names, and service marks related to the Stations, and any websites or social media (and the passwords for the foregoing) (collectively, the "Intangible Property").

Except as expressly provided in this Agreement, the Assets shall be transferred to Buyer "as-is, where-is," free and clear of liens, claims, and encumbrances ("Liens") except for liens for taxes not yet due and payable and liens that will be released at or prior to Closing (collectively, "Permitted Liens").

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, the Assets shall not include any of the following:

(a) Any assets of Seller that are not dedicated to the transmission or operation of the Stations;

(b) Any employment contracts or obligations regarding any personnel working at or for the Stations prior to the Closing Date (as defined in **Section 1.7**);

(c) Any accounts receivable of the Stations;

(d) Any contracts of insurance or insurance proceeds and insurance claims made by Seller relating to property or equipment repaired, replaced, or restored by Seller prior to the Closing Date; and

(e) Any contracts for programming for the Stations.

**1.3 Assumption of Liabilities.** Buyer shall not assume any liabilities of Seller.

**1.4 Purchase Price.** In consideration for the sale of the Assets, Buyer shall pay to Seller the sum of Three Hundred Thousand Dollars (\$300,000.00) (the "Purchase Price"), as follows:

(a) Within two (2) business days after the date of this Agreement, Buyer shall initiate a wire transfer to Fletcher, Heald & Hildreth, P.L.C. (the "Escrow Agent") of the sum of Ten Thousand Dollars (\$10,000.00) (the "Escrow Deposit"). The Escrow Deposit shall be held by the Escrow Agent in accordance with the terms of an escrow agreement in the form attached hereto as **Exhibit A** (the "Escrow Agreement"). At the Closing, upon receipt of joint written instructions from Seller and Buyer, Escrow Agent shall deliver the Escrow Deposit to Seller as a dollar-for-dollar credit against the Purchase.

(b) On the Closing Date, Buyer shall deliver the sum of Sixty-Five Thousand Dollars (\$65,000.00) to Seller by wire transfer pursuant to instructions Seller will provide.

(c) On the Closing Date, Buyer shall deliver a promissory note payable to Seller and in the form of the attached **Exhibit B** (the “Note”) in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00). The Note shall be secured by a security agreement (the “Security Agreement”) in the form of the attached **Exhibit C** with respect to the Assets, provided that, as required by law at this time, the Seller’s security interest with respect to the FCC Licenses shall extend only to the proceeds of the FCC Licenses.

Seller shall take all commercially reasonable steps necessary to ensure that the licenses of the Stations are not cancelled pursuant to Section 312(g) of the Communications Act. In the event that the FCC initiates or threatens to initiate a proceeding contemplating the cancellation of the license of any of the Stations, in addition to other remedies if any that Buyer may have available to it pursuant to the Agreement, at Buyer’s sole option Buyer may abandon the purchase of the Station or Station(s) with respect to which license cancellation is contemplated and Buyer and Seller shall negotiate in good faith a reduced Purchase Price to reflect the reduced value of the Stations.

**1.5 Other Dispositions of Deposit.** If this Agreement is terminated by Seller pursuant to **Section 10.1(c)**, the Escrow Deposit shall be disbursed by Escrow Agent to Seller. If this Agreement is terminated for any other reason, the Escrow Deposit shall be disbursed by Escrow Agent to Buyer. The parties shall each instruct the Escrow Agent to disburse the Escrow Deposit to the party entitled thereto and shall not, by any act or omission, delay or prevent any such disbursement.

**1.6 Prorations and Adjustments.** Subject to the provisions of the TBA, all prepaid and deferred income and expenses relating to the Assets and arising from the operation of the Stations shall be prorated between Buyer and Seller in accordance with the historic accounting principles of Seller as of 12:01 a.m. on the day of Closing (the “Effective Time”). Such prorations shall include without limitation all ad valorem real estate and personal property taxes, music and other license fees, utility expenses, rent, and other amounts under the Assumed Contracts and similar prepaid and deferred items. Seller shall receive a credit for all of the Stations’ deposits and prepaid expenses to the extent the same are assigned to, or accrue to the benefit of, Buyer. Prorations and adjustments shall be made no later than ninety (90) calendar days after Closing.

**1.7 Closing.** The closing (the “Closing”) of the transaction contemplated in this Agreement shall occur on a date (the “Closing Date”) not later than ten (10) calendar days following the date FCC Consent is granted (i.e., before the FCC Consent shall have become a Final Order (as defined below)). The terms “FCC Consent,” “FCC Application,” and “Final Order” are defined in **Section 1.8**.

**1.8 FCC Consent.**

(a) Within five (5) business days after the Escrow Deposit has been delivered by Buyer to Escrow Agent, Buyer and Seller shall file an application with the FCC (the “FCC Application”) requesting FCC consent to the assignment of the FCC Licenses to DMBL. FCC grant of the FCC Application is referred to herein as the “FCC Consent.” The parties shall prosecute the FCC Application with all reasonable diligence and otherwise use commercially reasonable efforts to obtain the grant of the FCC Application as expeditiously as reasonably practicable, except that no party shall be required to comply with a condition if compliance with the condition would have a material adverse effect upon it.

(b) Buyer and Seller shall notify each other of all documents filed or received from any governmental agency with respect to this Agreement, the FCC Application, or the transactions contemplated herein. Buyer and Seller shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.

(c) For the purposes of this Agreement, the term “Final Order” shall mean that action shall have been taken by the FCC (including action duly taken by the FCC’s staff pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled, or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari, or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari, or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(d) Seller shall take all necessary steps to resolve any impediments to the grant of the FCC Application that are not related to the Buyer, including, but not limited to, securing the grant of pending renewal applications for the Stations, and payment of any past-due fees owed to the FCC. Buyer shall have no obligation to take any action or pay any amount to resolve the impediments described in the previous sentence. Buyer expressly acknowledges and accepts that the pending renewal applications may be granted for a period as short as one year.

**1.9 Outside Date.** Section 10.1(d) provides that either party may terminate this Agreement if Closing does not occur by the Outside Date (provided that the terminating party is not then in default hereunder). As used in this Agreement, the term “Outside Date” means the date that is one hundred eighty (180) days after FCC public notice of acceptance of the FCC Application, except as provided below.

## **ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES**

Seller makes the following representations and warranties to Buyer:

**2.1 Authorization.** This Agreement is, and each of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the “Seller Ancillary Agreements”) when made by Seller and any other parties thereto will be, a legal, valid, and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization, or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such

enforceability is considered in a proceeding in equity or at law). Seller has all requisite power and authority under Montana law to execute, deliver, and perform his obligations under this Agreement.

**2.2 No Conflicts.** Except for the FCC Consent, the execution, delivery, and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby does not conflict with any contract or agreement to which Seller is a party or by which Seller is bound, or any law, judgment, order, or decree to which Seller is subject, or require any further consent or approval of, or a filing by Seller with, any governmental or regulatory or judicial authority or any third party.

**2.3 FCC Licenses.** Seller is the holder of the FCC Licenses set forth in **Schedule 1.1(a)**. To the best of Seller's knowledge and belief, the FCC Licenses are in full force and effect. Except as set forth in Schedule 1.1(a), each of the Stations is currently broadcasting. Seller has filed all tax returns, FCC reports and other documents required to be filed by any governmental authority with respect to the Assets or the Station.

**2.4 Litigation.** There is no action, suit, or proceeding pending or, to Seller's knowledge, threatened against Seller that would reasonably be expected to subject Buyer to liability, to materially and adversely impact the Assets or the operations of the Stations as presently conducted, or to materially and adversely affect Seller's ability to perform its obligations under this Agreement. Seller has provided to Buyer true and correct copies of any orders of the Montana Eighteenth Judicial District Court, Gallatin County which relate to or could impact the transactions contemplated by this Agreement.

**2.5 Title to Assets.** Seller has good and marketable title to the Assets free and clear of Liens except for Permitted Liens.

**2.6 Exclusivity of Representations.** THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER IN THIS AGREEMENT OR PURSUANT TO THIS AGREEMENT IN WRITING ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ANY SUCH OTHER IMPLIED REPRESENTATIONS OR WARRANTIES, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION (INCLUDING, WITHOUT LIMITATION, ANY FINANCIAL PROJECTIONS OR OTHER SUPPLEMENTAL DATA OR ANY INFORMATION DISCLOSED IN THE DILIGENCE PROCESS). EXCEPT AS SET FORTH IN THIS AGREEMENT, ALL OF THE TANGIBLE PERSONAL PROPERTY IS TO BE TRANSFERRED TO BUYER WITHOUT ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR INTENDED USE, OR OTHERWISE, ALL OF WHICH ARE HEREBY DISCLAIMED.

### **ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES**

Buyer hereby makes the following representations and warranties to Seller:

**3.1 Authorization.** This Agreement is, and each of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the “Buyer Ancillary Agreements”) when made by Buyer and any other parties thereto will be, a legal, valid, and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization, or other similar laws affecting or limiting the enforcement of creditors’ rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**3.2 No Conflicts.** Except for the FCC Consent, the execution, delivery, and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby does not conflict with any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order, or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

**3.3 Litigation.** There is no action, suit, or proceeding pending or, to Buyer’s knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or would reasonably be expected to materially and adversely affect the ability of Buyer to perform its obligations hereunder.

**3.4 Qualification.** Buyer is legally, financially, and otherwise qualified to be the licensee of, and to acquire, own and operate, the Stations under the Communications Act and the rules, regulations, and policies of the FCC; there are no facts that would, under existing law and the existing rules, regulations, and policies of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Stations; no waiver of or exemption from any FCC rule or policy is necessary on the part of Buyer for the FCC Consent to be obtained; and there are no matters pertaining to Buyer which would reasonably be expected to result in the FCC’s denial or delay of approval of the FCC Application.

### **ARTICLE 4: SELLER COVENANTS**

**4.1 Seller’s Covenants.** Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed, or conditioned, Seller shall:

(a) not modify, and shall maintain in full force and effect, the FCC Licenses and all applicable grant of Special Temporary Authority (“STA”) for the Stations, and the Stations each shall broadcast in accordance with the terms of such authorizations;

(b) not sell, lease, or dispose of or agree to sell, lease, or dispose of any of the Assets unless replaced with similar items of substantially equal or greater value and utility;

(c) upon reasonable notice, give Buyer and its representatives reasonable access to the Assets, and furnish Buyer with information relating to the Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Stations; and

(d) not enter into any agreement that will be binding upon Buyer after Closing.

## **ARTICLE 5: JOINT COVENANTS**

Buyer and Seller hereby covenant and agree as follows:

**5.1 Announcements.** Prior to Closing, no party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law.

**5.2 Control.** Buyer shall not, directly or indirectly, control, supervise, or direct the operation of the Stations prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision, and direction of the operation of the Stations prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses. After the Closing, Seller shall have no right to control the Stations, and Seller shall have no reversionary rights in the Stations.

**5.3 Risk of Loss.**

(a) Seller shall bear the risk of any loss of or damage to any of the Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) If prior to the Effective Time any of the Assets are damaged or destroyed, Seller shall have no obligation to repair or replace such Assets, but shall assign the proceeds if any from any insurance on such Assets to Buyer. If prior to the Effective Time any of the Assets are damaged or destroyed and the cost to return such Assets to their condition as of the date hereof exceeds Twenty-Five Thousand Dollars (\$25,000.00), Buyer may at its sole option terminate this Agreement by written notice to Seller.

## **ARTICLE 6: SELLER CLOSING CONDITIONS**

The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):



**6.1 Representations and Covenants.**

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date executed by Buyer to the effect that the conditions set forth in **Sections 6.1(a)** and **(b)** have been satisfied.

**6.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**6.3 FCC Authorization.** The FCC Consent shall have been obtained and shall be in full force and effect.

**6.4 Deliveries.** Buyer shall have complied with its obligations set forth in **Section 8.2.**

**ARTICLE 7: BUYER CLOSING CONDITIONS**

The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

**7.1 Representations and Covenants.**

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date executed by Seller to the effect that the conditions set forth in **Sections 7.1(a)** and **(b)** have been satisfied.

**7.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**7.3 FCC Authorization.** The FCC Consent shall have been obtained and shall be in full force and effect. Further, the pending renewal applications for the Stations shall have been granted for a period of at least one-year.

**7.4 Deliveries.** Seller shall have complied with its obligations set forth in **Section 8.1.**

**7.5 Pending or Threatened Litigation.** There shall be no pending or threatened litigation regarding this Agreement, the transaction contemplated in this Agreement, the Assets, and any other transactions contemplated by this Agreement.

**7.6 Tower Site Leases.** Buyer shall have entered into the following long-term leases for the transmission sites of the respective Stations:

(a) **KBOZ Transmitter Site Lease.** Buyer shall enter into a lease for use of the KBOZ-FM, KOBB-FM, and KBOZ (AM) transmitter and tower site and the transmitter buildings substantially in the form of the attached **Exhibit D.**

(b) **KOZB Transmitter Site Lease.** Buyer shall enter into a lease for use of the KOZB(FM) transmitter site with Margie Nord and Peggy Lou Stradley, as Trustees under the Beacon Hill Trust agreement dated October 5, 2013, upon such terms as are ordinary and customary for such a transaction with a term commencing on or before the Closing Date. In the event that Buyer, after exercising its commercially reasonable best efforts, is unable to enter into such a lease within sixty (60) of the date of this Agreement, either party, if not otherwise in default or breach of this Agreement, may terminate this Agreement and Buyer will be refunded the entire Escrow Deposit.

## **ARTICLE 8: CLOSING DELIVERIES**

**8.1 Seller Documents.** At Closing, Seller shall deliver or cause to be delivered to Buyer:

- (i) the certificate described in **Section 7.1(c);**
- (ii) an assignment of FCC authorizations assigning the FCC Licenses from Seller to DMBL;
- (iii) a bill of sale conveying the other Assets from Seller to DMB;
- (iv) a joint notice to the Escrow Agent for the release of the Escrow Deposit, executed by Seller;
- (v) a closing statement, executed by Seller; and
- (vi) any other instruments of conveyance, assignment, and transfer as Buyer may reasonably request to convey, transfer, and assign the Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens and to otherwise complete the transactions set forth in this Agreement.

**8.2 Buyer Documents.** At Closing, Buyer shall deliver or cause to be delivered to Seller:

- (i) the Purchase Price in accordance with **Section 1.4** hereof;
- (ii) the Note;
- (iii) the Security Agreement;
- (iv) the certificate described in **Section 6.1(c)**;
- (v) a joint notice to the Escrow Agent for the release of the Escrow Deposit, executed by Buyer;
- (vi) a closing statement, executed by Buyer; and
- (vii) such other documents and instruments as Seller may reasonably require to complete the transactions set forth in this Agreement.

## **ARTICLE 9: SURVIVAL; INDEMNIFICATION**

**9.1 Survival.** The representations and warranties in this Agreement shall survive Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the resolution of such claim. The covenants and agreements in this Agreement shall survive Closing until performed.

### **9.2 Indemnification.**

(a) Subject to **Section 9.2(b)**, from and after Closing, Seller shall defend, indemnify, and hold harmless Buyer from and against any and all losses, costs, damages, liabilities, and expenses, including reasonable attorneys' fees and expenses ("**Damages**") incurred by Buyer arising out of or resulting from:

- (i) any breach by Seller of its representations and warranties made under this Agreement; or
- (ii) any default by Seller of any covenant or agreement made under this Agreement; or
- (iii) the Retained Obligations; or
- (iv) the business or operation of the Stations before the Effective Time, except for the Assumed Obligations.

(b) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Seller shall have no liability to Buyer under **Section 9.2(a)(i)** until Buyer's aggregate Damages exceed an amount equal to one and a half percent (1.5%) of the Purchase Price, after which Seller shall be liable only for Damages in excess of such threshold amount, and (ii) the maximum aggregate liability of Seller under **Section 9.2(a)** shall be an amount equal to the Purchase Price.

(c) From and after Closing, Buyer shall defend, indemnify, and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

- (i) any breach by Buyer of its representations and warranties made under this Agreement; or
- (ii) any default by Buyer of any covenant or agreement made under this Agreement; or
- (iii) the Assumed Obligations; or
- (iv) the business or operation of the Stations after the Effective Time.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Buyer shall have no liability to Seller under **Section 9.2(c)(i)** until Seller's aggregate Damages exceed an amount equal to one and a half percent (1.5%) of the Purchase Price, after which Buyer shall be liable only for Damages in excess of such threshold amount, and (ii) the maximum aggregate liability of Buyer under **Section 9.2(c)** shall be an amount equal to the Purchase Price.

### **9.3 Procedures.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim, or assertion of liability by third parties that is subject to indemnification hereunder (a "**Claim**"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations except to the extent the indemnifying party's ability to remedy, contest, defend, or settle with respect to such Claim is thereby prejudiced and provided that such notice is given within the time period described in **Section 9.1**.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise, or settlement of such Claim with counsel selected by it at the indemnifying party's cost (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise, or final determination thereof).

(c) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise, or settlement of the Claim;

(ii) the indemnifying party shall not, without the indemnified party's written consent, settle, or compromise any Claim or consent to entry of any judgment which does not include the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim;

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim; and

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive, or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

## **ARTICLE 10: TERMINATION AND REMEDIES**

**10.1 Termination.** Subject to Section 10.3, this Agreement may be terminated prior to Closing as follows:

(a) by mutual written consent of Buyer and Seller;

(b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (as defined in Section 10.2);

(c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby (as applicable, a "default") and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligations to make the Escrow Deposit on the date specified in Section 1.4(a) of this Agreement and shall, with respect to Buyer's obligation to pay the Purchase Price at Closing, be a period of only three (3) business days; or

(d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the Outside Date (provided, however, that neither Buyer nor Seller may terminate this Agreement under this Section 10.1(d) if such party is in default hereunder).

(e) By written notice of Buyer to Seller or Seller to Buyer if by the sixtieth day following the date of this Agreement the condition set forth in Section 7.6 (b) of this Agreement is not satisfied.

(f) By written notice of Buyer to Seller or Seller to Buyer if the FCC initiates or threatens to initiate a proceeding which contemplates cancellation of the license of any of the Stations.

**10.2 Cure Period.** Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term “Cure Period” as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and continuing until the earlier of (i) ten (10) calendar days thereafter or (ii) the date which but for such breach or default would have been the Closing Date determined under **Section 1.7** (the “Projected Closing Date”); provided, however, that if the breach or default is non-monetary and cannot reasonably be cured within such period but can be cured before the Projected Closing Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Projected Closing Date.

**10.3 Survival.** Except as provided by **Section 10.5**, the termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, **Sections 1.4(a)** (Deposit), **1.5** (Other Dispositions of Deposit) and **11.1** (Expenses) shall survive any termination of this Agreement.

**10.4 Specific Performance.** In the event of failure or threatened failure by Seller to comply with the terms of this Agreement, Buyer shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement. If Buyer seeks such injunctive relief or decree of specific performance, Buyer shall not be required to post bond or other security in connection therewith. Notwithstanding the foregoing, if prior to Closing the condition described in **Section 10.1(c)** exists, then Seller’s sole remedy shall be termination of this Agreement and receipt of the liquidated damages amount pursuant to **Section 10.5**.

**10.5 Liquidated Damages.** If Seller terminates this Agreement pursuant to **Section 10.1(c)**, then Seller shall be entitled to the full amount of the Escrow Deposit, which amount shall constitute liquidated damages and the sole and exclusive remedy of Seller under this Agreement. Buyer acknowledges and agrees that Seller’s recovery of the Escrow Deposit shall constitute payment of liquidated damages and not a penalty and that Seller’s liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer’s material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

## **ARTICLE 11: MISCELLANEOUS**

**11.1 Expenses.** All FCC filing fees for the FCC Application shall be paid by Buyer. Each party shall be solely responsible for all other costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement and the preparation of its portion of the FCC Application. Buyer shall be

solely responsible all other governmental taxes, fees, and charges applicable solely to the transfer of the Assets under this Agreement (i.e., not including any governmental taxes, fees, or charges application to the Stations other than specifically with respect to the sale and transfer of the Assets as proposed in this Agreement). Each party is responsible for any commission, brokerage fee, advisory fee, or other similar payment that arises as a result of any agreement or action of it or any broker or other party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

**11.2 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 of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

**11.3 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party hereto, provided, however, that (i) Buyer (upon notice to Seller but without the need for Seller's consent) may make a collateral assignment of its rights under this Agreement to any lender who provides funds to Buyer for the acquisition or operation of the Stations and (ii) after Closing, Seller (upon notice to Buyer but without the need for Buyer's consent) may assign this Agreement, the Note and the Security Agreement and Seller's rights thereunder to a third party. With respect to any assignment of this Agreement by Buyer, (A) the assignee must deliver to Seller a written assumption of this Agreement, and (B) Buyer shall remain liable for all of its obligations hereunder. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns.

**11.4 Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as follows (or to such other address as any party may request by written notice):

**If to Seller:** Richard J. Samson, as Receiver  
310 West Spruce Street  
Missoula, MT 59802

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

Fletcher, Heald & Hildreth, PLC  
1300 N 17th Street, Suite 1100  
Arlington, VA 22209  
Attention: Matthew H. McCormick, Esq.

and

Holland & Hart LLP  
401 N. 31st Street, Suite 1500  
Billings, MT 59101  
Attention: Charles W. Hingle, Esq.

**If to Buyer:** Desert Mountain Broadcasting LLC  
2075 Central Ave., #5  
Billings, MT 59102  
**Attention:** Cameron Maxwell, President and CEO

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

Gray Miller Persh LLP  
2233 Wisconsin Ave. NW  
Suite 226  
Washington, DC 20007  
Attention: Derek H. Teslik

**11.5 Amendments.** No amendment or waiver of compliance with any provision 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 such amendment, waiver, or consent is sought.

**11.6 Entire Agreement.** This Agreement (including the Schedules hereto) constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement among the parties with respect to the Stations, which shall remain in full force and effect. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

**11.7 Severability.** If any court or governmental authority holds any provision in this Agreement invalid, illegal, or unenforceable under any applicable law, then, so long as no party is deprived of the benefits of this Agreement in any material respect, this Agreement shall be construed with the invalid, illegal, or unenforceable provision deleted and the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

**11.8 No Beneficiaries.** Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

**11.9 Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of Montana without giving effect to the choice of law provisions thereof.

**11.10 Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

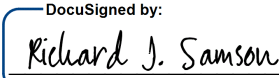
[SIGNATURE PAGE FOLLOWS]



**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**SELLER: RICHARD J. SAMSON, AS RECEIVER**

By:  Richard J. Samson, as Receiver

**BUYER: DESERT MOUNTAIN BROADCASTING LLC**

By: \_\_\_\_\_  
Cameron Maxwell, Member, President and CEO

**DESERT MOUNTAIN BROADCASTING LICENSES LLC**

By: \_\_\_\_\_  
Cameron Maxwell, Member, President and CEO

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date set forth above.

**SELLER: RICHARD J. SAMSON, AS RECEIVER**

By: \_\_\_\_\_  
Richard J. Samson, as Receiver

**BUYER: DESERT MOUNTAIN BROADCASTING LLC**

By: \_\_\_\_\_  
Cameron Maxwell, Member, President and CEO

**DESERT MOUNTAIN BROADCASTING LICENSES LLC**

By: \_\_\_\_\_  
Cameron Maxwell, Member, President and CEO

**Table of Schedules and Exhibits**

**Schedule 1.1(a) – FCC Licenses**

**Schedule 1.1(b) – Tangible Personal Property**

**Exhibit A – Form of Escrow Agreement**

**Exhibit B – Form of Promissory Note**

**Exhibit C – Form of Security Agreement**

**Exhibit D -- Form of KBOZ Transmitter Site Lease**

**Exhibit B**

**Form of Promissory Note**

**Exhibit B****PROMISSORY NOTE**

\$225, 000.00

Bozeman, Montana  
\_\_\_\_\_, 2021

FOR VALUE RECEIVED, DESERT MOUNTAIN BROADCASTING LLC, a Montana limited liability company, with a principal place of business at 2075 Central Ave., #5, Billings, Montana 59102 ("**Borrower**"), hereby promises to pay to the order of RICHARD J. SAMSON ("**Lender**"), in lawful money of the United States of America, to the addressee and at the address specified in paragraph 2 below, the principal sum of Two Hundred Twenty Five Thousand Dollars (\$225,000.00), together with interest as provided herein.

**1. Interest.** The outstanding principal balance of this promissory note (this "**Note**") shall bear interest at the rate of three and one-quarter percent (3.25%) per annum.

**2. Payment.** The Note shall be payable in sixty (60) monthly payments of, (a) interest only commencing on the date of Closing and continuing the same day of each month thereafter for six months thereafter, (b), on the same day of the seventh month and each month thereafter for fifty-three months principal and interest payments of Four Thousand Four Hundred Eighty-Four Dollars and Forty-One Cents (\$4,481.41) and (c) on the fifth anniversary of the date of this Note, the entire remaining balance. Payment shall be made to Joseph S. Sample, in care of Barbara Sample, 2517 Irving Place, Billings, Montana 59102, or such other place as Lender may from time to time designate.

**3. Prepayment.** This Note may be prepaid in whole or in part any time without penalty.

**4. Application of Payments.** Payments under this Note shall be applied first to any late charges and other costs and expense of enforcement and collection, then to accrued but unpaid interest, and then to principal.

**5. Security Interest; Guaranty.** The obligations of Borrower under this Note are secured by and pursuant to the terms of the Security Agreement of even date herewith.

**6. Events of Default; Remedies.** This Note shall become due and payable, at the option of Lender, without notice or demand and without the need for any action or election by Lender upon the occurrence at any time of any of the following events of default (each an "**Event of Default**"): (a) failure to make the payment of principal or interest due under the terms of this Note on the Maturity Date; (b) failure to perform or observe any other obligation under this Note upon thirty (30) days written notice of such failure; (c) the sale, transfer or assignment of any of the "Stations," as that term is defined in that certain Asset Purchase Agreement dated July \_\_\_\_, 2021, between Lender as "Seller" and Borrower as "Buyer," provided however that the sale, transfer or assignment of any of the Stations to Cameron Maxwell or any entity of which Cameron Maxwell or Borrower holds not less than fifty one percent (51%) of the voting control and equity

shall not be deemed an Event of Default. In the Event of Default, Lender may pursue any remedy provided by applicable law.

**7. Attorneys' Fees.** In the event of commencement of any suit to enforce payment of any amount due under this Note, the Lender shall be entitled to receive the costs of collection including reasonable attorneys' fees and court costs.

**8. Successor and Assigns.** "*Lender*" and "*Borrower*," as used herein, shall include successors or assigns of those parties. Borrower acknowledges that this Note will be assigned by Lender to Joseph S. Sample.

**9. Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of Montana.

IN WITNESS WHEREOF, Borrower has executed this Note effective as of the date first written above.

DESERT MOUNTAIN BROADCASTING LLC,  
a Montana limited liability company

By: \_\_\_\_\_  
Cameron Maxwell, Member, President and CEO

**Exhibit C**

**Form of Security Agreement**

## **SECURITY AGREEMENT**

**THIS SECURITY AGREEMENT** (this “Agreement”) is made as of \_\_\_\_\_, 2021, between **Richard J. Samson, as Receiver** (“Secured Party”) and **Desert Mountain Broadcasting LLC**, a Montana limited liability company (“Debtor”).

### **RECITALS**

**WHEREAS**, Secured Party has sold to Debtor the assets described in the Asset Purchase Agreement, dated August \_\_\_\_, 2021 (the “Purchase Agreement”), by and between Debtor and Secured Party; and

**WHEREAS**, pursuant to the Purchase Agreement, a portion of the purchase price due thereunder shall be paid by delivery of a Promissory Note to Secured Party at the Closing in the principal amount of Two Hundred Twenty Five Thousand Dollars (\$225,000.00) (the “Note”); and

**WHEREAS**, in order to secure payment of the Note, the interest, and any other amounts due and owing to Secured Party thereunder (the “Obligations”), Debtor has agreed to grant a security interest to Secured Party in certain assets of Debtor described below.

### **AGREEMENT**

**NOW, THEREFORE**, for valuable consideration, and to secure the payment and performance when due of the Obligations of Debtor to Secured Party, Debtor and Secured Party hereby agree as follows:

1. **GRANT OF SECURITY INTEREST.** Debtor hereby grants and conveys to Secured Party a first priority continuing security interest in and lien on the Collateral (as defined below), together with all rights, remedies and privileges pertaining thereto, and all substitutions and replacements therefore (except with respect to any purchase money security interest given in order to purchase any such substitutions or replacements, in which case Secured Party shall have a second priority security interest), and the proceeds thereof. The “Collateral” means:

(a) all furniture, fixtures, equipment, inventory, books and records, programming, music libraries, computer hardware and software, auxiliary and translator facilities, transmitting towers, transmitters, antennas, antenna line and other electronic equipment and parts, supplies, machinery, and vehicles, and other tangible and intangible personal property of Debtor relating to the following broadcast stations (collectively, the “Stations”), to the extent physically located in Bozeman, Montana, or used primarily in connection with one of the Stations:

1. KBOZ(AM), Bozeman, Montana (Facility ID No. 16775),
2. KBOZ-FM, Bozeman, Montana (Facility ID No. 55676),
3. KOB(AM), Bozeman, Montana (Facility ID No. 55677),



4. KOBZ-FM, Bozeman, Montana (Facility ID No. 16776), and
5. KOBZ (FM), Livingston, Montana (Facility ID No. 16777).

(b) all substitutes and replacements for and additions to (except with respect to any purchase money security interest given in order to purchase any such substitutions or replacements, in which case Secured Party shall have a second priority security interest), accessions, and attachments to any of the above, and all products or masses into which any goods are physically united such that their identity is lost;

(c) all certificates of title and certificates of origin or manufacturers statements of origin relating to any of the foregoing, now owned or hereafter acquired;

(d) all property similar to any of the foregoing hereafter acquired by Debtor, to the extent physically located in Bozeman, Montana, or used primarily in connection with one of the Stations;

(e) all ledger sheets, files, records, documents, instruments, and other books and records (including computer programs, tapes, and related electronic data processing software) evidencing an interest in or relating to the above;

(f) the proceeds of any and all construction permits, licenses, and authorizations for the Stations (including successor variants of its call sign), issued or granted to Debtor by the Federal Communications Commission (“FCC”) or any other governmental entity or otherwise in connection with the operation of the Stations and any auxiliary broadcast or other facility associated with the Stations. The parties recognize that as of the date of this Agreement, the FCC does not permit a security interest to extend to a Stations’ FCC construction permits, licenses, and authorizations (“FCC Authorizations”), but does not prohibit security interests that extend to the proceeds of the sale, transfer, or other disposition of such FCC Authorizations. Accordingly, this security interest shall extend to the proceeds of the sale, transfer, or other disposition of Debtor’s FCC Authorizations. If the law in this regard is subsequently changed so as to permit security interests in FCC licenses, construction permits, or other authorizations, then all of the right, title, and interest of Debtor in and to any FCC Authorizations, whether now held or hereafter acquired, shall automatically and immediately become subject to the Secured Party’s security interest to the maximum extent permitted by law as then in force and effect.

The Collateral shall secure the obligations owing by Debtor to Secured Party under the Note and extensions, amendments, or modifications thereof and any and all other indebtedness now or hereafter owed to Secured Party by Debtor. The security interest granted hereby shall continue to be effective irrespective of any retaking or repossession of Collateral, until all indebtedness and obligations secured hereby are fully paid in money.

2. **WARRANTIES AND COVENANTS.** Debtor warrants, covenants, and agrees as follows:

(a) **Payment.** To pay and perform all of the Obligations secured by this Agreement in accordance with their respective terms.

(b) **Defend.** To defend at Debtor's own cost the title to the Collateral against all persons and all claims and demands whatsoever. Debtor agrees not to transfer legal or equitable title to the Collateral to any other party without Secured Party's prior written consent.

(c) **Protect.** All risks of loss of damage to or destruction of the Collateral shall at all times be on Debtor. Debtor shall procure forthwith and shall maintain appropriate insurance with coverage on the Collateral for the full insurable value thereof for the life of this Security Agreement plus such other insurance as Secured Party may reasonably require; and Debtor shall promptly deliver to Secured Party, upon Secured Party's request, each such certificate of such policy showing loss payable to Secured Party as its interests may appear.

(d) **Assurance of Perfection.** On demand of Secured Party, to do the following: (i) furnish further assurance of title; execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this Agreement; (ii) execute any instrument or statement required by law or otherwise in order to perfect the security interests granted to Secured Party herein; and (iii) continue or terminate the security interest of Secured Party in the Collateral.

(e) **Possession.** To retain possession of the Collateral during the existence of this Agreement and not to sell, exchange, assign, deliver, mortgage, or otherwise dispose of same other than in the ordinary course of business without the prior written consent of Secured Party, which Secured Party may grant or deny in its sole discretion.

(f) **Liens.** To keep the Collateral free and clear of all liens, charges, encumbrances, taxes, and assessments. Debtor acknowledges that Secured Party does not assume any of Debtor's obligations in connection with acquisition, preparation or holding of the Collateral.

(g) **Taxes, etc.** To pay, when due, all taxes, assessments, license fees, premiums, and any other public or private charges when levied or assessed relating to the Collateral.

(h) **Name, State of Formation, Notice of Changes.** Debtor's name as shown above is accurate and complete, Debtor is a limited liability company organized under the laws of the State of Montana, and Debtor shall obtain the prior written consent of Secured Party before any change in the name or company structure of Debtor.

(i) **No Commingling.** Unless waived by Secured Party, all proceeds from any disposition of the Collateral shall be held in trust for Secured Party (other than revenues and collections by the Stations in the ordinary course of business); provided however, this requirement shall not constitute consent by Secured Party to any sale or other disposition.

(j) **Account Representations.** Each account and each invoice representing any account will: (i) cover a bona fide sale or lease and delivery of merchandise sold or leased in the ordinary course of business of the Debtor or cover the rendition by the Debtor of services to customers in the ordinary course of business; (ii) be for a liquidated amount, maturing as

stated in the invoice covering said sale; and (iii) other than Secured Party's security interest therein, not be subject to any other lien or to any offset, deduction, or counterclaim other than those asserted by the applicable customer in the ordinary course of business or those created by law. Invoices shall not be backdated, postdated, or redated, unless required by applicable law, regulations, or government authorities, and Debtor shall not make any sales on extended credit terms other than in accordance with Debtor's past practices.

(k) **Full Performance.** To perform and comply in all material respects with all obligations in respect of the accounts and under all other contracts and agreements to which Debtor is a party or by which it is bound relating to the Collateral where failure to so comply would result in a material adverse effect on the Collateral, unless the validity thereof is being contested in good faith by appropriate proceedings and such proceedings do not involve the material danger of the sale, forfeiture, or loss of the Collateral which is the subject of such proceedings or the priority of the lien in favor of Secured Party thereon.

### 3. **GENERAL PROVISIONS.**

(a) **Financing Statement Filing.** Debtor hereby authorizes Secured Party to file, without a signature of Debtor, a financing statement with any governmental authority, to perfect or continue the security interest granted by Debtor to Secured Party under this Agreement, or to file a photographic or other reproduction of this Agreement for use as a financing statement.

(b) **Non-Waiver.** Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this Agreement, shall not constitute a waiver of any subsequent or other default or failure.

(c) **Notices.** Notices to any party shall be in writing and shall be delivered personally or by mail, postage prepaid, addressed to the party at the address set forth below or otherwise designated in writing:

**If to Secured Party:** Richard J. Samson, as Receiver  
310 West Spruce Street  
Missoula, MT 59802

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

Fletcher, Heald & Hildreth, PLC  
1300 N 17th Street, Suite 1100  
Arlington, VA 22209  
**Attention:** Matthew H. McCormick, Esq.

and

Holland & Hart LLP

401 N. 31st Street, Suite 1500  
Billings, MT 59101  
Attention: Charles W. Hingle, Esq.

**If to Debtor:**

Desert Mountain Broadcasting LLC  
2075 Central Ave., #5  
Billings, MT 59102  
Attention: Cameron Maxwell, President and CEO

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

Gray Miller Persh LLP  
2233 Wisconsin Ave. NW  
Suite 226  
Washington, DC 20007  
Attention: Derek H. Teslik

(d) **Law Applicable.** The laws of the State of Montana shall govern the rights, duties, and remedies of the parties and enforcement of this Agreement. Any provisions herein declared invalid under any law shall not invalidate any other provision of this Agreement.

(e) **Default.** The following shall constitute an Event of Default by Debtor:

(i) **Non-Payment.** Failure of Debtor to make any payment when due and payable under the Obligations;

(ii) **Violation.** Failure of Debtor, within ten (10) days after receipt from Secured Party of notice of non-compliance, to comply with or perform any provision of this Agreement or any other documents evidencing the Obligations;

(iii) **Misrepresentation.** False or misleading representations or warranties made or given by Debtor in connection with this Agreement;

(iv) **Levy.** Subjection of the Collateral to levy of execution or other judicial process;

(v) **Insolvency.** Commencement of any insolvency proceeding by or against Debtor;

(vi) **Termination of Business Activities.** The cessation by Debtor of its business activities; or

(vii) **Impairment of Security.** Any waiver made by Debtor that materially impairs the collectability of an account.

(f) **Remedies on Default.** Upon the happening of any Event of Default, at the sole option of Secured Party, Secured Party shall have all the rights, remedies, and privileges with respect to repossession, retention, and sale of the Collateral and disposition of the proceeds as are accorded to a secured party by the applicable sections of the Uniform Commercial Code respecting "Default" in effect in the State of Montana and any other applicable laws as of the date of this Agreement, including but not limited to, the rights and remedies specified in this Security Agreement and in the Note and any other agreement between Debtor and Secured Party.

(g) **Attorneys' Fees Etc.** Secured Party's reasonable attorneys' fees, costs of collection, and the legal and other expenses for pursuing, searching for, receiving, taking, and selling the Collateral shall become a part of the Obligations secured hereby and shall be immediately chargeable to Debtor.

(h) **Deficiency.** Debtor shall remain liable for any deficiency resulting from a sale of the Collateral for less than the value of the Obligations and shall pay any such deficiency forthwith to Secured Party upon demand.

(i) **Possession of Collateral.** Upon the happening of any Event of Default, the Secured Party, in its sole discretion, may: (i) to foreclose the liens and security interests created under this Security Agreement or any other agreement relating to any and all Collateral by any available procedure, with or without judicial process (subject to the limitations set forth **Sections 1(h)** and **3(u)** of this Agreement); (ii) enter upon Debtor's premises peaceably, by the Secured Party's own means or with legal process, and take possession of the Collateral, or dispose of the Collateral on Debtor's premises and Debtor agrees not to resist or interfere; (iii) require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party reasonably convenient to both parties (Debtor agrees that Secured Party's address as set forth herein is a place reasonably convenient for such assembling); (iii) unless the Collateral is likely to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any commercially reasonable sale thereof in accordance with the provisions of the Montana Uniform Commercial Code. The requirements of reasonable notice will be met if such notice is mailed, postage prepaid, to the address of Debtor shown herein, at least ten (10) business days before the time of sale or disposition.

(j) **Cash Proceeds.** The net cash proceeds resulting from the collection, liquidation, sale, or other disposition of the Collateral shall be applied first to the expenses (including reasonable attorney's fees actually incurred) of retaking, holding, storing, processing, and preparing the Collateral or any portion thereof for sale, selling, collecting, and liquidating the same and the like, and then to the satisfaction of indebtedness and obligations owing by Debtor to Secured Party, application as to particular obligations or against principal or interest to be in Secured Party's reasonable discretion, with the balance to Debtor. If any Collateral shall require repair, maintenance, preparation, or the like, or is in process or other unfinished state, Secured Party shall have the right to perform such repair, maintenance, preparation, or other processing or completion of manufacture for the purpose of putting the same in such salable form as Secured Party shall deem appropriate, but Secured Party shall have the right to sell or dispose of such Collateral without such processing.

(k) **Power of Attorney.** With respect to the Collateral other than with respect to the FCC Authorizations, Debtor hereby appoints Secured Party as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following, but only upon the happening of any Event of Default: (i) to demand, collect, receive, receipt for, sue, and recover all sums of money or other property which may now or hereafter become due, owing, or payable from the Collateral; (ii) to execute, sign, and endorse any and all claims, instruments, receipts, checks, drafts, or warrants issued in payment for the Collateral; (iii) to settle or compromise any and all claims arising under the Collateral, and, in the place and stead of Debtor, to execute and deliver releases and settlements for the claim; and (iv) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Debtor, or otherwise, which in the discretion of Secured Party may seem to be necessary or advisable. This power is given as security for the Obligations, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Secured Party. Notwithstanding the foregoing, the Secured Party is not empowered or authorized to execute any FCC application on behalf of the Debtor absent an order of a court of competent jurisdiction to do so.

(l) **Indemnity.** Debtor shall indemnify and hold harmless Secured Party, and its directors, officers, employees, and affiliates, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, and disbursements of any kind or nature whatsoever including, without limitation, reasonable attorneys' fees and settlements costs, which may be imposed on, incurred by, or asserted against Secured Party, or its directors, officers, employees, or affiliates, in connection with any investigative, administrative, or judicial proceeding (whether Secured Party is or is not designated as a party thereto) directly or indirectly relating to or arising out of this Agreement or the Obligations, or any actual or proposed use of proceeds thereunder, except that neither Secured Party, nor any of its directors, officers, employees, or affiliates, shall have the right to be indemnified hereunder for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction.

(m) **Assignment.** Secured Party may assign this Agreement to any person to whom the Obligations are validly assigned, and if assigned the assignee shall be entitled, upon notifying Debtor, to all of the rights and remedies of Secured Party hereunder.

(n) **Captions.** The captions are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement nor the intent of any provision thereof.

(o) **Books and Records.** Debtor shall at all times maintain proper books of record and account and will permit Secured Party or its authorized officers or agents to have access to such books and records at all reasonable times.

(p) **Collection of Receivables.** If at any time Secured Party shall elect upon the happening of an Event of Default under this Agreement, Secured Party shall be entitled, in its own name or in the name of Debtor, to collect, demand, receive, sue for, or compromise in a

commercially reasonable manner any and all of the Collateral and to give good and sufficient releases therefor, to endorse any checks, drafts, or other orders for the payment of monies payable to Debtor in payment thereof, and to file any claims or take any action or proceeding, either in its own name or in the name of Debtor, which Secured Party may deem necessary or advisable, and in each case applying the proceeds of the foregoing in accordance with Section 3(j). It is expressly understood and agreed, however, that Secured Party shall not be required or obligated in any manner to make any inquiries as to the nature or sufficiency of any payment received by it or to present or file any claims or take any other action to collect or enforce a payment of any amounts which may have been assigned to it or to which it may be entitled to hereunder at any time or times.

(q) **Care of Collateral by Secured Party.** If Secured Party at any time has possession of any Collateral, whether before or after an Event of Default, Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Secured Party takes such action for that purpose as Debtor shall request or as Secured Party, in Secured Party's reasonable discretion, shall deem appropriate under the circumstances, but failure to honor any request by Debtor shall not of itself be deemed to be a failure to exercise reasonable care.

(r) **Successors and Assigns.** The terms, warranties, and agreements herein contained shall be jointly and severally binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(s) **Gender and Number.** The gender and number used in this Agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

(t) **No Oral Change.** This Agreement may not be changed orally.

(u) **FCC Compliance.** Notwithstanding any other provisions of this Agreement, any foreclosure on, sale, transfer, or other disposition of, or the exercise of any right to vote or consent with respect to, any of the Collateral as provided herein or any other action taken or proposed to be taken hereunder which would affect the operational, voting, or other control of any entity holding an FCC Authorization shall be made in accordance with the Communications Act of 1934, as amended, the terms of such FCC Authorizations, and any applicable rules of the FCC in effect at the time of an Event of Default. Notwithstanding anything to the contrary contained in this Agreement, the Secured Party shall not, without first obtaining the consent or approval of the FCC, take any action pursuant to this Agreement which would constitute or result in any change of control of the licensee or permittee of an FCC Authorization if such change in control would require, under then existing law, the prior consent of the FCC.

(v) **Remedies.** No failure on the part of Secured Party to exercise, and no delay in exercising, any right or remedy shall operate as a waiver thereof or of any default, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise

thereof or the exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by law. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions unenforceable or invalid.

(w) **WAIVER OF TRIAL BY JURY.** DEBTOR AND SECURED PARTY EACH HEREBY KNOWINGLY AND WILLINGLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE NOTE, THIS SECURITY AGREEMENT, OR ANY ACTS OR OMISSIONS OF DEBTOR OR SECURED PARTY, OR THEIR OFFICERS, EMPLOYEES, DIRECTORS, OR AGENTS IN CONNECTION THEREWITH.

(x) **Waiver of Counterclaim.** Debtor hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Secured Party arising out of or in any way connected with this Security Agreement, the Note, or the obligations thereunder.

**[SIGNATURE PAGE NEXT PAGE]**

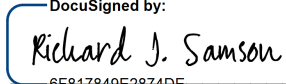


**Signature Page to Security Agreement**

**IN WITNESS WHEREOF**, the undersigned Debtor has executed this Security Agreement under seal as of the day and year first written above.

**SECURED PARTY:**

**RICHARD J. SAMSON, AS RECEIVER**

By:  DocuSigned by:  
Richard J. Samson, as Receiver  
6F847849E2874DE...

**DEBTOR:**

**DESERT MOUNTAIN BROADCASTING LLC**

By: \_\_\_\_\_  
Cameron Maxwell, as Member, President and CEO

**EXHIBIT D**

**Form of KBOZ Transmitter Site Lease**

## **TRANSMITTER AND TOWER SITE LEASE**

THIS TRANSMITTER AND TOWER SITE LEASE (this “Lease”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between Gallatin Broadcasting Holdings LLC, a Montana limited liability company (“Lessor”), and Desert Mountain Broadcasting LLC, a Montana limited liability company (“Lessee”). Lessor and Lessee may be referred to in this Lease, collectively, as the “Parties”.

WHEREAS, Lessor is the owner of certain real property located in Bozeman, Gallatin County, Montana, as is more particularly described in Exhibit A attached hereto (the “Real Estate”);

WHEREAS, Lessee’s subsidiary Desert Mountain Broadcasting Licenses, LLC (“DMBL”) is the licensee of the following radio broadcast stations:

1. KBOZ(AM), Bozeman, Montana (Facility ID No. 16775),
2. KBOZ-FM, Bozeman, Montana (Facility ID No. 55676),
3. KOBB(AM), Bozeman, Montana (Facility ID No. 55677),
4. KOBB-FM, Bozeman, Montana (Facility ID No. 16776), and
5. KOZB(FM), Livingston, Montana (Facility ID No. 16777),

the first 4 of which are collectively referred to in this Lease as the “Bozeman Stations”; and

WHEREAS, Lessee desires to lease from Lessor the part of the Real Estate depicted in Exhibit B attached this Lease, which shall be referred to in this Lease as the “KBOZ Site,” for use as a radio transmitter and tower site for the Bozeman Stations, including five (5) existing radio towers, antennas, and a transmitter support building, a photo of which is attached hereto as Exhibit C (the “Transmitter Building”).

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **GRANT.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the

KBOZ Site.

2. **TERM.** The term of this Lease shall commence on \_\_\_\_\_, 2021 (the “Commencement Date”) and terminate on the last day of the sixtieth (60th) month after Commencement Date (the “Initial Term”) subject to Lessee’s option to renew upon the same terms and conditions as hereinafter set forth.

3. **OPTION TO RENEW.** Lessor further grants to Lessee an option to renew this Lease at the termination of the Initial Term with three (3) renewal terms of five (5) years (each a “Renewal Term”; collectively with the Initial Term, the “Lease Term”). If Lessee elects to renew this Lease beyond the original Initial Term or any Renewal Term, Lessee shall give Lessor written notice of its intention to renew this Lease at least one hundred eighty (180) days prior to the termination of the Initial Term or any Renewal Term; provided, Lessee’s failure to exercise the option to renew as provided in this Section 3 shall result in termination of this Lease, including the option to renew the Lease Term, as of the last day of the Initial Term or then-current Renewal Term as the case may be.

4. **USE AND ACCESS.**

A. **Use.** Lessee shall use the KBOZ Site solely as a radio transmitter site. Initially, such use shall include (a) each existing radio tower and associated sheds, (b) antennas, (c) existing transmitters and associated equipment, (d) the Transmitter Building, and (e) any reasonable and lawful purposes incidental thereto. Subject to Section 4(E) of this Lease and to the prior approval of the FCC, to the extent required, Lessee’s use of the KBOZ site during the Term may include the addition, removal, or modification of items described in the previous sentence, including, without limitation, the addition, removal, or modification of broadcast equipment and facilities, at the KBOZ site.

B. Access. Lessee shall have access to the KBOZ Site from Johnson Road through the southern end of the Real Estate as depicted in Exhibit B for ingress and egress to and from the KBOZ Site as reasonably necessary for purposes of Lessee's broadcast operations, construction, installation, removal, servicing, maintenance and repair of the Transmitter Building and radio facilities; provided that Lessor, in its sole discretion, may designate the actual access route to the KBOZ Site from Johnson Road in connection with any development plan or subdivision plat of the Real Estate to be approved by governmental authorities during the Lease Term.

C. Utility Service. Lessee shall have the right, at its sole expense, to use the utility lines connected to the KBOZ Site. Lessee shall arrange for installation of separate meter in or on the Transmitter Building, at its sole expense, to be billed directly to Lessee and will reimburse Lessor for utility charges incurred as a result of Lessee's usage of electricity prior to such installation.

D. Permits. This Lease shall be subject to Lessee's acquiring and holding any required license or permit from the Federal Communications Commission, the Federal Aviation Administration or any other form of license or permit, governmental or otherwise, needed by Lessee to perform its operations hereunder, and to Lessee providing Lessor with copies thereof. If any of such permits or licenses are denied, revoked or terminated, Lessee shall suspend the activity subject to such permits or licenses until such time as such permits or licenses are reinstated.

E. Non-Interference. Lessee's installation, maintenance, operation and other activities hereunder shall be done in a good and workmanlike manner and in accordance with the good engineering standards. Lessee agrees that its communications operations on

the KBOZ Site shall at all times comply with the engineering rules and policies of the Federal Communications Commission (“FCC Engineering Rules”). If the operation of Lessee’s equipment interferes with, or receives interference from, the communications operations of Lessor or any other authorized user in the general area of the KBOZ Site, then the FCC Engineering Rules shall govern to resolve the interference.

5. **RENT.**

A. As and for rent of the KBOZ Site, Lessee does hereby covenant and agree to pay rent for the KBOZ Site during the Initial and first Renewal Term, commencing on the first day of month seven (7) following the Commencement Date, shall be (i) \$1,000 per month during the initial term, (ii) \$1,500 per month during the first renewal term, and (iii) \$1,500 per month during the second and third renewal terms, plus increases in the consumer price index for U.S. Cities accruing as of December 31 of the first renewal term or the second renewal term, as the case may be. All rent provided for in this Section 5, A, shall referred to in this Lease as the “Rent”.

B. Except as otherwise specifically set forth herein, the Rent shall be net of all utilities, taxes and other expenses or charges incurred in connection with Lessee’s use of occupancy of the KBOZ Site which shall be deemed additional Rent (“Additional Rent”) under the terms of this Lease.

C. All sums due from Lessee hereunder, including without limitation Rent and Additional, shall be payable monthly in advance and with interest at the rate of eighteen percent (18%) per annum upon each installment after the same becomes due, together with reasonable attorney fees in the event of default.

D. All monthly rental payments due hereunder shall be made by Lessee to Lessor at the person and address provided in Section 16 of this Lease, or to such other persons or addresses as Lessor shall direct Lessee by written notice.

6. **CANCELLATION.** Lessee may cancel this Lease by providing Lessor with twelve (12) months prior written notice. Lessee may cancel the Lease without further liability, except in the case of a breach of this Lease by Lessee, upon thirty (30) days' notice to Lessor in the event the use contemplated in paragraph 4 hereof is materially limited by federal, state or municipal statute, ordinance, rule or regulation.

7. **LESSOR'S REPRESENTATIONS.**

A. Lessor will as soon as reasonably possible after the Commencement Date Lessor will obtain a valuation of the Real Property for purposes of apportioning the *ad valorem* taxes on the Real Estate between the KBOZ Site and the balance of the Real Property.

B. As material inducements to Lessee to enter into this Lease, Lessor represents and warrants that as of the date of this Lease that Lessor has the full power and authority to enter into this Lease.

8. **LESSEE'S REPRESENTATIONS.** As material inducements to Lessor to enter into this Lease, Lessee covenants and agrees:

A. That it will use the KBOZ Site in the normal course of its business of radio transmission and for no other purpose, and in careful and proper manner; will commit no waste or damage thereon and shall take all reasonable precautions to prevent and protect the KBOZ Site from washing and erosion; will not sublet the KBOZ Site or any part thereof without Lessor's prior written consent, which consent shall not be unreasonably withheld.

Notwithstanding anything contained in this subparagraph to the contrary, Lessor agrees that no further consents are required for Lessee to lease tower space on the KBOZ Site.

B. That at the expiration of the Lease Term and without notice or demand, Lessee shall deliver to Lessor peaceful possession of the KBOZ Site and, so long as the Lease Term has lasted for at least ten (10) years, Lessee shall remove all improvements to the KBOZ site (to include towers, buildings, antennas and guy anchors). If Lessee fails to comply with the provision of this Section 8 (B), within the ninety (90) day period, Lessor may perform the work and Lessee shall reimburse Lessor for all costs Lessor incurs. In any event, and without regard to restoration of the lack of occurrence thereof, Lessee shall save and hold Lessor and Lessor's successors and assigns free and harmless from and shall indemnify them against any and all costs and liabilities (including reasonable attorney's fees) associated with any environmental law or arising from any court order relating to any environmental, toxic substance, hazardous substance contamination to the KBOZ Site or adjacent lands, arising as a result of Lessee's use of the KBOZ Site.

C. Lessee hereby releases and discharges Lessor from all claims and demands by Lessee for loss of or damage to Lessee's property (except any loss or damage that occurs as a result of Lessor's negligence or willful malfeasance), and agrees to indemnify Lessor against and hold Lessor harmless from any loss, cost or expense whatsoever, directly or indirectly resulting or occasioned to Lessor by injury to or destruction of life or property resulting from its negligent use and occupancy of the KBOZ Site or resulting from the negligent acts of commission or omission of Lessee, its employees, servants, agents, independent contractors, invitees or licensee.

D. That it will carry public liability insurance insuring Lessor against any loss



resulting from Lessee's use and occupancy of said KBOZ Site in an amount of not less than \$2,000,000.00 for commercial general liability and not less than \$500,000.00 for property damage.

E. That it will pay all bills and charges for utilities which may be assessed or charged against Lessee for its use of the KBOZ Site during the Lease Term and agrees that any such charges incurred on or after the Commencement Date shall be deemed Additional Rent under the terms of this Lease.

F. That if any use by the Lessee of the KBOZ Site increases the insurance rates of Lessor for the abutting land, Lessee will pay to the Lessor the amount of the increases in premium caused by such increases in rates after receiving written verification of the same from Lessor.

G. That Lessor, or their agents, may enter upon said KBOZ Site at all reasonable times, to examine the condition thereof, with prior approval from Lessee.

H. That it will permit no liens or encumbrances against the KBOZ Site.

I. That it will pay all real and personal property taxes relating to the use and occupancy of the KBOZ Site, including all increases of real estate taxes or assessments brought about by reason of improvements existing or constructed on the KBOZ Site by Lessee, if any. Lessee's obligation to pay real and personal property taxes shall deemed Additional Rent under the terms of this Lease.

J. That Lessee will keep the KBOZ Site free from waste and debris and that it will keep the area mowed and free of weeds.

K. That Lessee will, at its sole expense, cooperate with Lessor or its assignee in connection with any application to subdivide the KBOZ Site or other property within

the Real Estate, including without limitation execution and acknowledgment of any documents required to effect subdivision of the Real Estate pursuant to Montana law or local ordinances.

L. Lessee shall be and remain the owner of all existing or newly constructed improvements placed upon the KBOZ Site and such improvements may be removed by Lessee at the end of the Lease Term or any extension thereof; provided that within ninety (90) days following such removal from the KBOZ Site, Lessee shall restore the KBOZ Site as nearly as possible to the same status and condition it was in prior to construction of such improvements. If Lessee fails to comply with the provision of this Section 8 within the ninety (90) day period, Lessor may perform the work and Lessee shall reimburse Lessor for all cost thereof. In any event, and without regard to restoration or the lack of occurrence thereof, Lessee shall save and hold Lessor and Lessor's successors and assigns free and harmless from and shall indemnify them against any and all costs and liabilities (including reasonable attorney's fees) associated with any environmental entity or arising from any court order relating to any environmental, toxic substance, hazardous substance contamination to the KBOZ Site or adjacent lands, arising or claimed to arise, as a result of Lessee's use of the KBOZ Site.

9. **DEFAULT.** In the event Lessee violates any material term or condition of this Lease, fails to pay Rent or Additional Rent when due or to perform any of its obligations hereunder, Lessee shall, upon written notice thereof from Lessor, have thirty (30) days in the event of any default to remedy the same. If Lessee fails to remedy such default, Lessor may elect to terminate this Lease and take possession of the KBOZ Site; without prejudice, however, to the right of the Lessor to recover from Lessee all Rent and damages occasioned by Lessee's default,

together with all costs of collection, reasonable attorney fees and interest as herein provided. Lessee shall comply with the provisions of Section 15 hereof regarding the execution and recordation of a quitclaim deed.

Notwithstanding the foregoing, where the curing of an alleged default required more than the payment of money and cannot reasonably be accomplished within the time permitted and Lessee has commenced and is diligently pursuing to cure the default, Lessee shall then be entitled to reasonable time to complete the curing of the alleged default.

In case of any such default and entry by Lessor, Lessor may relet said KBOZ Site for the remainder of the Lease Term and may recover from Lessee any deficiency between the amount so obtained and the Rent set forth herein above. Failure on the part of Lessor to avail itself of any right or remedy hereunder shall not constitute a waiver thereof as to any future default or breach by Lessee.

10. **USE COMPLIANCE WITH APPLICABLE LAW.** Lessee shall at its own cost and expense comply with all existing and future law, order, rule or regulation of any governmental authority which may in any way apply to the use, maintenance or occupancy of or applications on the KBOZ Site or Lessee's use of the KBOZ Site or in any way affected the KBOZ Site, including Lessee's intended use as a radio transmission site and will hold Lessor and the KBOZ Site free from all liens, claims, demands, or causes of action resulting from the failure, neglect or refusal of Lessee to comply with such laws or regulations, Lessee agrees that it will not create or permit any nuisance or do anything against public policy on the KBOZ Site or unreasonably interfere with any neighboring tenants or property owners.

11. **HOLDOVER.** Any holding over by Lessee after the expiration of the Lease Term without Lessor's consent shall be construed to be a tenancy from month to month on the same

terms and conditions as contained in this Lease; provided, however, that Lessor may terminate the holding over by Lessee upon the giving of thirty (30) days written notice.

12. **RIGHT OF QUIET ENJOYMENT.** Lessor covenants Lessee shall be placed in possession of the KBOZ Site on the Commencement Date, and that during the Lease Term, and any renewal thereof, Lessee paying the herein stipulated rental and performing all of the terms and provisions of this Lease shall peaceably hold and enjoy the KBOZ Site without hindrance or interruption by Lessor, except that Lessor shall have the right to enter upon the KBOZ Site at all reasonable times for the purpose of inspecting same.

13. **RIGHT OF FIRST REFUSAL.** Lessor hereby grants to Lessee a right of first refusal to match any *bona fide* offer made to Lessor in the event that Lessor shall receive a *bona fide* offer for the sale of all or part of the KOBZ Site which Lessor shall desire to accept. For purposes of this Section 13, the term “sale” shall include but not be limited to the sale, transfer, or any other direct or indirect method of disposing or parting with ownership of the KOBZ Site or with any interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings.

A. **Scope of Right.** In the event of a *bona fide* offer to purchase the Real Estate is received by Lessor that includes the KBOZ Site or some part of the KBOZ Site, Lessee may exercise the right of first refusal provided in this Section 13 as to the property described in the *bona fide* offer. No right is hereby granted to match a *bona fide* offer for any part of the Real Estate that does not include the KBOZ Site or some parcel thereof. Other parcels within the Real Estate that do not include any part of KBOZ Site may be subdivided and sold or leased without triggering the rights set forth in this Section 13.

B. **Procedures for Exercise of Right of First Refusal.** The right of first refusal

granted in this Section 13 shall permit Lessee to make a *bona fide* offer to purchase the KBOZ Site and other property as provided in subsection A, upon the same terms and conditions contained in an acceptable *bona fide* offer; provided, however, that Lessee shall exercise said right of first refusal upon which the acceptable *bona fide* offer is based within thirty (30) calendar days of written notice from Lessor to Lessee. The written notice shall include a copy of the *bona fide* acceptable offer. Upon exercise by Lessee during the thirty (30) day period, Lessee shall deliver to Lessor (or the escrow agent named in said *bona fide* offer to hold the earnest money deposit) a matching earnest money deposit. If Lessee shall exercise its right of first refusal, then Lessor's purchase thereof shall close in accordance with the terms and conditions of the acceptable *bona fide* offer.

C. Non-Exercise of Right of First Refusal. In the event that Lessor shall receive an acceptable *bona fide* offer, and after proper notice to Lessee, and if Lessee shall fail to exercise its right of first refusal as to the KBOZ Site or any portion thereof covered by the acceptable *bona fide* offer, then Lessor shall be free to sell the KBOZ Site in accordance with the terms of the *bona fide* offer, free and clear of the terms of this right of first refusal and, thereafter, the KBOZ Site shall no longer be burdened by such right of first refusal. In this regard, Lessee agrees to and shall be obligated to provide Lessor with a written waiver and release of the KBOZ Site from the terms and conditions of this right of first refusal. However, in the event of failure on the part of Lessee to exercise its right of first refusal as to the KBOZ Site, and in the event of a subsequent failure to close under the acceptable *bona fide* offer, then Lessee's right of first refusal shall be deemed revived and shall continue in full force and effect. In any transaction to sell the KBOZ Site, Lessor shall assign this Lease to the purchaser of the KBOZ Site and shall require the purchaser

to assume and be bound by this Lease.

D. Exempt Transfers. Notwithstanding any other provision of this Section 13, any transfer by Lessor of an interest in the Lessor to an heir or heirs of any of the current members of the Lessor, Barbara Sample, David Sample and Patrick Sample, shall be exempt from the provisions of this Lease and the requirement to first offer the KBOZ Site for sale to Lessee; provided, however, the KBOZ Site shall continue to be subject to the provisions of this Lease after any such exempt transfer.

E. Duration. The right of first refusal covering the KBOZ Site shall be for a period starting on the Commencement Date and ending upon termination of this Lease.

14. ABSTRACT OF LEASE. An abstract of this Lease and the right granted to Lessee in Section 13 may be recorded by Lessee in the real property records of Gallatin County, Montana, in order to place third parties on notice off the existence of Lessee's rights and Owner' obligations hereunder.

15. RELATIONSHIP OF PARTIES. It is understood and agreed that the relationship of the Parties is strictly that of landlord and tenant and that Lessor has no ownership in the Lessee's improvements and that this Lease shall not be construed as a joint venture or partnership. Lessee is not and shall not be deemed to be an agent or representative of Lessor, or vice versa. Except as otherwise specifically set forth herein, it is understood and agreed that Lessor shall have no obligation to maintain or repair facilities on the KBOZ Site or any other improvements currently existing or hereafter created on the KBOZ Site, as said obligations shall be the sole responsibility of Lessee. Lessor shall not be obligated to provide any utility services to Lessee.

16. **TERMINATION.** On the termination of this Lease and on request of Lessor, Lessee will cause to be executed and duly recorded a quitclaim deed terminating all rights granted under this Lease.

17. **NOTICES.** All notices, requests, consents or other communications required or permitted under this Lease shall be in writing and shall be deemed to have been duly given or delivered by any party (a) when received by such party if delivered by hand, (b) on the next business day if being sent by recognized overnight delivery service, or (c) on the fifth business day after being mailed by first-class mail, postage prepaid, and in each case addressed as follows:

For Lessor: Gallatin Broadcasting Holdings LLC  
2517 Irving Place  
Billings, Montana 59102  
Attention: Barbara Sample, Managing Member

For Lessee: Desert Mountain Broadcasting LLC  
2075 Central Ave., #5  
Billings, Montana 59102  
Attention: Cameron Maxwell, President and CEO

Any party by written notice to the other party pursuant to this Section may change the address or the name of person to whom notices or copies thereof shall be directed.

18. **ASSIGNMENT.**

A. By Lessor. This Lease may be assigned by Lessor without the prior written consent of Lessee, and shall be assigned by Lessor to any part that purchases the KBOZ site.

B. By Lessee. Without the prior written consent of Lessor, such consent not to be unreasonably withheld or delayed, Lessee shall not assign or sublease this Lease or any interest herein, and shall not encumber, hypothecate or otherwise give as security, this Lease or any interest therein. Notwithstanding the foregoing, Lessee may assign its rights and obligations under this Lease to any party acquiring the licenses of Bozeman Stations

pursuant to prior FCC approval, provided that such acquiring party agrees in writing to assume, be bound by and comply with all of the terms and conditions of this Lease. No assignment shall be effective as against Lessor for any purpose, unless all sums due from Lessee together with any costs to Lessor to cover reasonable legal and other expenses of Lessor in connection with such assignment, shall have been paid to Lessor.

19. **CAPTIONS.** The paragraph captions in this Lease are for convenience only and are not a part of the Lease.

20. **BINDING AGREEMENT.** This Lease shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors and permitted assigns of Lessor and Lessee.

21. **CONTROLLING LAW.** This Lease shall be controlled by the laws of the State of Montana, without regard to its conflict of law rules.

22. **MODIFICATIONS.** Any agreement between the Parties hereto shall be ineffective in changing, modifying or discharging this Lease in whole or in part unless such agreement is in writing and signed by the party against whom such change, modification or discharge is sought to be enforced. This Lease supersedes any and all prior agreements between the Parties, whether written or oral, with respect to the subject matter hereof.

23. **ADDITIONAL ACTIONS.** The Parties shall cooperate with each other take any additional action and execute any additional documents necessary or appropriate to accomplish the purposes of this Lease or to preserve and further the rights of the Parties hereunder.

24. **CONFIDENTIALITY.** The Parties mutually acknowledge and agree that the existence, the terms, and/or a copy of this Lease may have to be disclosed to governmental authorities. The Parties agree to consult with one another in advance of any such disclosure, and



to seek to maintain the confidentiality of rent amounts and other provisions of this Lease, to the extent permitted by law.

25. **COUNTERPARTS.** This Lease may be executed in two or more counterparts, each of which shall be an original and the counterparts shall constitute one instrument.

**[THE REMAINDER OF THE PAGE IS INTENTIONALLY BLANK.]**

IN WITNESS THEREOF, this Lease has been duly executed and delivered by the Parties on the date first above written.

**LESSOR:**

Gallatin Broadcasting Holdings LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

**LESSEE:**

Desert Mountain Broadcasting LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A  
Real Estate Description

A tract of land in the Southeast one-quarter of Section Thirty-four, Township Two South, Range Five East, Montana Principal Meridian, Gallatin County, Montana, and more particularly described as follows:

Beginning at a point on the South line of said Section Thirty-four, said point being South 89°34'29" West, a distance of 90.00 feet from the Southeast corner of said Section Thirty-four; Thence South 89°34'29" West, along said South line, a distance of 456.26 feet; Thence North 45°00'00" West, a distance of 2410.31 feet; Thence North 45°00'00" East, a distance of 450.00 feet; Thence South 45°00'00" East, a distance of 2608.15 feet; Thence South 00°36'20" West, a distance of 174.93 feet to the true point of beginning, according to Certificate of Survey No. 134.

Said property is commonly referred to as 5445 Johnson Road, Bozeman, Gallatin County, Montana.

# EXHIBIT B KBOZ Site

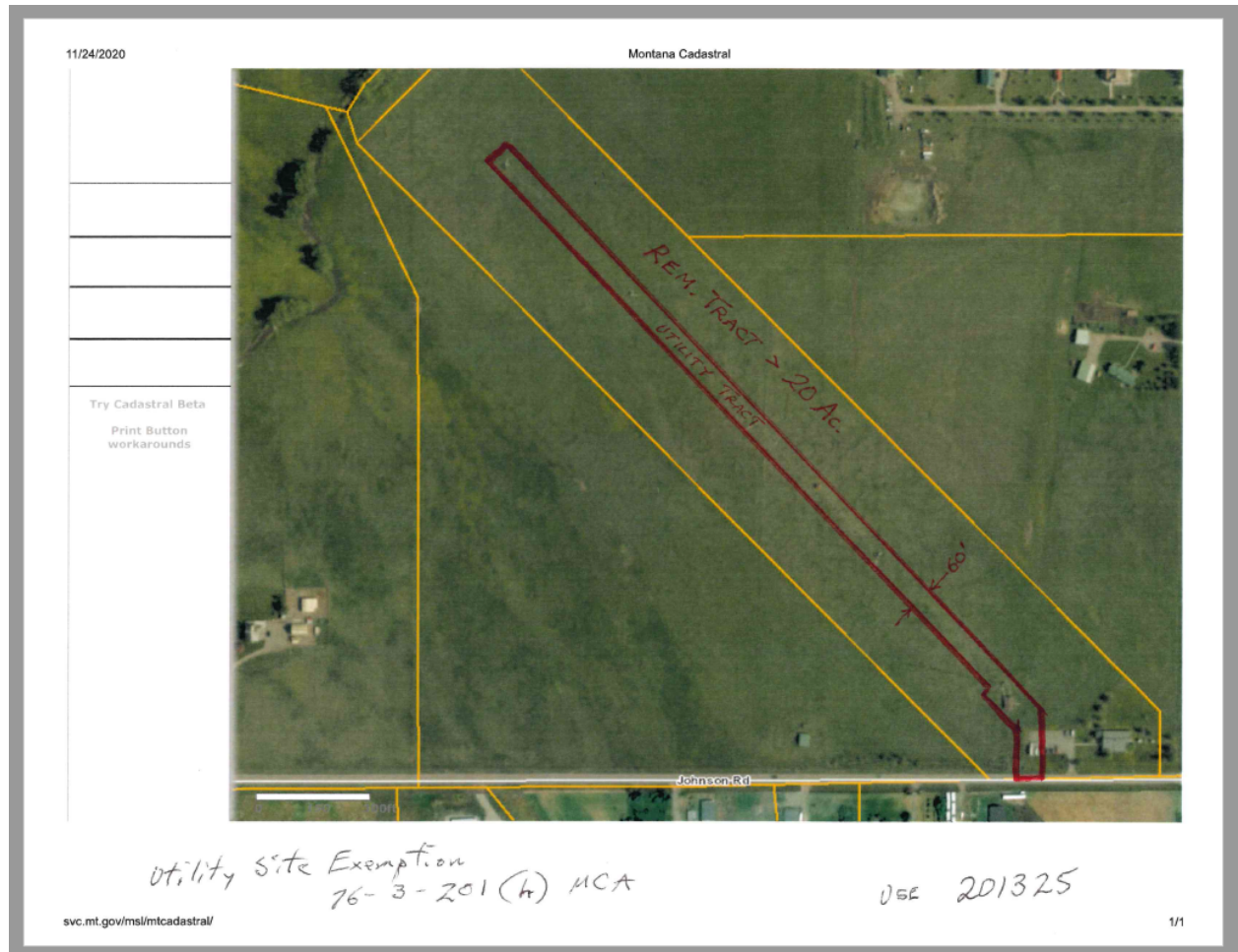


EXHIBIT C  
Transmitter Building



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