

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) is made as of December 17, 2021, by and between the **ESTATE OF ROBERT CUMMINGS TOOLE**, through its personal representative **KAREN L. TOOLE**, an individual residing in the State of Montana (“*Seller*”) and **BUTTE BROADCASTING INCORPORATED**, a Montana corporation (“*Buyer*”).

### **RECITALS**

WHEREAS, Seller owns and operates radio broadcast stations KQRV(FM), Deer Lodge, Montana (FCC ID No. 79010) and FM translator K257AF, Butte, Montana (FCC ID No. 69373) (together, the “*Stations*”) pursuant to certain authorizations issued by the Federal Communications Commission (the “*FCC*”); and

WHEREAS, on the terms and conditions described herein and subject to the prior approval of the FCC, Seller desires to sell, and Buyer desires to purchase, the Stations in exchange for the consideration set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### **ARTICLE 1. SALE AND PURCHASE**

1.1. Assets. On the Closing Date (defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller, the assets, properties, interests and rights of Seller of whatsoever kind and nature, which are owned by Seller and/or used or useful exclusively in connection with the operation of the Stations (“*Assets*”), except the Excluded Assets (defined below), including without limitation the following:

(a) Licenses and Authorizations. All of the licenses, construction permits and other authorizations issued by the FCC, the Federal Aviation Administration (the “*FAA*”), if any, and any other federal, state or local governmental authorities to Seller in connection with the conduct of the business and the full on-air operations of the Stations identified on **Schedule 1.1(a)**, together with all applications therefore, and any renewals or extensions thereof (collectively the “*FCC Authorizations*”).

(b) Tangible Property. Seller’s equipment, transmitters, antennas, cables, machinery, studio and remote equipment, surplus parts and equipment, backup equipment, and other tangible personal property used or useful in the conduct of the business or operations of the Stations (the “*Tangible Personal Property*”) (together with such improvements and additions thereto and replacements thereof between the date hereof and the Closing Date) specifically identified on **Schedule 1.1(b)** (“*Tangible Personal Property*”).

(c) Contracts. Seller's right, title and interest in and to the contracts, agreements and leases used in connection with the business and operation of the Stations, including the Station's transmitter site lease and programming agreements, as specifically described on **Schedule 1.1(c)** hereto ("Contracts").

(d) Intangible Property. All intangible property, including the Stations' call letters, licenses, patents and other similar intangible property rights and interests (and any goodwill associated with any of the foregoing) issued to, claimed, or owned by the Seller and used solely in connection with the Stations that are described in **Schedule 1.1(d)** ("Intangible Property").

(e) Files and Records. The Stations' FCC public files, programming information, technical information and engineering data, and engineering logs.

(f) Goodwill. All of Seller's goodwill in, and going concern value of, the Stations, if any.

The Assets shall be transferred to Buyer free and clear of all liens, claims and encumbrances ("Liens") except for Assumed Obligations (defined below) and liens for taxes not yet due and payable and for which Seller receives a credit pursuant to Section 2.2 ("Permitted Liens").

1.2. Excluded Assets. Notwithstanding anything to the contrary contained herein, the Assets shall not include the following ("Excluded Assets"):

(a) Cash. Cash, cash equivalents, cash deposits to secure contract obligations or similar type investments of Seller, such as certificates of deposit, Treasury bills, and other marketable securities on hand or in banks;

(b) Contracts. Any contracts or obligations not specifically assumed herein by Buyer and listed on **Schedule 1.1(c)** hereto;

(c) Refunds and Deposits. Any claims, rights, and interest of Seller to any (i) refunds of taxes or fees of any nature whatsoever or (ii) deposits or utility deposits or prepaid expenses, which in each case relate solely to the period prior to the Adjustment Time;

(d) Other. All insurance policies, coverages and proceeds thereunder and all rights in connection therewith, and pension, profit sharing and all other employee benefit plans;

(e) KBCK. Seller's other radio station, KBCK, Deer Lodge, MT (Fac. Id. 670), and all equipment, contracts, obligations and liabilities associated therewith;

(f) Voice of Robert Toole. All audio production or recordings containing the voice of Robert "Bob" Toole, and all rights in and to and/or the use of the voice of Robert "Bob" Toole; and

(g) Non-Scheduled Items. Any equipment, computer, furniture or other item not specifically included on a schedule to this Agreement.

1.3. Assumption of Obligations. Subject to the terms and conditions hereof, on the Closing Date (defined below), Buyer shall assume all liabilities, obligations, and commitments of any kind of Seller arising from the business or operation of the Stations after the Closing Date (defined below) or otherwise relating to the Contracts, the Stations or their operation, including without limitation those obligations of the Stations arising under the Decree (as hereinafter defined) (“Assumed Obligations”). Except for the Assumed Obligations, Buyer does not assume or agree to discharge or perform, and will not be deemed by reason of the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, to have assumed or to have agreed to discharge or perform, any liability, obligation, or commitment of Seller arising from the business or operation of the Stations before the Closing Date, including those under the Decree (as hereinafter defined) and Seller’s obligations for KBCK arising after the Closing Date under the Decree (“Retained Liabilities”). In particular, and without limiting the foregoing, Buyer is not agreeing to, and shall not, assume any liability, obligation, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyer liable for any such liability, obligation, expense or agreement arising from: (a) any music licensing-type agreement with any performing rights organization (“PRO”); or (b) funds received by Seller as a borrower or otherwise pursuant to the Paycheck Protection Program (the “PPP”), established by Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act, or any other governmental relief program. Seller shall indemnify Buyer for any and all Damages (as defined in Section 12.4(a)) related to (a) or (b) of this section 1.3 as provided in Section 12.4. Any known and unpaid licensing fees owed by Seller to any PRO shall be satisfied at Closing from the Purchase Price due to Seller.

## **ARTICLE 2. PURCHASE PRICE**

2.1. Purchase Price. Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, Buyer shall pay to Seller the sum of One Hundred and Thirty-five Thousand Dollars and No Cents (\$135,000.00) (“Purchase Price”) by wire transfer of immediately available funds, subject to the prorations and adjustments provided in Section 2.2 hereof, and pursuant to wire instructions provided by Seller prior to Closing.

2.2. Prorations and Adjustments. The business and operation of the Stations until 12:01 a.m. on the day of Closing (“Adjustment Time”) shall be for the account of Seller and thereafter for the account of Buyer. All of the Stations’ expenses shall be prorated between Seller and Buyer as of the Adjustment Time in accordance with generally accepted accounting principles, and the Purchase Price shall be adjusted accordingly. Such prorations may include, but are not limited to, real and personal property taxes (except for transfer taxes) upon the basis of the most recent tax bills and information available, business and license fees, music and other license fees, utility expenses, and other amounts under the Contracts and similar prepaid and deferred items such as FCC annual regulatory fees. On the Closing Date, the prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date.

2.3. Allocations. The parties hereby agree to the valuation of the Assets as described on **Schedule 2.3**. Such allocation shall be binding on the parties and used for all tax filings and

other related purposes.

### **ARTICLE 3. FCC APPLICATION; CLOSING**

3.1. FCC Application. Buyer and Seller shall jointly file an application with the FCC (“FCC Application”) requesting the FCC’s written consent to the assignment of the FCC Authorizations from Seller to Buyer within five (5) business days from the execution of the Agreement. The parties shall diligently take all steps necessary, proper, or desirable to expedite the prosecution of the FCC Application to a favorable conclusion. The written consent to an FCC Application by initial order of the FCC is referred to herein as the “FCC Consent.” In the event any objections or challenges to the FCC Application or any requests for reconsideration or review of the FCC Consent are filed at the FCC, the parties shall cooperate with respect to any responses thereto. Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the FCC Application; however, the fee to be paid to the FCC in conjunction with the filing of the FCC Application (“FCC Fee”) will be paid by Buyer.

3.2. Closing. The consummation of the transactions contemplated herein shall take place on a mutually acceptable date no later than ten (10) business days after the date that the FCC Consent (defined below) to the assignment of licenses is granted (the “Closing”). The date on which the Closing is to occur is referred to herein as the “Closing Date.”

### **ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby makes the following representations and warranties to Buyer which shall be true as of the date hereof and on the Closing Date:

4.1. Authority. Karen L. Toole is an individual residing in the State of Montana and is the duly appointed Personal Representative of the Estate of Robert Cummings Toole with full rights and authority to sell the Assets without further approval of local courts or probate authorities. Seller, by and through its Personal Representative, has the requisite power and authority to operate the Stations, to conduct the business of the Stations as is now conducted, and to execute, deliver and perform the transactions contemplated in this Agreement and the documents to be made pursuant hereto. This Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Seller enforceable in accordance with their respective terms, except 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).

4.2. No Conflicts, Defaults. The execution, delivery and performance of this Agreement by Seller and the documents to be made pursuant hereto does not or will not: (a) conflict with any law, judgment, order, or decree to which Seller, the Stations or any of the Assets is subject; (b) require the consent, approval or authorization, or filing with, any third party or any court or governmental authority, except the FCC Consent and counter-party consent to assign certain Contracts; (c) constitute or result in a breach of or default (or an event which with

notice or lapse of time, or both, would constitute a default) under, or result in the termination or suspension of, or accelerate the performance required by, or result in a right of termination, cancellation or acceleration of any contract, or any other material agreement, indenture, covenant, instrument, license or permit by which Seller is bound; (d) result in the creation or imposition of any Lien against the Stations or any of the Assets; or (e) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller or any of the Assets.

4.3. FCC Authorizations. Seller is the authorized legal holder of the FCC Authorizations as set forth on **Schedule 1.1(a)**. The FCC Authorizations constitute all of the licenses and authorizations required under the Communications Act of 1934, as amended (“*Communications Act*”) and the rules, regulations and policies of the FCC (“*FCC Rules*”) for, and used in the operation of, the Stations. The FCC Authorizations are in full force and effect and have not been revoked, suspended, cancelled, rescinded or terminated and have not expired, but are subject to a Consent Decree dated July 14, 2021 (DA-21-691) (the “Decree”), the assumption of which by Buyer with respect to the Stations is a necessary condition to the FCC’s consent to the Assignment Application.

4.4. Tangible Personal Property. **Schedule 1.1(b)** contains a list of all material items of Tangible Personal Property included in the Assets. Seller has good and marketable title to, or a valid leasehold interest in, each item of Tangible Personal Property set forth on **Schedule 1.1(b)**, free and clear of all Liens, except Permitted Liens. Each item of Tangible Personal Property is being sold hereunder in “as is, where is” condition.

4.5. Contracts. **Schedule 1.1(c)** is a list of all of the Contracts used in the operation of the Stations. Except as set forth thereon, each of the Contracts is in effect and is binding upon Seller, and to Seller’s knowledge, the other party thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors’ rights generally).

4.6. Intangible Property. **Schedule 1.1(d)** is a complete list of all material Intangible Property used exclusively in the operation of the Stations. Seller has a right, title and interest in and to such Intangible Property. No Intangible Property is the subject of any pending, or, to Seller’s knowledge, threatened legal proceedings claiming infringement or unauthorized use.

4.7. Taxes. Seller has filed all federal, state, local or foreign income, franchise, sales, use, property and other tax returns and forms that have become due pertaining to the Assets to be transferred hereunder. There is no pending or threatened investigation or claims against Seller for or relating to any liability in respect of taxes.

4.8. Brokers. There is no broker, finder or other person entitled to a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action by Seller.

4.9. No Litigation. Except for proceedings affecting segments of the broadcasting industry in general, to Seller’s knowledge: (a) Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree with respect to or affecting the Stations or

the Assets, other than the Decree (as defined herein); (b) there is no third party claim, litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against Seller with respect to the Stations in any federal, state or local court, or before any administrative agency, arbitrator or other tribunal authorized to resolve disputes; (c) there is no third party claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller with respect to the Stations, which is reasonably likely to have a material adverse effect upon the business, assets or condition, financial or otherwise, of the Stations or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken in connection with this Agreement.

4.10. Bankruptcy. No insolvency proceedings in the nature of bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, by or against Seller or the Assets, are pending or threatened, and Seller has not made any assignment for the benefit of creditors or taken any action in contemplation or in furtherance of the institution of such insolvency proceedings.

4.11. Insurance. All of the Assets that are insurable in character are insured against loss, injury or damage to the full extent of their replacement value.

## **ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

5.1. Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Montana. Buyer has the requisite power and authority to execute, deliver and perform the transactions contemplated in this Agreement and the documents to be made pursuant hereto.

5.2. Authority. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. The Agreement and the documents to be made pursuant hereto are legal, valid and binding agreements of Buyer enforceable in accordance with their respective 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).

5.3. FCC Qualification. Buyer is legally, financially, and otherwise qualified under the Communications Act and FCC Rules to hold the FCC Authorizations. Acquisition of the FCC Authorizations by Buyer complies with the Communications Act and FCC Rules with respect to multiple ownership as they exist on the date of this Agreement.

5.4. No Conflicts. The execution, delivery and performance of this Agreement and the documents to be made pursuant hereto does not or will not: (a) conflict with any organizational documents of Buyer, law, judgment, order, or decree to which Buyer is subject; (b) require the consent, approval or authorization, or filing with, any third party or any court or governmental

authority, except the FCC Consent; or (c) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller.

5.5. Brokers. There is no broker or finder or other person entitled to a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement or action by Buyer.

5.6. No Litigation. There is no litigation, proceeding or governmental investigation pending or to the knowledge of Buyer, threatened, in any court, arbitration board, administrative agency, or tribunal against or relating to Buyer that would prevent or materially impede the consummation by Buyer of the transactions contemplated by this Agreement.

5.7. Bankruptcy. No insolvency proceedings in the nature of bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, by or against Buyer, are pending or threatened, and Buyer has not made any assignment for the benefit of creditors or taken any action in contemplation or in furtherance of the institution of such insolvency proceedings.

## **ARTICLE 6. COVENANTS OF SELLER**

Seller covenants and agrees that from the date hereof until the completion of Closing it shall act in accordance with the following:

### 6.1. Operation of the Business.

(a) Seller shall operate the Stations only in the ordinary course of business, consistent with past practice, and keep all books and accounts, records, and files in the usual and ordinary manner.

(b) Seller shall maintain the FCC Authorizations in full force and effect without adverse modification.

(c) Seller shall maintain the Tangible Personal Property in good operating condition (ordinary wear and tear excepted) and repair.

Seller shall comply with the terms of the Consent Decree entered into with the Commission.

(d) Prior to the Closing Date, Seller shall not, without Buyer's prior written consent:

(i) Modify any of the FCC Authorizations;

(ii) Sell, lease, transfer, or agree to sell, lease or transfer, any of the Assets except for non-material sales or leases in the ordinary course of business of items which are replaced by assets of comparable or superior kind, condition and value;

(iii) Renew, amend, or terminate any Contract, or enter into any new

contract with respect to the Stations in any manner that will be binding upon Buyer or the Stations after Closing;

(iv) Make any change in the Stations' buildings, leasehold improvements or fixtures except in the ordinary course of business; or

(v) Create, suffer, or permit the creation of any Lien on the Assets, except for Permitted Liens.

6.2. Consents. Seller shall use commercially reasonable efforts to obtain any third-party consents necessary to assign the Contracts to Buyer, and an estoppel certificate from the transmitter site lessor.

6.3 Access. Between the date hereof and the Closing Date, Seller will afford Buyer reasonable access to the facilities, properties, books and records of Seller relating to the Stations. Buyer, at its sole expense, shall be entitled to make such engineering and other inspections of the Assets as Buyer may desire, so long as such inspection would not unreasonably interfere with the operation of the Stations.

## ARTICLE 7. JOINT COVENANTS

7.1. Confidentiality. Subject to requirements of applicable law, Seller and Buyer shall each keep confidential all information obtained by it with respect to the other party hereto in connection with this Agreement and the negotiations preceding this Agreement ("Confidential Information"); provided that, either party hereto may furnish such Confidential Information to its employees, agents, and representatives who need to know such Confidential Information (including its, tax, financial, and legal advisers, its banks and other lenders) ("Representatives"); provided however, the disclosing party shall be responsible for all actions or omissions of such Representatives with regard to Representatives' breach of this Section. Each party hereto shall, and shall cause each of such party's Representatives to, use the Confidential Information solely in connection with the transactions contemplated by this Agreement, and not for any competitive purpose or advantage detrimental to the other party hereto or any of its affiliates.

7.2. Control. Consistent with FCC Rules, 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 Authorizations. At any time prior to Closing, if Buyer so desires, the parties shall enter into a mutually agreeable Local Marketing Agreement wherein Buyer shall reimburse Seller's expenses related to the operation of the Station.

7.3. Announcements. Prior to Closing, neither 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.

7.4. Representations and Warranties. Each party shall render accurate at and as of the Closing Date the representations and warranties made by it in this Agreement.

7.5. Cure of Impediment to Closing. If any event should occur which would prevent

the consummation by one party of the transactions contemplated hereunder (other than an event proximately caused by the other party), that party shall use its best efforts to cure such event as expeditiously as possible.

## **ARTICLE 8. CONDITIONS TO THE OBLIGATIONS OF BUYER**

The obligations of Buyer to consummate the transactions contemplated by this Agreement are, at its option, subject to the fulfillment of the following conditions prior to or on the Closing Date:

8.1. Representations, Warranties, and Covenants. The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing except for changes permitted by the terms of this Agreement. The obligations to be performed by Seller at or prior to Closing shall have been performed in all material respects. Seller shall have furnished Buyer with a certificate, dated as of the Closing Date, to the effect that such conditions have been satisfied.

8.2. FCC Consent. The FCC Consent shall have been granted.

8.3. Liens. Other than Liens to be discharged by Seller on or before the Closing Date there shall not be any Liens on the Assets or any financing statements of record related to the Assets. Buyer may, at Buyer's sole expense, obtain any UCC, judgment, fixture and tax lien search reports as appropriate to confirm that no Liens are filed or recorded against the Assets in the public records of any applicable jurisdiction.

8.4. Consents and Estoppel. Seller shall have obtained any third-party consents required for the assignment of any Contracts by Seller to Buyer, and an estoppel certificate from each transmitter site lessor.

8.5. Proceedings. No suit, action, claim or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against any party hereto which: (a) would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (b) questions the validity or legality of any transaction contemplated hereby; or (c) seeks to enjoin any transaction contemplated hereby.

8.6. No Material Adverse Change. There shall have been no material adverse effect upon any of the Assets.

8.7. Deliveries. Seller shall have complied with its obligations set forth in Section 10.1.

## **ARTICLE 9. CONDITIONS TO THE OBLIGATIONS OF SELLER**

The obligations of Seller to consummate the transactions contemplated by this Agreement are, at its option, subject to the fulfillment of the following conditions prior to or on the Closing Date:

9.1. Representations, Warranties, and Covenants. The representations and warranties of Buyer made in this Agreement shall be true and correct in all material respects as of the Closing except for changes permitted by the terms of this Agreement. The obligations to be performed by Buyer at or prior to Closing shall have been performed in all material respects. Buyer shall have furnished Seller with a certificate, dated as of the Closing Date and duly executed by a person authorized on behalf of Buyer to give such a certificate, to the effect that such conditions have been satisfied.

9.2. FCC Consent. The FCC Consent shall have been granted.

9.3. Proceedings. No suit, action, claim or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against any party hereto which: (a) would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms; (b) questions the validity or legality of any transaction contemplated hereby; or (c) seeks to enjoin any transaction contemplated hereby.

9.4. Deliveries. Buyer shall have complied with its obligations set forth in Section 10.2.

## **ARTICLE 10. CLOSING DELIVERIES**

10.1. Deliveries by Seller. At the Closing, Seller shall deliver to Buyer the following, each of which shall be in form and substance satisfactory to Buyer and its counsel:

(a) An Assignment and Assumption of FCC Authorizations assigning the FCC Authorizations to Buyer;

(b) A Bill of Sale transferring title to the Tangible Personal Property and Intangible Property to Buyer;

(c) An Assignment and Assumption of Contracts assigning the Contracts to Buyer;

(d) Third-party consents necessary for the assignment and assumption of the Contracts and estoppel certificates executed in connection with the Stations' transmitter site leases;

(e) A certificate, dated the Closing Date, certifying the fulfillment of the conditions set forth in Section 8.1 by Seller;

(f) An Assignment and Assumption of the Decree with respect to the Stations; and

(g) Such other documents and instruments of conveyance, assignment and transfer that may be reasonably necessary to sell, assign, transfer, convey, or otherwise provide good and marketable title in and to the Assets to Buyer free and clear of Liens, except for Permitted Liens.

10.2. Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

- (a) An Assignment and Assumption of FCC Authorizations assuming the FCC Authorizations from Seller;
- (b) An Assignment and Assumption of Contracts assuming the obligations under the Contracts from Seller;
- (c) A certificate, dated the Closing Date, certifying the fulfillment of the conditions set forth in in Section 9.1 by Buyer;
- (d) The Purchase Price in immediately available wire transferred funds as provided in Section 2.1;
- (e) An Assignment and Assumption of the Decree with respect to the Stations; and
- (f) Any other documents and instruments of assumption that may be reasonably necessary to purchase and acquire the Assets and to assume the Assumed Obligations.

#### **ARTICLE 11. SURVIVAL**

The representations and warranties in this Agreement shall expire six (6) months after the Closing ("Survival Period"), except as otherwise expressly stated herein. The covenants and agreements in this Agreement, and indemnification obligations with respect to such provisions, shall survive Closing until performed. No claim may be brought under this Agreement unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the earlier of the last day of the Survival Period or expiration of the applicable statute of limitations. In the event such notice is given, the right to indemnification with respect thereto shall survive the Survival Period until such claim is finally resolved and any obligations thereto are fully satisfied. Any investigation by or on behalf of any party hereto shall not constitute a waiver as to enforcement of any representation, warranty, covenant or agreement contained herein.

#### **ARTICLE 12. TERMINATION AND REMEDIES**

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

- (a) By mutual written consent of both parties;
- (b) By written notice of Buyer (provided it is not in material default hereunder) to Seller if Seller fails to perform the obligations to be performed by it, or otherwise breaches in any material respect any of its representations or warranties, under this Agreement and such failure or breach is not cured within thirty (30) calendar days ("Cure Period") after Seller receives notice of such breach or default from Buyer; or

(c) By written notice of Seller (provided it is not in material default hereunder) to Buyer if Buyer fails to perform the obligations to be performed by it, or otherwise breaches in any material respect any of its representations or warranties, under this Agreement and such breach or default is not cured within the Cure Period after Buyer receives notice of such breach or default from Seller; or

(d) By written notice of one party to the other if the FCC denies the FCC Application or designates it for a trial-type hearing, provided, however, that the right to terminate this Agreement under this Section 12.1(d) shall not apply to any party whose action or inaction shall have been a cause for such dismissal; or

(e) By written notice of one party to the other if Closing does not occur within one (1) year after the date of this Agreement.

Termination of this Agreement shall not relieve any party of any liability it would otherwise have for a breach or default under this Agreement.

12.2. Specific Performance. In the event of a material breach by Seller of any representation, warranty, covenant or agreement under this Agreement, at Buyer's election, in addition to any other remedy available to it, Buyer shall be entitled to an injunction restraining any such material breach and the enforcement of this Agreement by a decree of specific performance requiring Seller to fulfill its obligations under this Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required.

12.3. Indemnification.

(a) Subject to the limitations set forth herein, following the Closing, Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including interest, penalties, court costs and reasonable attorneys' fees) ("*Damages*") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) the breach by Seller of any of its representations, warranties or certifications made in or pursuant to, or failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement or any other transaction documents; or (ii) the Retained Liabilities.

(b) Subject to the limitations set forth herein, following the Closing, Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) the breach by Buyer of any of its representations, warranties or certifications made in or pursuant to, or failure by Buyer to perform any of its covenants, conditions or agreements set forth in, this Agreement or any other transaction documents; or (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Stations subsequent to the Closing and the Assumed Obligations.

(c) If any party (the "*Indemnitee*") receives notice or otherwise obtains knowledge of any matter with respect to which another Party (the "*Indemnifying Party*") may be

obligated to indemnify the Indemnitee under this Section 12.4, then the Indemnitee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnitee in connection therewith; provided that no failure or delay in the giving of such notice shall affect the Indemnitee's rights under this Section 12.4 except to the extent that such failure or delay has materially prejudiced the Indemnifying Party's ability to defend the matter in question.

(d) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) neither party shall have any liability to the other under Section 12.1 or 12.2, as applicable, until such party's aggregate Damages exceeds Ten Thousand Dollars (\$10,000.00) (the "Threshold Amount").

(e) If the Indemnifying Party is entitled to and does elect to assume the defense of any matter pursuant to Section 12.4(c) and conducts such defense in a reasonably vigorous manner, then (i) the Indemnitee, at the Indemnifying Party's expense, shall fully cooperate as reasonably requested by the Indemnifying Party in the defense of such matter, (ii) the Indemnifying Party shall keep the Indemnitee informed of all material developments and events relating to such matter, (iii) the Indemnitee shall have the right to participate, at its own expense, in the defense of such matter, and (iv) except with the prior written consent of the Indemnitee, the Indemnifying Party will not, in the defense of such matter, consent to the entry of any judgment (other than a judgment of dismissal on the merits without cost), or enter into any settlement, that does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnitee of a release from all Damages in respect of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(f) Any representation, warranty or certification that is specifically identified in a written claim for indemnification delivered within the period herein provided shall survive until the claim in question is either settled or finally adjudicated.

(g) The parties agree that any indemnity payments made pursuant to this Section 12.4 will be treated by the parties on all applicable tax returns as an adjustment to the Purchase Price.

### **ARTICLE 13. GENERAL PROVISIONS**

13.1. Risk of Loss. The risk of loss of or damage to any of the Assets shall remain with Seller at all times until 12:01 a.m. local time on the day of Closing, and Buyer shall bear such risk on and after the Closing Date.

13.2. Expenses. Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement. The FCC Fee under Section 3.1 of this Agreement shall be shared equally between Buyer and Seller.

13.3. Further Assurances. Each party shall execute all such instruments and take all

such actions as any other party may reasonably request, without payment of further consideration, to effectuate the transactions contemplated by this Agreement, including without limitation the execution and delivery of confirmatory and other transfer documents in addition to those to be delivered at Closing.

13.4. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, legal representatives, successors and permitted assigns. This Agreement and any rights or obligations hereunder may be assigned by Buyer or Seller only with the prior written consent of the other party, which shall not be unreasonably withheld.

13.5. Notices. Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery, confirmed facsimile transmission, confirmed delivery by a nationally recognized overnight courier service, or on the third (3<sup>rd</sup>) day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be address as follows (or to such other address as any party may request by written notice):

if to Seller, then to:

Karen L. Toole  
774 Eastside Road  
Deer Lodge, MT 59722  
Email: karenstriver@gmail.com

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

Hardy, Carey, Chautin & Balkin, LLP  
1080 West Causeway Approach  
Mandeville, LA 70471  
Attn: Joseph C. Chautin, III, Esq.  
Tel: (985) 629-0777  
Facsimile: (985) 629-0778  
Email: jchautin@hardycarey.com

If to Buyer, then to:

Butte Broadcasting Incorporated  
660 Dewey Blvd.  
Butte, MT 59701  
Attn: Ron J. Davis  
Email: rondavis@kbowkopr.com

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

Sciarrino & Shubert, PLLC  
330 Franklin Road  
Ste. 135A-133  
Brentwood, TN 37027-3280  
Attn: Dawn M. Sciarrino, Esq.  
Tel: (202) 256-9551  
Email: dawn@sciarrinolaw.com

13.6. Amendments and Waivers. No amendment or waiver of compliance with any

provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

13.7. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

13.8. 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.

13.9. Governing Law; Venue. 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.

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

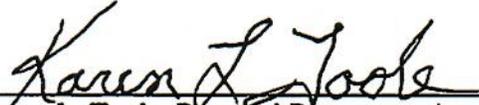
[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

**SELLER:**

ESTATE OF ROBERT CUMMINGS TOOLE



\_\_\_\_\_  
Karen L. Toole, Personal Representative of the  
Estate of Robert Cummings Toole

**BUYER:**

BUTTE BROADCASTING INCORPORATED



\_\_\_\_\_  
Ron J. Davis