

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this agreement) is made as of the date set forth below by and among Old West Media, Inc. (Buyer) and Flash Broadcasting, LLC (Seller).

### **Recitals**

- A. Seller owns Radio Station KBRV (AM), Soda Springs, Idaho (Facility I.D. 17437) (the "Station"). The Station has licenses issued by the Federal Communications Commission (FCC).
- 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 Station Assets (defined in Section 1.1).

### **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 **STATION ASSETS.** On the terms and subject to the conditions hereof, at Closing (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 assets and properties of Seller, real and personal, tangible and intangible, that are used in the operation of the Station (the 'Station Assets'), including without limitation the following:
  - a. all licenses, permits and other authorizations issued to Seller by the FCC with respect to the Station (the 'FCC Licenses'), including those described on Schedule 1.1(a), including any renewals or modifications thereof between the date hereof and Closing;
  - b. all equipment, transmitters, antennas, cables, towers, all computer systems, including, but not limited to, software, servers, printers, scanners, monitors, and all related documentation, all spare, backup and additional parts at the tower, repeater, and studio locations, all furniture, and other tangible personal property used in the operation of the Station, including, without limitation, the property described on Schedule 1.1(b) (the 'Tangible Assets');
  - c. all agreements and all other contracts, agreements and leases entered into in the ordinary course of the Station's business, including without limitation those listed on Schedule 1.1(d), together with all contracts, agreements and leases made between the date hereof and Closing in accordance with Article 4 (the 'Station Contracts');

- d. all of Sellers rights in and to certain intangible property which is used in the operation of the Station, including without limitation those listed on Schedule 1.1(e) (the 'Intangible Property'); and
- e. Sellers rights in and to the Station's local public files, engineering data and reports, but excluding records relating to Excluded Assets (defined in Section 1.2).
- f. The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances 'Liens') except for
  - i. Assumed Obligations (defined in Section 1.4),
  - ii. liens for taxes not yet due and payable and
  - iii. liens that will be released at or prior to Closing.

1.2 **EXCLUDED ASSETS.** Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title and interest therein and shall be retained by Seller (the 'Excluded Assets'):

- a. all accounts run prior to closing, all cash and cash equivalents of Seller, including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;
- b. all Station Contracts that are terminated or expire prior to Closing in accordance with Article 4;
- c. all records not relating to the operation of the Station;
- d. all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;
- e. any non-transferable shrink-wrapped computer software and any other non-transferable computer licenses that are not material to the operation of the Station;
- f. minute books or similar internal documents of Seller or any of their predecessors-in-interest also all old tubes and vinyl records not used in current station operations;
- g. the assets listed on Schedule 1.2 (if any).

1.3 **PURCHASE PRICE.** The purchase price to be paid by Buyer to Seller for all of the property, assets, contracts, rights, privileges and immunities to be acquired hereunder shall, subject to the adjustments provided for below, be the sum of **One Hundred Ten Thousand, Five Hundred Dollars (\$110,500.00)**, subject to adjustment pursuant to Section 1.6 and by the Buyers assumption of the Station's Transmitter Lease ('Station Transmitter Lease') (hereafter together the 'Purchase Price').

1.4 **METHOD OF PAYMENT.** The Purchase Price shall be paid as follows:

- a. Purchase Price shall be financed by Seller. The Purchase Price shall be represented by a Promissory Note (the "Note") in a form substantially similar to that set forth in Schedule 1.4(a) attached hereto and made a part hereof, to be executed and delivered by Buyer to Seller on the Closing Date, according to the following terms and conditions:
  - i. Beginning August 1, 2014, Payor will assume the loan currently financed by Caribou Broadcasting in the amount of \$36,342.96 for the buyout of the transmitter.
  - ii. Beginning August 1, 2014, Payor will assume the loan currently financed by Caribou Broadcasting in the amount of \$29,400 for the buyout of the radio station.
  - iii. \$15,000 to purchase the repeater license and all equipment on Georgetown Summit related to the operation of translator call sign #K224EJ. To be paid in interest free monthly installments until paid in full. Payor agrees to make a payment of \$1,000 per month to the Payee.
  - iv. The business loan that is currently financed by Flash Broadcasting in the amount of \$26,000 to be refinanced by Payor. If Payor is unable to refinance this loan, the outstanding amount will be added to the \$15,000 referenced above for a total of \$44,757.04. Payments of \$1,000 per month will continue as agreed for a period of 36 months. On August 1, 2017, a balloon payment for the remaining balance will be due.
- b. Security. As Security for the above referenced obligations, Buyer shall give a first security interest in all of the Station Assets transferred, including any asset used primarily in the operation of the Station by the Buyer. Security will be represented by a Security Agreement in a form substantially similar to that set forth in Schedule 1.4(b) attached hereto and made a part hereof, to be executed and delivered by Buyer to Seller on the Closing Date.
- c. Station Transmitter Lease. The Buyer shall assume all obligations of the Seller under the Station Transmitter Lease, a copy of which is attached hereto on Schedule 1.1(d).

1.5 **PRORATIONS AND ADJUSTMENTS.** Except as stated in this Section 1.5, all prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Station shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles ('GAAP') as of 12:01 a.m. on the day of Closing (the 'Effective Time'). Such proration shall include without limitation all ad valorem and other property taxes (except transfer taxes as provided by Section 11.1), music and other license fees, utility expenses, rent and other amounts under Station Contracts and similar prepaid and deferred items. Seller shall receive a credit for all of the Station's deposits and prepaid expenses. Proration and adjustments shall be made no later than ninety (90) calendar days after Closing. In the event of any disputes between the parties as to such adjustments, the amounts not in dispute shall nonetheless be paid at the time provided herein and such disputes shall be determined by an independent certified public accountant mutually selected by the parties, and the fees and expenses of such accountant shall be paid one-half by Seller and one-half by Buyer.

- 1.6 **ALLOCATION.** Within one hundred twenty (120) days of Closing, Buyer and Seller shall allocate the Purchase Price for tax purposes in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the 'Code'). If Buyer does not obtain the appraisal, then the Purchase Price shall be allocated as agreed to by the Buyer and Seller. Each of Buyer and Seller shall file a tax return in accordance with and when required under the Code.
- 1.7 **CLOSING.** The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the 'Closing') shall take place on or before the fifth (5th) business day after the date the FCC Consent, or on such an earlier day after such consents as Buyer and Seller may mutually agree. The date on which the Closing is to occur is referred to herein as the 'Closing Date'.
- 1.8 **FCC CONSENT.**
- a. The parties shall file an application with the FCC (the 'FCC Application') requesting FCC consent to the assignment of the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the 'FCC Consent'. Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.
  - b. Buyer and Seller shall notify each other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. 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.

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

Seller makes the following representations and warranties to Buyer:

- 2.1 **ORGANIZATION.** Seller is duly organized corporation, validly existing and in good standing under the laws of the State of Idaho. Seller has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the 'Seller Ancillary Agreements') and to consummate the transactions contemplated hereby.
- 2.2 **AUTHORIZATION.** The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is a legal, valid and binding agreement.
- 2.3 **NO CONFLICTS.** Except as set forth on Schedule 2.3 and except for the FCC Consent and consents to assign certain of the Station Contracts, 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 organizational documents of Seller, any contract or agreement to which Seller are a party or by which it is bound, or any law, judgment, order, or decree to which Seller are subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

- 2.4 **FCC LICENSES.** Except as set forth on Schedule 1.1 (a), Seller is the holder of the FCC Licenses described on Schedule 1.1 (a), which are all of the licenses, permits and authorizations required for the present operation of the Station. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending, or, to Sellers knowledge, threatened, any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability). Except as set forth on Schedule 1.1(a), the Station is operating in general compliance with the FCC Licenses, the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the 'Communications Act'), and the rules, regulations and policies of the FCC.
- 2.5 **PERSONAL PROPERTY.** Schedule 1.1(b) contains a list of material items of Tangible Personal Property included in the Station Assets. Except as set forth on Schedule 1.1(b), Seller has good and marketable title to the Tangible Personal Property free and clear of Liens. Further all Tangible Personal Property are in good operating condition and repair and comply in all material respects with all applicable governmental authority including the Communications Act and the FCC Rules.
- 2.6 **CONTRACTS.** Schedule 1.1(d) contains a list of all contracts that are used in the operation of the Station. The Station Contracts requiring the consent of a third party to assignment are identified with an asterisk on Schedule 1.1(d).
- 2.7 **ENVIRONMENTAL.** To Sellers knowledge, no hazardous or toxic substance or waste regulated under any applicable environmental, health or safety law has been generated, stored, transported or released on, in, from or to the Real Property leases included in the Station Assets. To Sellers knowledge, Seller has complied in all material respects with all environmental, health and safety laws applicable to the Station.
- 2.8 **INTANGIBLE PROPERTY.** Schedule 1.1(e) contains a description of the Intangible Property included in the Station Assets.
- 2.9 **COMPLIANCE WITH LAW.** Except as set forth on Schedule 2.11,
- a. Seller has materially complied with all rules and regulations of the FCC, and
  - b. to Sellers knowledge, there are no claims or investigations pending or threatened against Seller in respect of the Station except those affecting the industry generally.
- 2.10 **LITIGATION.** Except as set forth on Schedule 2.12, there is no action, suit or proceeding pending or, to Sellers knowledge, threatened against Seller in respect of the Station that will subject Buyer to liability or which will affect Sellers ability to perform its obligations under this Agreement. Seller are not operating under or subject to any order, writ, injunction or decree relating to the Station or the Station Assets of any court or governmental authority which would have a material

adverse effect on the condition of the Station or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

- 2.11 **NO UNDISCLOSED LIABILITIES.** There are no liabilities or obligations of Seller with respect to the Station that will be binding upon Buyer after the Effective Time other than the Assumed Obligations.

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

Buyer hereby makes the following representations and warranties to Seller:

- 3.1 **ORGANIZATION.** Buyer is duly organized corporation, validly existing and in good standing under the laws of the State of Idaho. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Buyer pursuant hereto (collectively, the "Buyer Ancillary Agreements") and to consummate the transactions contemplated hereby.
- 3.2 **AUTHORIZATION.** The execution, delivery and performance of this Agreement and the Buyer Ancillary Agreements by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a legal, valid and binding agreement.
- 3.3 **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 organizational documents of Buyer, any contract or agreement to which Buyer is a party or 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.
- 3.4 **LITIGATION.** There is no action, suit or proceeding pending or, to Buyers knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.
- 3.5 **QUALIFICATION.** Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Station 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, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Station. No waiver of or exemption from any FCC rule or policy is necessary for the FCC Consent to be obtained. There are no matters which might reasonably be expected to result in the FCCs denial or delay of approval of the FCC Application.

## **ARTICLE 4: SELLER COVENANTS**

- 4.1 **SELLERS 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. operate the Station in the ordinary course of business and in accordance with FCC rules and regulations and with all other applicable laws, regulations, rules and orders;
  - b. not materially adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses;
  - c. not, sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens;
  - d. not dissolve, liquidate, merge or consolidate with any other entity;
  - e. maintain the Tangible Personal Property in the ordinary course of business; and
  - f. Not enter into new Station Contracts that will be binding upon Buyer after closing or amend any existing Station Contracts.

## **ARTICLE 5: JOINT COVENANTS**

Buyer and Seller hereby covenant and agree as follows:

- 5.1 **CONFIDENTIALITY.** The parties agree to hold in confidence and not disclose, (a) any data or information relating to Seller or Buyer or the Station obtained from Seller or any of their employees, agents or representatives in connection with this Agreement, or (b) any data and information relating to the business, customers, financial statements, conditions or operations of the Station which are confidential in nature and not generally known to the public. If the transaction contemplated in this Agreement is not consummated for any reason, the parties agree to return in a prompt fashion such data, information and any other written material obtained by the parties in connection with this transaction.
- 5.2 **PUBLIC ANNOUNCEMENTS.** Prior to Closing, no party shall, without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), 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, in which case such party shall give advance notice

to the other, and except that the parties shall cooperate to make a mutually agreeable announcement, and except as necessary to enforce rights under or in connection with this Agreement. Notwithstanding the foregoing, the parties acknowledge that this Agreement and the terms hereof will be filed with the FCC Application and thereby become public.

- 5.3 **CONTROL.** Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Station prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of License Corporation as the holder of the FCC Licenses.
- 5.4 **RISK OF LOSS.** Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.
- 5.5 **CONSENTS.**
- a. The parties shall use all commercially reasonable efforts to obtain (i) any third party consents necessary for the assignment of any Station Contract.
  - b. To the extent that any Station Contract may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment of such Station Contract; provided, however, with respect to each such Station Contract, Seller and Buyer shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which Buyer shall receive the benefits under the Station Contract from and after Closing, and to the extent of the benefits received, Buyer shall pay and perform Sellers obligations arising under the Station Contract from and after Closing in accordance with its terms.
- 5.6 **ACTIONS.** After Closing, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action which is pending or threatened against Seller or their affiliates with respect to the Station, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, Buyer shall make available its employees to give depositions or testimony and shall preserve and furnish all documentary or other evidence that Seller may reasonably request.

## **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. 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. At the Closing, (i) no applicable law shall exist and no action shall have been entered which prohibits the transaction contemplated by this Agreement and (ii) no legal proceedings shall have been commenced (by persons other than Seller, Buyer and their respective affiliates) and not stayed, settled or dismissed which seeks to enjoin, restrain or alter the transaction contemplated by this Agreement.

6.2 FCC Authorization. The FCC Consent shall have been obtained.

6.3 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.

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. At the Closing, (i) no applicable law shall exist and no action shall have been entered which prohibits the transaction contemplated by this Agreement and (ii) no legal proceedings shall have been commenced (by persons other than Seller, Buyer and their respective affiliates) and not stayed, settled or dismissed which seeks to enjoin, restrain or alter the transaction contemplated by this Agreement.

7.3 **FCC AUTHORIZATION.** The FCC Consent shall have been obtained.

7.4 **DELIVERIES.** Seller shall have complied with their obligations set forth in Section 8.1

7.5 **CONSENTS.** The Required Consents (if any) shall have been obtained.

## ARTICLE 8: CLOSING DELIVERIES

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

- a. a certificate executed by Sellers evidencing authorization by the Sellers board of directors for the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;
- b. an assignment of FCC authorizations assigning the FCC Licenses from Seller to Buyer;
- c. an assignment and assumption of contracts assigning the Station Contracts from Seller to Buyer (including Station Transmitter Lease);
- d. Real Property lease for Transmitter Site;
- e. a bill of sale conveying the other Station Assets from the Seller to Buyer; and
- f. any other instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Station Assets from the respective Seller to Buyer, free and clear of Liens, except for Permitted Liens.

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

- a. a Promissory Note;
- b. a Security and Pledge Agreement;
- c. certified copies of resolutions authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;
- d. an assignment and assumption of contracts assuming the Station Contracts (including Station Transmitter Lease);
- e. Real Property lease for Transmitter Site; and
- f. such other documents and instruments of assumption that may be necessary to assume the Assumed Obligations.

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

9.1 **SURVIVAL.** The representations and warranties in this Agreement shall survive Closing for a period of one (1) years from the Closing Date.

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 their representations and warranties made under this Agreement; or
  - ii. any default by either or both of Seller of any covenant or agreement made under this Agreement; or
  - iii. the Retained Obligations; or
  - iv. the business or operation of the Station before the Effective Time, except for the Assumed Obligations.
- b. 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 Station after the Effective Time.

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 10.2, 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 breach their 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 (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 and is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyers obligations to make the Deposit and to pay the Purchase Price at Closing; or
- d. by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date nine (9) months after the date of this Agreement.

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 receive from the other written notice of breach or default hereunder and continuing until the earlier of (a) ten (10) calendar days thereafter, or (b) the Closing Date determined under Section 1.8; 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 Closing Date determined under Section 1.8, 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 Closing Date determined under Section 1.8.

10.3 **SPECIFIC PERFORMANCE.** In the event of failure or threatened failure by Seller to comply with the terms of this Agreement, the 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.

## ARTICLE 11: MISCELLANEOUS

11.1 **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. All governmental filing fees and charges applicable to the request for FCC Consent shall be shared equally. Buyer shall be solely responsible for all governmental taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement.

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 Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided that (a) any such assignment does not delay processing of the FCC Application , grant of the FCC Consent or Closing, (b) any such

assignee delivers to Seller a written assumption of this Agreement, (c) Buyer shall remain liable for all of its obligations hereunder , and (d) Buyer shall be solely responsible for any third party consents necessary in connection therewith (none of which is a condition to Closing). The terms of this Agreement shall bind and inure to the benefit of the parties respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

- 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 facsimile transmission 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:                   ***FRANK VILT***  
   ***700 BEAR HOLLOW***  
   ***MONTPELIER, ID 83254***

If to Buyer:                   ***OLD WEST MEDIA, INC.***  
   ***1044 MAIN STREET, SUITE B***  
   ***EVANSTON, WY 82930***

- 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 all Schedules and Exhibits 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 Station, 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 Idaho without giving effect to the choice of law provisions thereof.
- 11.10 **COUNTERPARTS.** This Agreement may be executed in separate counterparts (including by the use of facsimile or portable document format (.pdf)), each of which will be deemed an original and all of which together will constitute one and the same agreement.
- 11.11 **FINDERS.** There are no brokers, finders or other Person is entitled to a commission, brokerage fee or other similar payment in connection with this Agreement.

Dated as of:

[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: FLASH BROADCASTING, LLC**

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

Title: \_\_\_\_\_

**BUYER: OLD WEST MEDIA, INC.**

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

Title: \_\_\_\_\_

Schedule 1.1(a)

FCC Licenses

Schedule 1.1(b)

Tangible Personal Property

Schedule 1.1(c)

Real Property Lease (Draft)

Schedule 1.1 (d)

Station Contracts

Schedule 1.1(e)

Intangible Property

## Schedule 1.2

### Excluded Assets

Schedule 1.4(a)

Promissory Note (Draft)

Schedule 1.4(b)

Security Agreement and Pledge Agreement (Draft)

Schedule 2.11

Legal Compliance

Schedule 2.12

Litigation

## Schedule 2.3

### Compliance