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ASSET PURCHASE AGREEMENT

by and between

CHAPARRAL BROADCASTING, INC., Seller

and

ANTHONY MEDIA, INC., Buyer

for the sale and purchase of

Station KBXI, Facility ID 10336, Billings, Montana

Dated: November 7, 2014

SCHEDULE 2.2 -- Tangible Property

SCHEDULE 2.1 -- FCC Licenses

LIST OF SCHEDULES

## **ASSET PURCHASE AGREEMENT**

This Agreement, made and entered into as of the \_\_\_\_ day of November, 2014, by and between **CHAPARRAL BROADCASTING, INC.** ("Seller") and **ANTHONY MEDIA, INC.** ("Buyer").

WHEREAS, Seller is the owner and licensee of Radio Station KBXI, Facility ID 10336, Billings, Montana (the "Station");

WHEREAS, Buyer wishes to purchase from Seller all of the assets owned by Seller and used or held for use in connection with the operation of the Station and to acquire from Seller the authorizations issued by the Federal Communications Commission (the "FCC") for the operation of the Station;

WHEREAS, the authorizations issued by the FCC may not be assigned to Buyer without the prior written consent of the FCC.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties, intending to be legally bound, agree as follows:

### **1. RULES OF CONSTRUCTION**

**1.1. Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

- "Assignment Application" means the application on FCC Form 314 that Seller and Buyer shall join in and file with the FCC requesting its consent to the assignment of the FCC Licenses from Seller to Buyer.
- "Closing" means the consummation of the Transaction.
- "Closing Date" means the date on which the Closing takes place, as determined pursuant to Section 11 hereof.
- "Deposit" means the sum of Twenty-Five Thousand Dollars (\$25,000.00) that Buyer shall deliver to David Tillotson, Esq. as Escrow Agent (the "Escrow Agent") upon the execution of this Agreement as earnest money for the performance of Buyer's obligations hereunder.
- "Governmental Authority" means any nation or government, any state or other political subdivision

thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

- "Knowledge" when used in connection with any representation or warranty by a person or entity means the actual knowledge of such person or entity at the time the representation is made without any requirement or expectation that such person or entity has made any investigation or inquiry regarding the matter at issue.
- "Transaction" means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of Seller and Buyer set forth herein.

**1.2. Other Definitions.** Other capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

**1.3. Number and Gender.** Whenever the context so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of one gender shall be construed to mean or include the other gender.

**1.4. Headings and Cross-References.** The headings of the Sections and Paragraphs hereof have been included for convenience of reference only, and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to Sections or Paragraphs herein shall mean the Sections or Paragraphs of this Agreement unless otherwise stated or clearly required by the context. All references to Schedules herein shall mean the Schedules to this Agreement which have been separately initialed for identification by Seller and Buyer. Words such as "herein" and "hereof" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise stated or clearly required by the context.

**1.5. Computation of Time.** Whenever any time period provided for in this Agreement is measured in "business days" there shall be excluded from such time period each day that is a Saturday, Sunday, recognized federal legal holiday, or other day on which the FCC's offices are closed and are not reopened prior

to 5:30 p.m. Washington, D.C. time. In all other cases all days shall be counted.

**2. ASSETS TO BE CONVEYED BY SELLER TO BUYER.** On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Buyer all of Seller's right, title, and interest in the following assets (the "Station Assets") free and clear of all liens and encumbrances whatsoever except for statutory liens for taxes not yet due:

**2.1. Licenses.** The licenses, permits and other authorizations issued by the FCC for the operation of the Station listed in Schedule 2.1 hereof (the "FCC Licenses"), and all other transferable licenses, permits and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station.

**2.2. Tangible Property.** All tangible personal property and fixtures listed in Schedule 2.2 hereof, together with replacements thereof and improvements and additions thereto made between the date hereof and the Closing Date (the "Tangible Property").

**2.3. Intangible Property.** The call signs, slogans, logos, trademarks, copyrights, websites and similar materials and rights and the goodwill and other intangible assets used in or arising from the business of the Station (the "Intangible Property").

**2.4. Tower Site Lease.** The lease for the Station's transmitter site (the "Lease").

**2.5. Business Records.** All existing business records relating to Seller's ownership and operation of the Station (including without limitation logs, public file materials, and engineering records), to the extent that Seller possesses such records.

**3. EXCLUDED ASSETS.** The following assets are expressly excluded from the Station Assets being conveyed hereunder and shall be retained by Seller:

(a) Seller's cash and cash equivalents and accounts receivable;

(b) any claims that Seller may have under any insurance policies or contracts and any other claims that Seller may have against third parties;

(c) Seller's internal books and records which do not relate to the ownership or operation of the Station; and

(d) Any and all property of any kind owned by Seller which is neither specifically identified in the schedules hereto nor used or held for use in the operation of the Station.

#### **4. CONSIDERATION.**

**4.1. Consideration; Method of Payment.** The purchase price for the Station Assets is Five Hundred Thousand Dollars (\$500,000.00), which amount shall be paid to Buyer as follows:

(a) On the Closing Date Buyer and Seller shall jointly instruct the Escrow Agent to deliver the deposit to Seller;

(b) On the Closing Date, Buyer shall deliver to Seller the sum of Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) in immediately available funds;

(c) In addition to the payments described in parts (a) and (b) above, Buyer shall pay Seller an additional (\$150,000), plus five percent (5%) annual interest, in the event Buyer does not enter into a "Sale or Transfer", as the quoted term is defined below, of the Station within ten (10) years from the date of Closing. If Buyer does close on a Sale or Transfer of the Station within ten (10) years, Buyer shall pay Seller the amount of the "Total Consideration" received for the Sale or Transfer, as the quoted term is defined below, over and above \$500,000.00 up to a maximum amount of One Hundred Fifty Thousand Dollars (\$150,000.00), interest free. For the purposes of this Agreement, the term Sale or Transfer means (i) the sale of all or substantially all of the assets used or useful in the operation of the Station; or (ii) the sale, transfer, or other conveyance of the controlling interest in Buyer to any third party, other than pursuant to a transaction for which the consent of the FCC may properly be requested and obtained on a "short form" (FCC Form 316) application.

**4.2. Bonus Payment.** In the event that Buyer completes a Sale or Transfer prior to the tenth (10<sup>th</sup>)

anniversary of the Closing hereunder, Buyer shall pay to Seller as additional consideration for the Station an amount equal to twenty percent (20%) of the amount by which the "Total Consideration" for the Station or for the equity of Buyer as defined below exceeds Six Hundred Fifty Thousand Dollars (\$650,000.00) (the "Bonus Payment"). "Total Consideration" means any and all payments that Buyer, or Buyer's equity owners will receive from the sale, whether in cash at closing or pursuant to deferred payments and including any payments to be made to Buyer or Buyer's equity owners in consideration of a covenant not to compete, or any similar sort of agreements entered into in connection with the Sale or Transfer. The Bonus Payment will be paid to Seller in immediately available funds and in full regardless as to whether the Total Consideration for the Sale or Transfer is paid in full at the closing or is wholly or partially deferred within five (5) business days of the Closing on the Sale or Transfer which triggers the Bonus Payment. Prior to the tenth (10th) anniversary of the Closing hereunder, Buyer shall pay Seller \$150,000 plus 5% annual interest in the event that it enters into a Time Brokerage, Local Marketing, Joint Sales, or similar Agreement with respect to the Station.

**4.3. Allocation of Purchase Price.** The Purchase Price shall be allocated between the Tangible Property and the Intangible Property in accordance with the Allocation Schedule to be agreed to by the parties prior to the Closing. Seller and Buyer shall use such allocation for all purposes related to the valuation of the Station Assets, including, without limitation, in connection with any federal, state, county or local tax returns and, unless required to do so in accordance with a "determination" as defined in Section 1313(a) (1) of the Internal Revenue Code, neither Seller nor Buyer shall take any position in any tax return, tax proceeding, tax audit or otherwise that is inconsistent with such allocation.

**5. PRORATIONS.** In view of the fact that Buyer has been programming the Station pursuant to a Time Brokerage Agreement, the parties agree that there shall be proration adjustments to the Purchase Price.

**6. SELLER'S LIABILITIES.** Buyer does not and shall not assume or be deemed to assume, pursuant to this Agreement or otherwise, any liabilities, obligations, or commitments of Seller of any nature whatsoever.

**7. SELLERS' REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Sellers hereby makes the following representations, warranties, and covenants:

**7.1 Existence and Power.** Seller is a corporation validly existing and in good standing under the laws of the State of Delaware with the full power to enter into, deliver and perform this Agreement.

**7.2. Binding Agreement.** The execution, delivery, and performance of this Agreement by Seller has been duly authorized by its stockholders and directors. This Agreement has been duly executed and delivered by Seller to Buyer and constitutes a legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms.

**7.3. No Violation.** The execution and performance of this Agreement by Sellers will not violate Seller's articles of incorporation, by-laws or any material order, rule, judgment or decree to which Seller or its principals are subject, or breach any contract, agreement or other commitment to which Seller or their principals are a party or are bound.

**7.4. Conveyance of Assets.** At Closing, Seller shall convey to Buyer good and marketable title to all the Station Assets, free and clear of all liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions and encumbrances or other defects of title except for the lien of any personal or real property taxes that will not become due until after the Closing Date.

**7.5. Governmental Authorizations.** Except for the FCC Licenses, Seller is unaware of any material licenses, permits, or authorizations from any Governmental Authority which are required to operate the Station. The FCC Licenses are all the FCC authorizations held by Seller with respect to the Station, and are all the FCC authorizations used in or necessary for the lawful operation of the Station. The FCC Licenses are in full force and effect, are subject to no unusual or materially adverse conditions or restrictions, and are unimpaired by any acts or omissions of Seller or Seller's employees or agents.

**7.6. Condition of Tangible Property.** Seller makes no representations or warranties concerning the condition of the



Tangible Property, it being expressly understood and agreed that Buyer is acquiring the Tangible Property "as is where is."

**7.7. Litigation.** Except for proceedings affecting radio broadcasters generally, there is no complaint, investigation, or proceeding pending or, to Sellers' Knowledge, threatened before or by the FCC, any other Governmental Authority, or any other person or entity relating to the business or operations of the Station. There is no other litigation, action, suit, investigation or proceeding pending or, to the best of Sellers' Knowledge, threatened that may give rise to any claim against any of the Station Assets or adversely affect Sellers' ability to consummate the Transaction as provided herein. Sellers are not aware of any facts that could reasonably result in any such proceedings.

**7.8. Insolvency Proceedings.** No insolvency proceedings of any character, including without limitation bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Seller or the Station Assets are pending or threatened. Seller has not made an assignment for the benefit of creditors or taken any action with a view to, or that would constitute a valid basis for, the institution of any insolvency proceedings. Upon consummation of the transactions provided for herein, Seller (i) will have sufficient capital to carry on their business and transactions, (ii) will be able to pay its debts as they mature or become due, and (iii) will own assets the fair market value of which will be greater than the sum of all liabilities of Seller not specifically assumed by Buyer pursuant to the terms of this Agreement.

**8. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.** Buyer hereby makes the following representations, warranties and covenants:

**8.1. Existence and Power.** Buyer is a corporation validly existing and in good standing under the laws of the State of Montana with the full legal power and capacity to enter into, deliver and perform this Agreement and on the Closing Date Buyer shall be qualified to engage in business in the State of Montana.

**8.2. Binding Agreement.** This Agreement has been duly executed and delivered to Seller by Buyer and constitutes a

legal, valid, and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

**8.3. No Violation.** The execution and performance of this Agreement by Buyer will not violate Buyer's articles of incorporation or by-laws or any material order, rule, judgment or decree to which Buyer or Buyer's principals is subject, or breach any contract, agreement or other commitment to which Buyer or Buyer's principals are a party or by which Buyer or Buyer's principals are bound

**8.4. Licensee Qualifications.** Buyer is legally, financially, and otherwise qualified under the Communications Act of 1934, as amended, and the rules and regulations of the FCC to be the licensee of the Station.

**8.5. Litigation.** There is no action, suit, investigation or other proceeding pending or to Buyer's Knowledge threatened that may adversely affect Buyer's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Buyer is not aware of any facts that could reasonably result in any such proceeding.

**9. PRE-CLOSING RIGHTS AND OBLIGATIONS.** The parties covenant and agree as follows with respect to the period prior to Closing:

**9.1. Application for FCC Consent.** Within five (5) business days after the execution of this Agreement, Seller and Buyer shall join in and file the Assignment Application, and they shall diligently take all steps necessary or desirable and proper expeditiously to prosecute the Assignment Application and to obtain the FCC's determination that grant of the Assignment Application will serve the public interest, convenience and necessity.

**9.2. Administrative Violations.** If Seller receives any finding, order, complaint, citation or notice prior to Closing which states that any aspect of the Station's operations violates any rule, regulation or order of the FCC or of any other Governmental Authority which affects the Station Assets (an "Administrative Violation"), including without limitation any rule, regulation or order concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall use its reasonable best efforts to remove or correct the Administrative Violation and shall be

solely responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed.

**9.3. Risk of Loss.** The risk of loss or damage to the Station Assets shall be upon Seller at all times prior to Closing. In the event of material loss or damage, Seller shall promptly notify Buyer thereof and use its best efforts to repair, replace or restore the lost or damaged property to its former condition as soon as possible. In the event that any loss, damage or destruction to the Station's assets has not been repaired, restored and/or replaced prior to the Closing Date, the Closing shall nevertheless take place and Seller shall assign its rights to receive any insurance proceeds with respect to the damaged, lost, or destroyed assets to Buyer and, to the extent that the insurance proceeds so assigned are insufficient to cover all of the costs of repairing and/or replacing the assets that were damaged, lost or destroyed, the Purchase Price shall be adjusted to cover such shortfall.

**9.4. Operations Prior to Closing.** Subject to the existing Time Brokerage Agreement between the parties with respect to the Station, between the date of this Agreement and the Closing Date Seller shall operate the Station in the normal and usual manner and in material compliance with all applicable laws, regulations and orders of the FCC and other governmental authorities. To the extent consistent with such operations, Seller shall use its reasonable best efforts to maintain all of the Station Assets in a manner consistent with Seller's past practices and to comply in all material respects with all laws, rules and regulations of all Governmental Authorities.

**9.5. Control of Station.** This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, except pursuant to and consistent with the Time Brokerage Agreement referred to above, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operations of the Station. Such operations shall be the sole responsibility of Seller.

## **10. CONDITIONS PRECEDENT.**

**10.1. Mutual Conditions.** The obligation of both Buyer and Seller to consummate the Transaction is subject to the satisfaction of each of the following conditions:

(a) **Approval of Assignment Application.** The FCC shall have granted the Assignment Application by Final Order, that is by order which is no longer subject to appeal or review ("Final Order") and such grant shall be in full force and effect on the Closing Date.

(b) **Absence of Litigation.** As of the Closing Date, no action, suit or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction shall be pending before any court, the FCC, or any other Governmental Authority; provided, however, that this Paragraph may not be invoked by a party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of, such party.

**10.2. Conditions to Buyer's Obligation.** Conditions to Buyer's Obligation. In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Buyer to consummate the Transaction is subject, at Buyer's option, to the satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Seller to Buyer shall be true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made.

(b) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been duly complied with and performed in all material respects.

(c) **Estoppel Certificate and Consent to Assign.** Seller shall have obtained from the landlord under the Lease the landlord's written consent to the assignment to, and the assumption of, Buyer of Seller's rights and obligations under the Lease and an estoppel certificate establishing that the Lease is in full force and effect, and that there is no default under the Lease.

(d) **Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer all of the closing documents specified in Paragraph 11.2.1, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably acceptable to Buyer.

**10.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Sellers to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Buyer to Seller shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as if then made.

(b) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Buyer on or before the Closing Date shall have been duly complied with and performed in all material respects.

(c) **Payment.** Buyer shall have delivered to Seller the cash portion of the Purchase Price.

(d) **Closing Documents.** Buyer shall have delivered to Seller all the closing documents specified in Paragraph 11.2.2, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably satisfactory to Seller.

## **11. CLOSING.**

**11.1. Closing Date and Method.** Unless Seller and Buyer agree otherwise: (i) the Closing Date shall be the fifth (5<sup>th</sup>) business day after the effective date of an action by the FCC's staff granting the Assignment Application and (ii) the Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require in person, by mail or air courier and by Buyer delivering the Purchase Price to Seller by wire transfer.

**11.2. Performance at Closing.** The following documents shall be delivered at Closing:

**11.2.1. By Seller.** Seller shall deliver or cause to be delivered to Buyer:

(a) A certificate by Seller's President attesting to Seller's compliance with the matters set forth in Section 10.2 (a).

(b) Assignments in form and substance reasonably satisfactory to Buyer transferring to Buyer all of the interests of Seller in and to the FCC Licenses and all other transferable licenses, permits, and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station.

(c) Bills of sale in form and substance reasonably satisfactory to Buyer conveying to Buyer all of the Tangible and Intangible Property of the Station.

(d) An assignment of the Lease.

(e) Any other documents reasonably requested by Buyer.

**11.2.2. By Buyer.** Buyer shall deliver to Seller:

(a) A certificate executed by Buyer's Managing Member attesting to Buyer's compliance with the matters set forth in Section 10.3 (a).

(b) The Purchase Price.

(c) An instrument by which Buyer assumes Seller's obligations under the Lease.

(d) Any other documents reasonably requested by Seller.

**12. INDEMNIFICATION.** The parties agree as follows with respect to the period subsequent to Closing:

**12.1. Buyer's Right to Indemnification.** For a period of one (1) year following the Closing Seller undertakes and agrees to indemnify and hold Buyer harmless against (i) any breach, misrepresentation, or violation of any of Seller's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Seller not assumed by Buyer; and (iii) any claims by third parties against Buyer attributable to Seller's ownership or operation of the Station Assets prior to Closing and not otherwise assumed by Buyer under this Agreement. This indemnity is intended by

Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising within said one (1) year period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.2. Seller's Right to Indemnification.** For a period of one (1) year following the Closing Buyer undertakes and agrees to indemnify and hold Seller harmless against (i) any breach, misrepresentation, or violation of any of Buyer's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Buyer; and (iii) any claims by third parties against Seller attributable to Buyer's operation of the Station after Closing. This indemnity is intended by Buyer to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising during said one (1) year period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.3. Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(1) The party claiming indemnification (the "Claimant") shall give written notice to the party from which indemnification is sought (the "Indemnitor") promptly after the Claimant learns of any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless; provided, however, that the Claimant's failure to give the Indemnitor prompt notice shall not bar the Claimant's right to indemnification unless such failure has materially prejudiced the Indemnitor's ability to investigate or defend against the claim or proceeding.

(2) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have thirty (30) days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purpose of this investigation, the Claimant agrees to make available to the Indemnitor and its authorized representatives the information relied upon by the Claimant to

substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension hereof), the Claimant may seek appropriate legal remedies.

(3) With respect to any third-party claims as to which the Claimant is entitled to indemnification, the Indemnitor shall have the right to employ counsel reasonable acceptable to the Claimant to defend against any such claim or proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor. The parties will fully cooperate in any such action, and shall make available to each other any books or records useful for the defense of any such claim or proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such claim or proceeding within twenty (20) days after receiving notice thereof from the Claimant (or such shorter time specified in the notice as the circumstances of the matter may dictate) the Claimant shall be free to engage counsel of its choice and defend against or settle the matter, all at the expense of the Indemnitor.

**12.4. Indemnification Not Sole Remedy.** The right to indemnification hereunder shall not be the exclusive remedy of either party in connection with any breach by the other party of its representations, warranties, or covenants, nor shall such indemnification be deemed to prejudice or operate as a waiver of any remedy to which either party may otherwise be entitled as a result of any such breach by the other party.

### **13. DEFAULT AND REMEDIES.**

**13.1. Opportunity to Cure.** If either party believes the other to be in default hereunder, the former party shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured within ten (10) days after delivery of that notice, then the party giving such notice may exercise the remedies available to such party pursuant to this Section, subject to the right of the other party to contest such action through appropriate proceedings. If a notice of default is given ten (10) days or less prior to the Closing Date, the Closing Date shall be automatically extended to first business day following the last day of the "cure" period.



**13.2. Seller's Remedies.** Buyer recognizes that if the transaction contemplated by this Agreement is not consummated as a result of Buyer's breach of this Agreement, Seller would be entitled to compensation, the extent of which is extremely difficult and impractical to ascertain. To avoid this problem, the parties agree that if this Agreement is not consummated due to the default of Buyer, the Deposit shall be delivered to Buyer as liquidated damages in lieu of any other remedies to which Seller might otherwise be entitled due to Buyer's wrongful failure to consummate the Transaction.

**13.3. Buyer's Remedies.** Seller agrees that the Station Assets include unique property that cannot be readily obtained on the open market and that Buyer will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyer shall have the right, if Buyer is not in material default in its obligations hereunder, specifically to enforce Seller's performance under this Agreement, and Seller agrees to waive the defense in any such suit that Buyer has an adequate remedy at law and to interpose no opposition, legal or otherwise, as to the propriety of specific performance as a remedy.

#### **14. TERMINATION.**

**14.1. Failure to Obtain FCC Consent.** This Agreement may be terminated at the option of either party upon written notice to the other if the Closing has not occurred within nine (9) months after the date on which the FCC releases a public notice that the Assignment Application has been accepted for filing; provided, however, that a party may not terminate this Agreement if such party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has been caused or materially contributed to (i) by any failure of such party to furnish, file or make available to the FCC information within its control; (ii) by the willful furnishing by such party of incorrect, inaccurate or incomplete information to the FCC; or (iii) by any other action taken by such party for the purpose of delaying the FCC's decision or determination respecting the Assignment Application.

**14.2. Termination Due to Breach.** This Agreement may be terminated by either party due to a material breach of this Agreement by the nonbreaching party giving written notice of such termination. In such event, the nonbreaching party shall be entitled to the remedies specified in Sections 13.2 and 13.3 hereof.

**14.3. Return of Deposit.** In the event this Agreement is terminated for any reason, except for a reason described in Section 13.2, the Deposit shall be returned to Buyer.

**15. ENFORCEMENT OF REMEDIES; DISPUTES.** Except for (i) the right of Buyer to seek specific performance of this Agreement and (ii) the right of Seller to sue to collect money due to Seller from Buyer pursuant to Section 4 hereof, which rights shall be pursued in an appropriate court and the right of either party to enforce the provisions of or any determination made pursuant to this section, the parties agree to resolve any disputes arising out of or in connection with this Agreement as provided in this section.

**15.1. Appointment of Dispute Panel.** If any dispute is not resolved in the time permitted by this Agreement or, if no time is specified, within five (5) days of the date either party gives the other notice that it intends to invoke the provisions of this section, each party will immediately name one arbitrator who shall be a person with one of the following qualifications (a) substantial experience in radio ownership or management, (b) an attorney with substantial experience in performing legal services for broadcasting licensees, or (c) a radio broadcasting consultant, and, within five (5) days of their appointment, the two arbitrators so selected shall select a third arbitrator with similar qualifications (the "Dispute Panel"). In the event one party names an arbitrator within the time period specified herein and the other party fails to do so, the Dispute Panel shall be comprised of the sole arbitrator who was timely named who shall have the full power and authority to resolve the dispute pursuant to the provisions of this Article 15.

**15.2. Decision Process.** Each party may submit such materials as it may elect to the Dispute Panel provided that a copy of such material is delivered by hand or overnight courier to the other party. Neither party will contact any member of the Dispute Panel to discuss the dispute unless the other party is present in person or by conference telephone call or the other party consents. The Dispute Panel will request and review such information as its members deem necessary to resolve the dispute. The Dispute Panel and each party will treat all information received by it as confidential and will destroy such information when the dispute is resolved. The Dispute Panel will resolve the matters presented to it so as to give each Party the benefit of its bargain by applying the provisions of

this Agreement and, to the extent the Agreement is not dispositive, the customs and practices which, in the view of Dispute Panel, are common to transactions of this nature. The Dispute Panel will render its decision as soon as possible, but in any event, within sixty (60) days of the appointment of the third expert. The decision will be in writing and signed by each member of the dispute panel. The decision may include an award of damages as permitted by this agreement. Any third party may rely upon an original copy of the written decision or a copy of the decision certified by any member of the Dispute Panel as evidence of the decision.

**15.3. Binding Effect.** The decision of a majority of the members of the Dispute Panel will be binding and final with respect to both parties and may be enforced by seeking preliminary and permanent injunctive relief or entry of a judgment by a court of competent jurisdiction.

**15.4. Costs and Fees.** Each party will bear the costs and fees of the expert appointed by it plus half of the costs and expenses of the third expert. If the Dispute Panel determines by majority decision that the position of a party lacks substantial merit or was taken primarily to delay or otherwise impair the business efforts of the other party, then that party will pay the costs and fees of all the members of the panel plus the other party's reasonable attorney's fees.

**15.5. Venue.** The parties agree that unless they otherwise agree the exclusive venue for any proceedings of the Disputes Panel shall be Billings, Montana.

## **16. GENERAL PROVISIONS.**

**16.1. Brokerage.** Each party represents to the other that it has not employed any broker or finder in connection with the Transaction and agrees to indemnify the other party and hold it harmless against any claim from any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Seller or Buyer, as the case may be.

**16.2. Expenses.** The FCC filing fee for the Assignment Application and any sales, use or transfer taxes applicable to this Transaction shall be paid equally by Buyer and Seller except as otherwise provided herein, all other expenses incurred in connection with this Agreement or the Transaction shall be

paid by the party incurring those expenses whether or not the Transaction is consummated.

**16.3. Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or on the date of delivery by email with a "read receipt" or other confirmation of delivery, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses, or to such other address as a party may request. Notice made in accordance with this section shall be deemed delivered upon receipt.

To Seller: Chaparral Broadcasting, Inc.  
Attn: Jerrold T. Lundquist, President  
14 Cockenoe Drive  
Westport, CT 66880  
Email: [jerry\\_lundquist@external.mckinsey.com](mailto:jerry_lundquist@external.mckinsey.com)

With a copy that will not constitute notice to:

David Tillotson, Esq.  
Law Office of David Tillotson  
4606 Charleston Terrace NW  
Washington, DC 20007  
Email: [dtlaw67@starpower.net](mailto:dtlaw67@starpower.net)

To Buyer: Anthony Media, Inc.  
P.O. Box 22209  
Billings, MT 59104  
Email: [kanthony21@gmail.com](mailto:kanthony21@gmail.com)

With a copy that will not constitute notice to:

John T. Jones/Adam J. Tunning  
Moulton Bellingham PC  
P.O. Box 2559  
Billings, MT 59103  
Email: [John.Jones@moultonbellingham.com](mailto:John.Jones@moultonbellingham.com)  
[Adam.Tunning@moultonbellingham.com](mailto:Adam.Tunning@moultonbellingham.com)

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice

purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

**16.4. Assignment.** Neither party may assign its rights and obligations hereunder without the written consent of the other party which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assignees.

**16.5. Exclusive Dealings.** For so long as this Agreement remains in effect, neither Seller nor any person acting on Seller's behalf shall solicit, initiate, or accept any offer from, or conduct any negotiations with, any person concerning the acquisition of the Stations or the Station Assets, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

**16.6. Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

**16.7. Indulgences.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of a party at any time to require performance by another party of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by the another party shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by a party for the performance of any obligation or act by another party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**16.8. Survival of Representations and Warranties.** The several representations, warranties, and covenants of the parties contained herein shall survive the Closing for a period of one (1) year ; provided, however, that those specific matters as to which claims for indemnification have been duly made before the expiration of such one-year period shall survive until those claims have been resolved.

**16.9. Prior Negotiations.** This Agreement supersedes in all respects all prior and contemporaneous oral and written negotiations, understandings and agreements between the parties with respect to the subject matter hereof. All of said prior and contemporaneous negotiations, understandings and agreements are merged herein and superseded hereby.

**16.10. Schedules.** The Schedules attached hereto or referred to herein are a material part of this Agreement, as if set forth in full herein.

**16.11. Entire Agreement; Amendment.** This Agreement and the Exhibits and Schedules hereto set forth the entire understanding between the parties in connection with the Transaction, and there are no terms, conditions, warranties or representations other than those contained, referred to or provided for herein and therein. Neither this Agreement nor any term or provision hereof may be waived, altered or amended in any manner except by an instrument in writing signed by the party against whom the enforcement of any such change is sought.

**16.12. Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provisions of this Agreement shall be interpreted or construed against the party whose counsel drafted the provision.

**16.13. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Montana without regard to the choice of law rules utilized in that jurisdiction.

**16.14. Severability.** If any term of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

**16.15. Waiver of Jury Trial; Attorney's Fees.** If, notwithstanding the provisions of Section 15, any law suit is filed to resolve an issue as to the interpretation or enforcement of this agreement and is not dismissed on the basis of Section 15, each party irrevocably waives trial by jury and the right thereto in any and all litigation in any court with respect to, in connection with, or arising out of this Agreement. If either party files a lawsuit to resolve an issue as to the interpretation or enforcement of this agreement, the prevailing party shall be entitled to its attorney's fees and costs.

**16.16. Confidentiality.** Subject to the requirements of applicable law, Buyer and Seller shall each keep confidential all information obtained by it with respect to the other parties hereto in connection with this Agreement and the negotiations preceding this Agreement, and will use such information solely in connection with the transactions contemplated by this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to each other party hereto, without retaining a copy thereof, any schedules, documents or other written information obtained from such other party in connection with this Agreement and the transactions contemplated hereby. Notwithstanding the foregoing, no party will be required to keep confidential or return any information which: (a) is known or available through other lawful sources, not known to the disclosing party to be bound by a confidentiality agreement with the disclosing party; (b) is or becomes publicly known through no fault of the receiving party or its agents; (c) is required to be disclosed pursuant to an order request of a judicial or governmental authority (provided the disclosing party is given reasonable prior notice of the order or request and the purpose of disclosure); or (d) is developed by the receiving party independently of the disclosure by the disclosing party. The foregoing notwithstanding, Sellers may broadcast and/or publish the public notice required by Section 73.3580 of the FCC Rules.

**16.17. Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument. Each fully executed set of counterparts shall be deemed to be an original, and all of the signed counterparts together shall be deemed to be one and the same instrument.

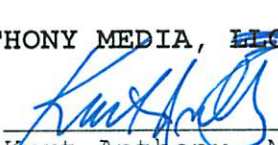
[Signatures are on the following page]

IN WITNESS WHEREOF, and to evidence their assent to the foregoing, Seller and Buyer have executed this Asset Purchase Agreement as of the date first written above.

CHAPARRAL BROADCASTING, INC.

BY:   
Jerrold T. Lundquist, President

ANTHONY MEDIA, ~~LLC~~ <sup>INC</sup>

BY:   
Kurt Anthony, Manager



License for Station KBXI, Facility ID 10336, Billings, Montana

**FCC LICENSES AND AUTHORIZATIONS**

**SCHEDULE 2.1**

TANGIBLE PROPERTY

SCHEDULE 2.2