

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement ("Agreement") is made and entered into this day of August 27 2009, Spirit Media ("Seller") and Jeffrey O'Brien or Assignee ("Buyer").

WITNESSETH:

WHEREAS, Seller is the owner of a translator Construction Permit for Tuba City, Arizona K252ES, Facility ID 155722, channel 252 and equipment, including certain rights to the translator permit issued by the Federal Communications Commission ("FCC" or "Commission") and certain property and other rights used or held for use with the translator permit; and

WHEREAS, Seller desires to sell and assign and Buyer desires to purchase and acquire the CP including the authorizations and assets associated with the translator permit, in accordance with the Agreement ("Binding Agreement"); and

WHEREAS, the translator Construction Permit for K252ES issued by the FCC for the construction of the Station may not be assigned to Buyer without the prior consent of the Commission; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the parties do hereby agree as follows:

1. SALE OF ASSETS AND ASSIGNMENT OF LICENSES

At the Closing, Seller shall sell or assign and transfer to Buyer and Buyer shall purchase from Seller the following assets ("Assets"), free and clear of debts, liens, encumbrances and other security interests except as specifically provided herein:

Tangible Personalty: All the fixed and tangible personal property owned by Seller used for the translator construction permit, as listed in Exhibit A hereto, less any such property consumed, depleted or otherwise disposed of in the ordinary course of business, plus all such property acquired by Seller in the ordinary course of business for the operation of the Stations prior to the Closing Date (the "Tangible Personalty").

Licenses and Authorizations: All licenses, permits, permissions and other authorizations as listed in Exhibit B hereto (including without limitation the right to the use of the translator call signs) if any, which are issued by the Commission and other governmental agencies and that are associated exclusively with the translator construction permit, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Licenses").

Intangible Personal Property: All good will, trademarks, service marks, copyrights, trade names, common law property rights and all other intangible personal property used with the translator, listed on Exhibit B.

Records: Such of Seller's files, logs, relating exclusively to the translator (the "Records").

2. ASSETS EXCLUDED- ALL ASSETS NOT LISTED IN EXHIBIT A, B, OR C

3. PURCHASE PRICE AND OBLIGATIONS WITH RESPECT THERETO

The consideration for the Assets and translator construction permit and equipment, which are being purchased from Seller by Buyer, is the following (the "Purchase Price" of Thirty Thousand Dollars \$30,000):

A. It is understood that under the Binding Agreement, Buyer will deposit Five Thousand (\$5,000) in an escrow account held by Buyer counsel within ten (10) days of the signing of this Agreement.

B. At the Closing Date, Buyer will pay to Seller by wire transfer of immediate available funds to a bank designated by Seller the sum of Twenty Five Thousand Dollars (\$25,000), and fax instructions to seller counsel to release all funds held in escrow for this transaction to Seller.

4. PRORATIONS AND ADJUSTMENTS

All taxes, prepayments (to the extent Buyer obtains the asset for which such prepayment was made), deposits, utility charges, Contracts and income and operating expenses of the translator construction permit shall be prorated between Buyer and Seller as of 12:01 a.m. Arizona time on the Closing Date.

5. EXPENSES

Each party shall bear its own legal, engineering and accounting fees and other costs and expenses with respect to the transaction. Recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Seller to Buyer, if any, will be paid by Seller or Buyer according to prevailing custom in the State of Arizona. The FCC fee for filing the application described in Paragraph 7 hereof shall be divided equally between Buyer and Seller.

6. ASSUMPTION OF CERTAIN LIABILITIES-NONE

7. FILING OF FCC APPLICATION

Seller and Buyer agree to proceed no later than ten (10) days from the due signing of this APA to file an application requesting FCC consent to the transactions herein set forth (the "Application"). If Buyer is dissatisfied seller will refund buyer deposit. The parties agree to prosecute the Application, defend it against challenges and file any amendments or additional information requested by the FCC, all in good faith and with due diligence, such that it may be granted and become a Final Order as expeditiously as practicable. A "Final Order" shall mean a Commission grant that is no longer subject to reconsideration, review or appeal by the Commission or any court of competent jurisdiction.

8. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties, all of which have been relied upon by Buyer in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct on the Closing Date:

A. **Organization:** Seller of this facility and recognized licensee is an entity known as Spirit Media and has full power and authority to enter into and perform this Agreement.

B. **Authorization:** The execution, delivery and performance of this Agreement has been duly authorized by the Seller, and constitutes a valid and binding agreement of Seller, enforceable in accordance with its terms.

C. **Insolvency Proceedings:** No insolvency proceedings of any character, including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement of creditors, voluntary or involuntary, affecting the Seller or the Assets are pending or threatened.

D. **Real Property None**

E. **Commission Licenses:** Exhibit B hereto contains a complete list of all the Construction Permits for an FM translator, permits, and other authorizations issued by the Commission, together with any applications therefore pending before the Commission,

needed for the Seller. The translator construction permit is in full force and effect, has been issued for the full term and Seller has received no notice of any investigations, proceedings, or material complaints pending before or threatened by the Commission which might adversely affect the translator construction permit, other than proceedings intended to be generally applicable to substantial segments of the industry.

G. **Tangible Assets**: Seller has good and marketable title to each item listed on Exhibit B, free and clear of all mortgages, liens, charges or encumbrances.

II. **Employee Relations**: In the conduct of the translator construction permit affairs, Seller has complied in all material respects with all applicable laws, rules and regulations relating to the employment of labor including those relating to collective bargaining and other unfair labor practices, wages, hours, discrimination, and the withholding and payment of social security and similar taxes and is not liable for any arrears or penalties relating thereto which would have a material adverse effect on the operations of the TP or which could result in liability to the Buyer following the Closing. It is expressly understood and agreed that Buyer is not assuming any employment contracts, pension liabilities or employee obligations of Seller including, without limitation, accrued holiday, vacation, or sick leave, and all retirement benefits, if any, and all such matters arising prior to Closing shall be and remain Seller's sole responsibility and obligation. Seller understands and agrees that the discharge, re-employment or continued employment of any current employees of the translator construction permit is at the discretion of Buyer.

I. **Intangible Property**: The Intangible Property includes all good will, trade marks, service marks, copyrights, trade names, intellectual property and other similar intangible property rights currently used to promote or identify the translator construction permit. Seller has no knowledge of any infringement or unlawful or unauthorized use of the Intangible Property or that the Intangible Property may infringe the rights of any third party.

J. **Compliance with Laws; Litigation**: To the best of Seller's knowledge, the translator is in compliance with all applicable federal, state and local laws. Seller has filed all tax returns, FCC reports and other documents required to be filed by any governmental authority with respect to the Assets listed or the translator construction permit. There is no judgment outstanding and, to the best of Seller's knowledge, no litigation, proceeding or investigation of any nature (other than that intended to affect substantial segments of the

industry as a whole) pending or threatened which is likely to materially and adversely affect the translator construction permit or materially and adversely affect the enjoyment and use by Buyer of the translator construction permit to be purchased hereunder.

9. COVENANTS OF SELLER

A. **Negative:** Pending the Closing Date or earlier termination of this Agreement, Seller will not do any of the following without the written consent of Buyer:

(i) Enter into any contract or commitment in relation to the translator construction permit business or employees to which the Buyer will be bound or which will materially adversely affect Buyer's translator construction permit following Closing hereunder.

(ii) Create or assume any mortgage upon or pledge or subject to lien or encumbrance against the translator construction permit;

(iv) Sell, assign, lease, convey, or otherwise transfer or dispose of any of the Assets used for the translator construction permit, or offer to sell the translator construction permit to any person other than Buyer or an assignee of Buyer, as permitted hereunder.

B. **Affirmative:** Pending the Closing Date, Seller will:

(i) Give to Buyer, its counsel, engineers, accountants and other authorized representatives, reasonable access to all of the records pertaining to the translator construction permit.

(ii) Promptly notify Buyer of any unusual or material developments with respect to the translator construction permit.

C. **Translator construction permit:** Seller hereby covenants and agrees to cooperate fully with Buyer concerning any technical proposals or filings with the FCC recommended by Buyer to improve the facilities of the translator construction permit after the closing. The preparation of materials and the submission of any applications with the FCC shall be at the sole expense of Buyer and Buyer shall pay any costs and expenses incurred by Seller relating to such filings in advance

10. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER

Buyer makes the following representations, warranties and covenants, all of which have been relied upon by Seller in entering into this Agreement and, except as specifically otherwise provided, all of which shall be true and correct as of Closing:

A. **Organization and Ownership:** Buyer is a corporation duly organized,

validly existing, and in good standing under the laws of the State of Arizona, is authorized to do business in the State of Arizona and has full power and authority to enter into and perform this Agreement.

B. **Authorization**: The execution and delivery of this Agreement has been duly authorized by the directors and shareholders of Buyer, and constitutes a valid and binding agreement of Buyer, enforceable in accordance with its terms.

C. **No Contravention**: The execution, delivery and performance of this Agreement by Buyer will not violate any provision of its articles of incorporation or bylaws nor will result in a breach of, or constitute a default under, the provisions of any agreement or other instrument to which Buyer or its principals is a party or by which it or its property is bound or affected.

D. **Qualification**: Buyer is fully qualified, legally, financially and otherwise, to become owner of the translator construction permit and to timely consummate all of the transactions contemplated by this Agreement.

11. CONTROL OF Translator construction permit

Nothing contained in this Agreement shall be construed as giving Buyer any right to directly or indirectly supervise or direct the operation of the translator construction permit prior to the Closing. Such operation, including complete control and supervision of all programming, shall be the sole responsibility of Seller. Effective on the Closing Date and thereafter, Seller shall have no control over, nor right to intervene or participate in, the operation of the translator.

12. RISK OF LOSS - DAMAGE TO FACILITIES NONE

13. CLOSING DATE AND PLACE

Buyer shall fix the Closing Date and time by giving at least ten (10) days' written notice thereof to Seller. Unless extended by mutual written consent of Buyer and Seller, the date of Closing shall be no more than ten (10) business days after FCC Staff grant of the Application, provided, however, at the option of Buyer, the Closing may be deferred until not more than one (1) day after such grant becomes a Final Order. For purpose of this Agreement, "Final Order" means an FCC action that has not been reversed, stayed,

enjoined, set aside, annulled, or suspended, and with respect to which no requests or applications are pending for administrative or judicial review, reconsideration, appeal, or stay, and the time for filing any such request or application and the time for the FCC to set aside the action on its own motion have expired. Buyer and Seller agree to close by fax signatures with wire transfer of funds to a bank designated by Seller.

14. CONDITIONS OF CLOSING – SELLER'S OBLIGATIONS

The obligations of Buyer under this Agreement are, at Buyer's option, subject to compliance by Seller with each of the following terms and conditions at or prior to the Closing Date:

A. **Operating Status of Station:** The Station is not operational as only a construction permit has been issued.

B. **Commission Consent:** The Commission shall have granted the Application and, if a petition to deny shall have been filed against the Application, such grant shall have become a Final Order;

C. **Consents:** Seller shall have obtained required written consent to the assignment of the Contracts designated as material in Exhibit C (None) and delivered such consents to Buyer along with true copies of all of the Contracts if any;

D. **Instruments of Conveyance:** Seller shall have delivered to Buyer the following instruments, all of which shall be in form customary in the State of Arizona and reasonably satisfactory to Buyer:

(i) Bills of sale, warranty deeds and other instruments of assignment and transfer, covering the translator construction permit and Records listed in Exhibit A, B & C;

(ii) Such other documents as Buyer shall reasonably request and which are necessary to place Buyer in actual possession and operating control of the translator construction permit being transferred hereunder.

E. **Other Acts:** Seller shall, within reason, have done any other acts, which are necessary to effectuate the transactions contemplated herein.

15. CONDITIONS OF CLOSING - BUYER'S OBLIGATIONS

The obligations of Seller under this Agreement are, at Seller's option, subject to compliance by Buyer with each of the following terms and conditions at or prior to the Closing Date:

- A. **Commission Consent**: The Commission shall have approved the assignment of the translator construction permit from Seller to Buyer, and at Buyer's option, such approval shall have become a Final Order.
- B. **Purchase Price**: Buyer shall have delivered to Seller the Purchase Price.
- C. **Other Acts**: Buyer shall, within reason, have done any other acts, which are necessary to effectuate the transactions contemplated herein.

16. TERMINATION

- A. If the Commission has not granted the Application within (6) months of the date hereof, either Buyer or Seller may terminate this entire Agreement upon written notice to the other, provided that the party seeking to terminate is not in default hereunder.
- B. Either party may terminate this Agreement if the other shall be in material breach hereof and if the said breach shall not have been cured within ten (10) days of written notice thereof by the party seeking to terminate, provided, however, that if any such breach is not reasonably susceptible of being cured within ten days, then the party in breach shall have undertaken to cure the breach with all reasonable diligence and shall have cured the breach as promptly as is reasonably practicable.

17. REMEDIES

If this Agreement is terminated due to no fault of either Buyer or Seller, then neither party shall have any liability to the other. If the Agreement is terminated due to a material default of Seller then, in addition to any other remedies to which it may be entitled, Buyer may seek a decree of specific performance, it being agreed by both Buyer and Seller that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyer for the loss of an

opportunity to acquire the Station on the terms set forth herein. If this Agreement is terminated due to Buyer's material default hereunder, then Seller shall retain the Escrow Deposit as liquidated damages, and not as a penalty, it being agreed that actual damages would be difficult to calculate and that the amount of the Escrow Deposit is a reasonable estimate of Seller's damages.

18. INDEMNIFICATION

Seller shall indemnify, defend, and hold Buyer harmless against all claims, demands and legal actions and will reimburse Buyer for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the operation of the translator construction permit prior to Closing or the material breach by Seller of any of its representations, warranties or covenants set forth herein. Buyer shall indemnify, defend and hold Seller harmless against all claims, demands and legal actions, and will reimburse Seller for any damages (including legal fees incurred with respect to same) resulting from, or arising out of, the operation of the translator construction permit after Closing or the material breach by Buyer of any of its representations, warranties or covenants set forth herein. Should any claims covered by the foregoing provisions be asserted against either party, the party being charged shall notify the other promptly and give it an opportunity to defend the same; the parties shall extend reasonable cooperation to each other in connection with such defense.

19. NOTICES

All necessary notices, demands and requests shall be deemed duly given if mailed by certified mail – return receipt, postage prepaid, addressed as follows:

Seller: Spirit Media / Freddie Begay P.O. Box 365 Kealahou, HI
96750

Buyer: Jeffrey O'Brien or assignee

PRESERVATION OF BOOKS AND RECORDS

For one (1) year after the Closing, (a) Buyer will preserve the Records and will allow Seller reasonable access to them and (b) Seller will preserve all other books and records relating to the translator construction permit (including all tax records) and will allow Buyer reasonable access to them.

21. PRESS RELEASES

The parties will advise and consult with one another prior to the issuance of any public announcements pertaining to the transactions contemplated hereby, and no such announcement will be made by either party without written consent to the other, except as otherwise required by law.

22. SURVIVAL

Except as otherwise specifically provided herein, the representations, warranties, covenants, and agreements contained herein and in any certificate or other instrument delivered pursuant hereto shall be deemed and construed to be continuous and shall survive the Closing hereunder and the payment of the Purchase Price for a period of one year.

23. BROKER/FINDER

Buyer and Seller hereby mutually represent that there are no finders, consultants or brokers involved in this transaction and that neither Seller nor Buyer has agreed to pay any brokers', and finders 'or consultants' fees in connection with this transaction.

24. ASSIGNMENT

Neither party hereto may assign this Agreement or its rights and obligations hereunder without the written consent of the other, whose consent shall not be unreasonably withheld.

25. CONSTRUCTION

This Agreement shall be construed and enforced in accordance with the laws of the State of Arizona. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and to this end only the provisions of this Agreement are declared severable.

26. COOPERATION

Each party hereto agrees to perform such further acts and to execute and deliver such further documents as may be necessary or desirable to effectuate the purposes of this Agreement including but not limited to the obligations of the parties set forth in Section

9C hercof.

27. TIME OF ESSENCE

Time is of the essence with respect to every provision of this Agreement.

28. ENTIRE AGREEMENT

This Agreement embodies the entire agreement among the parties and supersedes all prior agreements and understandings among the parties. No attempted change, termination or waiver of any of the provisions hereof shall be binding except by a written instrument signed by the party against which the same is sought to be enforced.

29. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

EXECUTED on the day first above written,

Spirit Media representative, Freddie W. Begay

Freddie W. Begay Date 09/18/2009

Freddie W. Begay, Individual

Freddie W. Begay Date 09/18/2009

By Jeffrey O'Brien or Assignee

POCKET Radio Inc Assignee Date 09/18/2009
POCKET Radio PRESIDENT
JOHN LOREN