

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is entered into as of this 1st day of April, 2016 (the “Effective Date”) by and between **TRI STATE RADIO, LLC**, a limited liability company organized under the state of Utah (“Seller”), and the **UNIVERSITY OF UTAH**, a body politic and corporate of the state of Utah (“Buyer”) (each a “Party” and, collectively, the “Parties”).

RECITALS

WHEREAS, Seller is the licensee and operator of full service FM radio broadcast station KYLZ(FM) (Facility ID 170181), authorized to operate on 93.9 MHz, Enoch, Utah (the “Station”), pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”);

WHEREAS, Seller owns or leases all other assets used in connection with the operation of the Station; and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to purchase substantially all of the assets owned or leased by Seller and used in connection with the operation of the Station;

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to the following terms and conditions:

ARTICLE 1: SALE AND PURCHASE

1.1 **Purchased Assets**. Subject to the terms and conditions herein contained, Seller shall grant, convey, sell, assign, transfer and deliver to Buyer on the Closing Date (as defined below) all assets, properties, interests and rights of Seller owned, used or useful in connection with the operation of the Station (collectively, the “Purchased Assets”), but excluding the Excluded Assets (as defined below). The Purchased Assets shall include, without limitation, the following:

(a) **Licenses and Authorizations**. All licenses, authorizations, permits, granted construction permits, together with any renewals, extensions or modifications thereof and additions thereto, and all pending applications for FCC licenses, permits, and authorizations applied for or issued with respect to the Station by the FCC (collectively, the “FCC Authorizations”), by the Federal Aviation Administration (“FAA”), and by any other federal, state or local governmental authorities in connection with the conduct of the business and operation of the Station, as set forth in Schedule 1.1(a) attached hereto.

(b) **Tangible Personal Property**. The machinery and equipment, towers, transmitters, transmission lines, antennas, cables, spare parts and other tangible personal property (including associated manufacturers and vendor warranties) used or held for use in connection with the operation of the Station, including the tangible property listed and described on Schedule

1.1(b) attached hereto, and any additions and improvements thereto between the Effective Date and the Closing Date (collectively, the “Tangible Personal Property”).

(c) **Intangible Property.** All of Seller’s rights in the Station’s call sign or call letters and in any trademarks, trade names, service marks, patents, patent applications, internet domain names and associated websites, social media, copyrights, programs and programming material (including program rights), jingles, slogans, logos, and other intangible property, owned or leased by Seller and primarily used or held for use in the operation of the Station, as set forth in Schedule 1.1(c), and all goodwill associated with the foregoing (collectively, the “Intangible Property”).

(d) **Files and Records.** The Station’s public inspection file, FCC logs and other compliance records, filings with the FCC relating to the Station, and all other technical information, engineering data, books and records that relate to the Station and the Purchased Assets being conveyed hereunder; any sales and promotional literature, manuals and data, sales and purchase correspondence and data, advertiser lists, lists of present and former suppliers, and lists of present and former customers that relate to the Station and the Purchased Assets.

(e) **Claims.** Any and all claims and rights against third parties if and to the extent that they relate to Purchased Assets, including, without limitation, all rights under any insurance policies and manufacturers’ and vendors’ warranties.

(f) **Prepaid Items.** All advance payments, deposits, reserves and prepaid expenses relating to the Purchased Assets and prepaid taxes relating to the Purchased Assets.

1.2 **Excluded Assets.** The following shall be excluded from the Purchased Assets and retained by Seller (collectively, the “Excluded Assets”):

(a) **Cash.** All cash, cash equivalents or similar investments such as certificates of deposit, treasury bills and other marketable securities on hand and/or in banks and deposits of Seller.

(b) **Accounts Receivable.** Any accounts receivable of Seller arising from the operation of the Station prior to the Closing which are outstanding and uncollected as of the Closing (the “Accounts Receivable”).

(c) **Other Receivables.** Any intercompany accounts, promissory notes, amounts due from employees, bonds, letters of credit, or other similar items.

(d) **Benefit Plans.** Any pension, profit-sharing or cash or deferred (Section 401(k)) plans and trusts and assets thereof, or any other employee benefit plan or arrangement, and the assets thereof.

(e) **Tax Refunds.** Any interest in and to any refunds of federal, state or local franchise, income or other taxes of Seller for taxes incurred and actually paid by Seller prior to the Closing.

(f) **Books and Records.** Except for books and records described in Section 1.1(d), the financial records, account books and general ledgers, and all corporate records (including organizational documents) of Seller, including tax returns and stock transfer books.

(g) **Contracts.** Any agreements, licenses, permits, authorizations, leases, subleases, or other contracts of any kind, other than those expressly set forth in Schedule 1.1(a), Schedule 1.1(b), or Schedule 1.1(c).

1.3 **Liabilities.**

(a) **Liens.** The Purchased Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities and encumbrances of every kind and nature ("Liens"), other than for taxes not yet due and payable and Buyer's obligations to perform on and after the Closing Date the obligations arising under the Purchased Assets. Taxes on Purchased Assets that are not yet due and payable, Liens that will be discharged prior to Closing (including purchase money security interests, if any) and Buyer's obligations to perform on and after the Closing Date the obligations arising under the Purchased Assets are referred to as "Permitted Liens."

(b) **Assumed Liabilities.** Buyer shall assume and undertake to pay, discharge and perform all obligations and liabilities relating to the Purchased Assets first arising after the Closing (collectively, the "Assumed Liabilities").

(c) **Retained Liabilities.** With the sole exception of the Assumed Liabilities, Buyer does not agree to assume any obligations or liabilities of Seller, whether such obligations or liabilities are known or unknown, fixed or contingent, including without limitation the following: (i) any obligations or liabilities relating to the operation of the Station prior to the Closing, (ii) any accounts payable or other obligations relating to the operation of the Station prior to the Closing, (iii) any obligations or liabilities of Seller which are unrelated to the Purchased Assets being sold hereunder, (iv) any obligations or liabilities relating to employees of Seller (including any pension obligations or pension withdrawal liabilities), (v) any obligations or liabilities relating to or arising from the Excluded Assets, (vi) any federal, state or local franchise, income or other taxes of Seller or attributable to the operation of the Station for any period prior to the Closing Date, or (vii) any obligations or liabilities arising out of any litigation, claim or proceeding now or hereafter pending or threatened against Seller or relating to Seller's ownership of the Purchased Assets or Seller's operation of the Station prior to the Closing Date). All such liabilities (collectively, the "Retained Liabilities") shall remain the sole obligation of Seller, and Seller shall pay and discharge the Retained Liabilities when and as they come due.

1.4 **Purchase Price.**

(a) **Purchase Price.** The total aggregate purchase price to be paid for the Purchased Assets (the "Purchase Price") will be four hundred and fifty thousand dollars (\$450,000). Buyer shall pay the Purchase Price to Seller in accordance with the following terms:

- (i) Buyer will pay to Seller an initial deposit of twenty-five thousand dollars (\$25,000) upon the execution of this Agreement (the “Deposit”), and the Deposit shall be applied against the Purchase Price as of the Closing Date.
- (ii) Buyer shall pay Seller seventy-five thousand dollars (\$75,000) of the Purchase Price on the Closing Date (the “Closing Date Payment”).
- (iii) The remaining three hundred and fifty thousand dollars (\$350,000) of the Purchase Price shall be invoiced annually, on the first anniversary of the Closing Date and each anniversary thereafter, in five (5) equal installments of seventy thousand dollars (\$70,000) (each, a “Annual Payment”). Each Annual Payment shall be due and payable in full within forty-five (45) days from the Buyer’s receipt of such invoice. In accordance with Section 10.1 of this Agreement, all provisions of this Section 1.4 shall survive the Closing until all amounts due and payable under this Agreement have been paid in full and any disputes relating to payment of the Purchase Price have been finally determined.

(b) **Failure of Timely Invoice/Loss of FCC Authorizations/Disputes.** In the event that Seller shall fail timely to submit an invoice or invoices in accordance with the terms of Section 1.4(a)(iii), above, Buyer is not thereby relieved of the obligation to make each and all of the Annual Payments once it receives the applicable invoice(s). In the event of an untimely invoice, Buyer shall make payment within forty-five (45) days of Buyer’s receipt of the invoice. In the event of the loss or substantial impairment of the FCC Authorizations resulting from Seller’s actions or inactions prior to Closing, Buyer shall, in addition to all other remedies available to Buyer, including but not limited to the indemnification provisions set out in Article 10 hereof, be relieved of any obligation to make any further Annual Payments. For purposes of this Agreement, the term substantial impairment means any material modification or limitation of the Station’s FCC Authorizations to reduce the Station’s technical facilities or hours of operation or otherwise to prevent the Station from being operated or constructed substantially as now authorized. If any initial action is taken by the FCC to revoke or substantially impair (as described herein) the FCC Authorizations, and such action is caused by the action or inaction of Seller prior to Closing, then Buyer may withhold any further Annual Payment pending a Final Order by the FCC or court of competent jurisdiction; provided that, if the Final Order restores the FCC Authorizations without substantial impairment, then Buyer shall immediately resume payment of the Annual Payments, but without any penalty for late payment. Otherwise, the loss or impairment of the FCC Authorizations not resulting from actions or inactions of Seller prior to Closing shall not relieve Buyer of its obligation to make each and all of the Annual Payments.

(c) **Late Payments.** All late payments shall bear interest at the lesser of the rate of 1% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly.

1.5 **Prorations.** The Parties agree to prorate all FCC regulatory fees (based on the most recent publicly available information about the cost of such regulatory fees for the Station), power and utilities charges, and real and personal property taxes upon the basis of the most recent tax bills arising out of the operation of the Station which are incurred, accrued, or payable, all as of

11:59 p.m. local time of the day preceding the Closing, to reflect the principle that such expenses arising from the operation of the Station or relating to the Purchased Assets before the Closing Date shall be for the account of Seller and such expenses arising from the operation of the Station or relating to the Purchased Assets on or after the Closing Date shall be for the account of Buyer. Such prorations shall be determined by the mutual agreement of the Parties working in good faith and a corresponding adjustment shall be made to the Closing Date Payment, with final settlement and payment to be made by Buyer to Seller or by Seller to Buyer within forty-five (45) days after the Closing Date.

1.6 **Allocation of Purchase Price.** Buyer and Seller shall negotiate in good faith an allocation of the Purchase Price to the assets acquired hereunder in a manner which complies with Section 1060 of the Internal Revenue Code of 1986, as amended to the date hereof (the "Code"), prior to Closing.

1.7 **Payment Method.** All amounts due and payable under this Agreement shall be in U.S. Dollars, and shall be payable by wire transfer or other method of immediately available funds (including, for example, a cashier's check).

ARTICLE 2: FCC CONSENT; CLOSING

2.1 **FCC Consent; Assignment Application.** Buyer and Seller shall prepare, execute and file a substantially complete application to the FCC (the "Assignment Application") requesting the FCC's consent (the "FCC Consent") to the assignment from Seller to Buyer of all FCC Authorizations pertaining to the Station. The Assignment Application shall be filed not later than ten (10) business days after the date of the execution of this Agreement. Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC in order to secure such FCC Consent without delay and to promptly consummate the transaction contemplated in this Agreement. Buyer shall pay the FCC filing fees due in connection with the Assignment Application, one-half of which fees shall be credited against the Purchase Price at the Closing. Each Party shall be responsible for all of its other costs with respect to the preparation, filing and prosecution of the Assignment Application. Seller and Buyer shall vigorously prosecute the Assignment Application before the FCC and otherwise use commercially reasonable efforts in order to obtain the FCC Consent promptly and in order to carry out the provisions of this Agreement. Buyer and Seller shall promptly notify each other of, and provide copies of, all documents filed with or received from the FCC or any other governmental agency with respect to this Agreement, the Assignment Application or the transaction contemplated hereby. If FCC reconsideration or review, or judicial review, shall be sought with respect to the FCC Consent by a third party or upon the FCC's own motion, Buyer and Seller shall cooperate in opposing such requests for FCC reconsideration or review or for judicial review. If Buyer or Seller becomes aware of any fact which would prevent or delay the FCC Consent or the Final Order (as defined in Section 2.2), it shall promptly notify the other Party.

2.2 **Closing Date; Closing Place.** The closing (the "Closing") of the transaction contemplated in this Agreement shall occur on a date (the "Closing Date") that is no more than ten (10) business days following the date on which the FCC Consent shall have become a Final Order (as defined below) unless such requirement shall have been waived by Buyer in its sole discretion, provided that the other conditions to the Closing set forth in Articles 7 and 8 hereof shall have

either been waived or satisfied; and Seller and Buyer agree that, should the FCC Consent not become a Final Order before the effectiveness of the FCC Consent would ordinarily expire, then they shall cooperate to the extent necessary to obtain such FCC extension of the effectiveness of the FCC Consent as may be required. The Closing shall be deemed to be effective at 12:01 am on the date on which the Closing occurs. For purposes of this Agreement, the term “Final Order” means action by the FCC consenting to the Assignment Application, which consent has not been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which action no timely request for stay, petition for rehearing, petition for reconsideration, application for review, or notice of appeal is pending, and as to which the times for filing any such request, petition, application, notice, or appeal, or for reconsideration or review by the FCC on its own motion, shall have expired. The Closing shall be held at the offices of Buyer’s counsel, or by exchange of documents via email, or as Seller and Buyer may agree.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer, as of the date hereof and again at and as of the Closing:

3.1 **Organization and Authorization.** Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Utah and is qualified to do business in the State of Utah. Seller has the power and authority to execute and deliver this Agreement and to consummate the transaction contemplated hereby. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby on Seller’s part, have been duly and validly authorized by Seller, and no other actions on the part of Seller are necessary to authorize the execution and delivery of, or the performance of Seller’s obligations under, this Agreement, or to consummate the transaction contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller. This Agreement constitutes the legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors’ rights or the application of principles of equity.

3.2 **No Defaults.** The execution, delivery, and performance of this Agreement by Seller will not (i) constitute a violation of, or conflict with, Seller’s organizational documents; (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to the business of the Station and to which Seller or any of the Purchased Assets may be subject; (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Seller or any of the Purchased Assets; (iv) result in the creation or imposition of any Lien, charge, or encumbrance of any nature whatsoever upon any of the Purchased Assets, other than Permitted Liens; or (v) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent, except as otherwise noted in Schedule 3.9 hereto.

3.3 **Tangible Personal Property.** Schedule 1.1(b) hereto contains a list of the material Tangible Personal Property owned by Seller that will be conveyed to Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property.

As of the date of the Station's last "on-air" operation, each material item of Tangible Personal Property (i) was in good condition and repair, ordinary wear and tear excepted, and (ii) is operating in full compliance with the FCC Authorizations and rules and regulations of the FCC and FAA, and since that time, each material item of Tangible Personal Property has been maintained in a manner substantially consistent with generally accepted standards of good engineering practice.

3.4 **FCC Authorizations and Other Licenses.**

(a) Schedule 1.1(a) hereto contains a true and complete list of the FCC Authorizations and all other licenses, permits, construction permits, or other authorizations from governmental or regulatory authorities (including without limitation all pending applications for FCC licenses, permits, and authorizations applied for in connection with the operation of the Station), together with any renewals, extensions or modifications thereof and additions thereto, that are required for the lawful conduct of the business and operations of the Station in the manner and to the full extent that the Station is presently operated. Except as listed on Schedule 1.1(a), the FCC Authorizations and other licenses were validly issued by the FCC or other governmental or regulatory authority, as applicable, and are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations and the other licenses, permits, and authorizations listed on Schedule 1.1(a), none of which is subject to any restrictions or conditions that would limit the operations of the Station, other than (i) as may be set forth on the faces of such FCC Authorizations and other licenses, or (ii) as may be applicable to substantial segments of the full service FM radio broadcasting industry. Subject to the provisions set forth in Section 3.15 hereinbelow, Seller has at all times operated the Station in material compliance with the FCC Authorizations, the Communications Act of 1934, as amended to the date hereof (the "Communications Act"), and all regulations and published policies of the FCC (collectively, the "Communications Laws"). The Station is not causing objectionable interference to any other station. To Seller's knowledge, there is not now pending, or threatened, any action by or before the FCC to revoke, cancel, rescind, modify, terminate or refuse to renew any of such FCC Authorizations. Except as set forth in Schedule 3.4(a), Seller has not received any notice of, and has no knowledge of, (i) any pending, issued, or outstanding order by or before the FCC, or of any investigation, petition, inquiry, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or complaint against either the Station or Seller or (ii) any application, action or proceeding by or before the FCC for the renewal of the Station's FCC Authorizations as to which any petition to deny or objection has been filed. Except as set forth in Schedule 3.4(a), all reports and filings required to be filed with the FCC by Seller with respect to the operation of the Station have been filed, and all such reports and filings are accurate and complete. Seller has paid all FCC regulatory fees due and payable by Seller with respect to the Station. To the extent any renewal applications are due, Seller has timely filed license renewal applications for such licenses. Seller maintains a public inspection file for the Station, and such public file complies with the Communications Laws. At the time of on-air operations, the operations of the Station did not exceed permissible levels of exposure to non-ionizing electromagnetic radiofrequency ("RF") radiation specified in the FCC's rules and regulations concerning RF radiation. Except as set forth on Schedule 1.1(a), the Station was not silent or operating on less than the required minimum schedule for a period of time of more than thirty (30) days during the current license term without Commission authority or application therefor.

(b) Schedule 3.4(b) hereto identifies the tower(s) on which the main antenna of the Station are mounted, as well as all antenna support structures, including any guy anchors and guy wires, used or useful in connection with the operation of the Station (together, the “Tower”). Except as set forth on Schedule 3.4(b) hereto, Seller’s presence on any of the Transmission Structures (as defined below) has been registered to the extent required by law, and Seller has complied in all material respects with the FCC Authorizations as relating to such Transmission Structures. To the knowledge of Seller, the owners of all such Transmission Structures have constructed, operated and maintained the Transmission Structures in compliance in all material respects with all applicable laws (and including, to the extent applicable, all such laws concerning the marking, painting, lighting, height and registration of the transmission structures). “Transmission Structure” shall mean all Towers, buildings (including transmitter buildings) and other structures and improvements used or useful in connection with the operation of the Station.

3.5 **Title.** Except as set forth on Schedule 3.5 hereof, no Liens exist or have been filed or recorded against the Purchased Assets in the public records of the Secretary of State of Seller’s state of organization or in any other jurisdiction in which the Purchased Assets are located. Any Lien listed on Schedule 3.5 will be fully discharged on or prior to the Closing Date. The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Purchased Assets to Buyer, will transfer good and marketable title to the Purchased Assets, free and clear of all Liens other than Permitted Liens.

3.6 **Employees.** Seller is not a party or subject to any labor union or collective bargaining agreements with respect to the Station. Seller, in the operation of the Station, has complied with all applicable laws, rules and regulations relating to the employment of labor, including those related to wages, hours, collective bargaining, occupational safety, discrimination, and the payment of social security and other payroll-related taxes, and it has not received any notice alleging that it has failed to comply with any such laws, rules or regulations. No labor union or other collective bargaining representative represents or, to the knowledge of Seller, claims to represent any of the employees of the Station. To the knowledge of Seller, there is no effort being made to organize the employees or any group of employees of the Station for purposes of collective bargaining.

3.7 **Brokers.** There is no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding, or action on the part of Seller.

3.8 **Litigation; Compliance with Law.** Seller is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of the Station or the Purchased Assets or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and to Seller’s knowledge no such proceeding is pending. Except as set forth in Schedule 3.4(a), there is no litigation or administrative investigation or proceeding pending by or against, or, to Seller’s knowledge, threatened against, Seller which relates to the Station or which could materially and adversely affect any of the Purchased Assets. Seller, with respect to the Station, has complied with all applicable laws, regulations, orders, or decrees. The present uses by Seller of the Purchased Assets do not violate any such laws, regulations, orders, or decrees, and Seller has no

knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing.

3.9 **Approvals and Consents.** Except as described in Schedule 3.9 hereto, the execution, delivery and performance by Seller of this Agreement and the consummation of the transaction contemplated hereby will not require any consent, permit, license or approval of any person, entity or government or regulatory authority other than the FCC Consent.

3.10 **Environmental Matters.** (i) To its knowledge, Seller has not, in connection with its business or assets, generated, used, transported, treated, stored, released or disposed of, or has suffered or knowingly permitted anyone else to generate, use transport, treat, store, release or dispose of any Hazardous Substance (as defined below) in violation of any applicable environmental law; (ii) to Seller's knowledge, there has not been any generation, use, transportation, treatment, storage, release or disposal of any Hazardous Substance in connection with the conduct of Seller's business which has created or might reasonably be expected to create any liability under any applicable environmental law or which would require reporting to or notification of any governmental entity; (iii) to the knowledge of Seller, no asbestos or polychlorinated biphenyl or underground storage tank is contained in or located at any facility used in connection with its business; and (iv) to Seller's knowledge, any Hazardous Substance handled or dealt with in any way in connection with Seller's business has been and is being handled or dealt with in compliance with all applicable environmental laws. To Seller's knowledge, Seller and the Station are in compliance with all environmental, health and safety laws applicable to leased real property included in the Purchased Assets. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller or the Station that asserts that Seller or the Station has violated any environmental, health or safety laws applicable to such real property. Seller has not requested or obtained any Phase I environmental assessments of owned or leased real property included in the Purchased Assets. "Hazardous Substance" means substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances," or any other formulation of any applicable environmental law intended to define, list or classify substances by reason of deleterious properties such as ignitibility, corrosivity, reactivity, radioactivity, carcinogenicity, reproductive toxicity and petroleum and drilling fluids, produced waters and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

3.11 **Taxes.** Seller has duly, timely, and in the required manner filed all federal, state, and local income, franchise, sales, use, property, excise, payroll, and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies, and losses required to be paid. No event has occurred which could impose upon Buyer any liability for any taxes, penalties, or interest due or to become due from Seller from any taxing authority.

3.12 **Sufficiency of Assets.** The Purchased Assets, together with the Excluded Assets described in Section 1.2, are sufficient for the conduct of the business and the operation of the Station as presently operated by Seller. The Purchased Assets constitute all material assets regularly used or held for use to operate the Station.

3.13 **Intellectual Property.** Seller owns or possesses, has valid licenses for or is an authorized user of any Computer Software, Intangible Property and Information Technology necessary to carry on the Station's business as it is currently being operated by Seller. To Seller's knowledge, Seller is not infringing upon or otherwise acting adversely to any intellectual property owned by any other person, and Seller has not received any notice of infringement of or conflict or of asserted rights of others with respect to any such intellectual property, nor does Seller have any knowledge of any basis for such a claim or assertion. To Seller's knowledge, no other person is infringing upon Seller's rights or ownership in the Intangible Property. As used herein, "Computer Software" means all computer software and databases (including source code, object code and all related documentation) and "Information Technology" means rights for use of the computers, Computer Software, firmware, middleware, servers, workstations, routers, hubs, switches, intra-office data communications lines, and all other information technology equipment and elements, and associated documentation, in each case, which are necessary for the operation of the Station, if any.

3.14 **Absence of Insolvency.** No insolvency proceedings of any character including without limitation, bankruptcy, receivership, reorganization, composition or arrangements with creditors, voluntary or involuntary, affecting Seller or any of the Purchased Assets, are pending or, to the best knowledge of Seller, threatened, and Seller has made no assignment for the benefit of creditors, nor taken any action with a view to, or which would constitute the basis for the institution of, any such insolvency proceedings.

3.15 **Accuracy of Representations and Statements.** No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit, or schedule furnished or to be furnished by Seller in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer in the circumstance under which such representation, warranty, or statement was made. Buyer understands that, as of the Effective Date, the Station is not on the air. Therefore, any representations and warranties made by Seller in this Article 3, or any covenants made by Seller in Article 5 or in any other part of this Agreement with respect to Seller's "operation" of the Station do not refer to any on-the-air operation of the Station by Seller as of the Effective Date.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties to Seller, as of the date hereof and again at and as of the Closing:

4.1 **Organization and Standing.** Buyer is a body politic and corporate of the state of Utah, and is duly organized, validly existing, and in good standing under the laws of the State of Utah.

4.2 **Authorization.** Buyer has the power and authority to execute and deliver this Agreement, and to consummate the transaction contemplated hereby. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby have been duly and validly authorized by Buyer, Buyer's members and/or Buyer's board of governors, as

applicable, and no other proceedings on the part of Buyer are necessary to authorize the execution and delivery of, or the performance of Buyer's obligations under this Agreement, or to consummate the transaction contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer. This Agreement constitutes the legal, valid, and binding agreement of Buyer enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

4.3 **No Defaults.** The execution, delivery, and performance of this Agreement by Buyer will not (i) conflict with or result in any breach of any provision of the articles of organization, operating agreement, or other similar organizational documents of Buyer, or (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation of Buyer, except for such defaults (or rights of termination, cancellation, or acceleration) or conflicts as to which requisite waivers or consents have been obtained and delivered to Seller, (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Buyer, or (iv) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent.

4.4 **Buyer's Qualification.** Apart from the requirement of the FCC Consent, Buyer is legally, financially, and technically qualified to acquire and to become the FCC licensee of, the Station and to perform its obligations under this Agreement (including to pay the Purchase Price).

4.5 **Litigation.** Buyer is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of Buyer or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and no such proceeding is pending. There is no litigation pending by or against, or, to the knowledge of Buyer, threatened against Buyer, that would prevent or impede the consummation by Buyer of the transaction contemplated by this Agreement.

4.6 **Brokers.** There is no broker or finder or other person who would have any valid claim for a commission or a brokerage fee in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding, or action on the part of Buyer.

4.7 **Accuracy of Representations and Statements.** No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit, or schedule furnished or to be furnished by Buyer in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Seller in the circumstance under which such representation, warranty, or statement was made.

ARTICLE 5: COVENANTS OF SELLER

5.1 **Station Documents.** Until the Closing, the records, files and other documents kept in connection with the Station shall be maintained by Seller in the usual and ordinary manner consistent with standard broadcast industry practice. Seller shall maintain the FCC Authorizations in accordance with their terms and in compliance with all applicable laws, rules and regulations and all applicable FCC regulations and published policies. Seller shall maintain the FCC Authorizations in full force and effect and shall take all actions necessary to so maintain them, including but not limited to the timely filing and prosecution of any necessary modification or renewal applications of the FCC Authorizations or other submissions to the FCC.

5.2 **Maintenance of Purchased Assets.** Until the Closing, Seller shall maintain the Purchased Assets in good working order consistent with standards of good engineering practice. Seller will replace any of such property that is used or useful in the operation of the Station which shall be worn out, lost, stolen, or destroyed with like property of substantially equivalent kind and value.

5.3 **FCC Compliance.** Until the Closing, Seller shall continue to maintain the Station in accordance with the terms of the FCC Authorizations and in compliance with all applicable laws and FCC regulations and published policies. Seller will deliver to Buyer, promptly after filing, copies of any reports, applications, or responses to the FCC, or any material communications from the FCC, or if from any other party directed to the FCC, promptly after receipt by Seller, related to the Station that are filed or received by Seller between the date of this Agreement and the Closing Date. Seller will not file any application with the FCC requesting authority to modify the Station's facilities without Buyer's prior written consent and Seller shall take all actions necessary to keep the FCC Authorizations, including all permits and applications pending before the FCC, valid and in full force and effect. Seller shall promptly take all necessary or desirable action to obtain a grant of any required renewal application for the Station, including, but not limited to, negotiating and entering into a tolling agreement with the FCC if necessary.

5.4 **Operation of Station in Ordinary Course.** Without prejudice to Section 5.3, until the Closing, except as disclosed in writing to and approved in writing by Buyer, and subject to Seller's ultimate control over the operations of the Station, Seller shall maintain the Station solely in the ordinary course of business and in accordance with past practice, and shall pay and perform all of its obligations with respect to the Station in the ordinary course as such obligations become due.

5.5 **Disposition of Assets.** Prior to the Closing, Seller shall not, without the prior written consent of Buyer, sell, lease, or transfer, or agree to sell, lease, or transfer, any of the Purchased Assets that are used or useful in the Station without replacement thereof with an asset of equivalent kind, condition, and value that satisfies industry standards for such assets, nor create any new Lien on the Purchased Assets other than Permitted Liens and Liens arising pursuant to, and in accordance with the terms of, this Agreement.

5.6 **Compliance with Law.** Until the Closing, Seller shall comply with all federal, state, and local laws, rules and regulations in connection with the operation of the Station.

5.7 **Access to Facilities, Files and Records.** At the request of Buyer, prior to Closing, Seller shall from time to time give or cause to be given to Buyer full access during normal business hours to the Purchased Assets, and all accounts, books, licenses, agreements, contracts and equipment with respect to the Station; provided, however, that all such access shall require the express consent of Seller and shall be scheduled in a manner reasonably acceptable to Seller.

5.8 **Representations and Warranties.** Until the Closing, Seller shall give detailed written notice to Buyer promptly upon learning of the occurrence of any event that would cause or constitute a breach, or that would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of the representations or warranties contained in this Agreement. Seller shall use commercially reasonable efforts to cure any such event. Updates provided in order to comply with the covenant in this Section 5.8 will not have any impact on Buyer's Conditions to Closing or serve to limit Buyer's right to indemnification hereunder.

5.9 **Consummation of Agreement.** Seller shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to cause the transaction contemplated by this Agreement to be fully carried out.

5.10 **Employees.** Buyer shall have no obligation to offer employment to any employee of Seller or the Station. Buyer shall have no liability with respect to any such employee or for any such employee's benefits of any kind or nature, except to the extent that Buyer shall offer employment to any such employee and then only from and after the time at which such offer shall have been extended, and accepted by such employee, and subject to the terms and conditions thereof.

5.11 **Exclusivity.** From the Effective Date until the earliest of (a) the Closing Date or (b) the termination of this Agreement, Seller shall not, and shall not permit any of its affiliates or any employees, partners, directors, officers, attorneys, accountants, financial advisors, representatives or agents of the foregoing to, directly or indirectly, review, solicit, initiate or agree to any proposals for, or exchange information (including by way of furnishing information concerning Seller or the Station) or enter into any negotiations concerning, or respond in writing to any inquiries for, the acquisition of Seller, the Station, the Purchased Assets or any substantial part thereof.

ARTICLE 6: COVENANTS OF BUYER

6.1 **Representations and Warranties.** Until the Closing, Buyer shall give detailed written notice to Seller promptly upon learning of the occurrence of any event that would cause or constitute a breach or would have caused a breach had such event occurred or been known to Buyer prior to the date hereof, of any of the representations and warranties of Buyer contained in this Agreement. Buyer shall use commercially reasonable efforts to cure any such event. Updates provided in order to comply with the covenant in this Section 6.1 will not have any impact on Seller's Conditions to Closing or serve to limit Seller's right to indemnification hereunder.

6.2 **Consummation of Agreement.** Until the Closing, Buyer shall use all commercially reasonable efforts to fulfill and perform all conditions and obligations on its part to

be fulfilled and performed under this Agreement, and to cause the transaction contemplated by this Agreement to be fully carried out.

ARTICLE 7: CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date.

7.1 Representations, Warranties and Covenants.

(a) Each of the representations and warranties of Buyer contained in this Agreement is true and correct in all material respects as of the date hereof and again at and as of the Closing Date (in each case, excluding any materiality qualifications set forth in such representations and warranties).

(b) Buyer shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

7.2 **Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) and no action is pending which would restrain or prohibit the consummation of the transaction contemplated hereby.

7.3 **FCC Authorizations.** The FCC Consent has been issued by the FCC with no conditions adverse to Seller.

7.4 **Deliveries.** Buyer has complied with each and every one of its obligations set forth in Section 9.2.

ARTICLE 8: CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date.

8.1 Representations, Warranties and Covenants.

(a) Each of the representations and warranties of Seller contained in this Agreement is true and correct in all material respects as of the date hereof and again at and as of the Closing Date (in each case, excluding any materiality qualifications set forth in such representations and warranties).

(b) Seller shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

8.2 **Proceedings.** Neither Seller nor Buyer is subject to any restraining order or injunction (or similar action) and no action is pending which would restrain or prohibit the consummation of the transaction contemplated hereby.

8.3 **FCC Authorizations.** The FCC Consent shall have been issued by the FCC with no conditions adverse to Buyer and shall have become a Final Order,

8.4 **Absence of Any Material Adverse Change.** There shall have been no material adverse change in the Purchased Assets, or in the business, operations or condition of the Station.

8.5 **Deliveries.** Seller has complied with each and every one of the obligations set forth in Section 9.1.

8.6 **Required Consents.** Seller shall have obtained and delivered to Buyer all of the Required Consents, if any, described in Schedule 3.9.

8.7 **Liens.** No Liens shall exist or have been filed or recorded against the Purchased Assets in the public records of the Secretary of State of Seller's state of organization or in any other jurisdiction in which the Purchased Assets are located except for those which will be fully discharged on or prior to the Closing Date. Duly executed UCC releases, mortgage terminations or other similar documents or instruments required to transfer the Purchased Assets free and clear of Liens (other than Permitted Liens) shall have been delivered by Seller.

8.8 **Environmental or Engineering Issues.** Seller shall have remedied, to Buyer's satisfaction in its sole discretion, any environmental or engineering issues identified on Schedule 8.8.

ARTICLE 9: ITEMS TO BE DELIVERED AT CLOSING

9.1 **Deliveries by Seller.** At Closing, Seller shall deliver to Buyer, duly executed by Seller or such other signatory as may be required by the nature of the document:

(a) a certificate for Seller, dated as of the Closing Date, executed by an officer of Seller, certifying on behalf of Seller that the closing conditions specified in Sections 8.1(a) and (b) have been satisfied;

(b) a bill of sale sufficient to sell, convey, transfer and assign the personal property and all other assets included in the Purchased Assets (other than the FCC Authorizations) to Buyer free and clear of any Liens, in a form reasonably acceptable to Buyer and Seller (the "Bill of Sale");

(c) an Assignment and Assumption Agreement sufficient to assign the FCC Authorizations (including the Station's call letters) to Buyer, in a form reasonably acceptable to Buyer and Seller (the "FCC Authorizations Assignment and Assumption Agreement");

(d) the Required Consents described in Schedule 3.9, if any;

(e) executed releases, in suitable form for filing and otherwise in form and substance reasonably satisfactory to Buyer, of any security interests granted in the Purchased Assets as security for payment of loans and other obligations and of any other Liens (other than Permitted Liens); and

(f) certified copies of appropriate resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Seller of this Agreement, and the consummation of the transaction contemplated hereby.

9.2 **Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller, duly executed by Buyer or such other signatory as may be required by the nature of the document:

(a) a certificate for Buyer, dated as of the Closing Date, executed by an officer or other authorized representative of Buyer, certifying on behalf of Buyer that the closing conditions specified in Sections 7.1(a) and (b) have been satisfied;

(b) the payment of the Closing Date Payment by wire transfer of immediately available funds in accordance with Section 1.4;

(c) the Bill of Sale;

(d) the FCC Authorizations Assignment and Assumption Agreement; and

(e) certified copies of any resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, required to authorize the execution, delivery and performance by Buyer of this Agreement, and the consummation of the transaction contemplated hereby, or similar documentary evidence of institutional action by Buyer to authorize the execution, delivery and performance by Buyer of this Agreement, and the consummation of the transaction contemplated hereby.

ARTICLE 10: SURVIVAL AND INDEMNITY

The rights and obligations of Buyer and Seller under this Agreement shall be subject to the following terms and conditions:

10.1 **Survival.** The representations and warranties of Buyer and Seller contained in this Agreement shall survive the Closing for six (6) years after the Closing Date, except that the representations and warranties contained in Section 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.3 and 4.6 shall survive the Closing indefinitely. Except as stated below, neither Seller nor Buyer shall have any liability whatsoever with respect to any representation or warranty unless a claim is made hereunder or an action at law or in equity is commenced prior to expiration of the applicable survival period for such representation or warranty. Section 1.4, and all provisions relating to payment of the Purchase Price or the conditions thereof, shall survive the Closing until all undisputed amounts due and payable under this Agreement have been paid in full and any disputes relating to payment of the Purchase Price have been finally determined.

10.2 General Agreement to Indemnify.

(a) Subject to this Article 10, Seller shall indemnify, defend and hold harmless Buyer and any employee, representative, agent, director, officer, affiliate or permitted assign of Buyer (each, a “Buyer Indemnified Party”) from and against any and all claims, claims, actions, suits, proceedings, liabilities, obligations, losses and damages, amounts paid in settlement, diminution of value, interest, costs and expenses (including reasonable attorneys’ fees, court costs

and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, “Losses”) asserted against, incurred or suffered by any Buyer Indemnified Party as a result of, arising out of or relating to: (i) the failure of any representation or warranty of Seller made in the Agreement to have been true and correct as of the date hereof or as of the Closing; (ii) the breach by Seller of any covenant or agreement of Seller contained in this Agreement or any agreement or certificate referred to in Section 9.1 to the extent not waived by Buyer, or (iii) the Retained Liabilities.

(b) Subject to this Article 10, Buyer shall indemnify, defend and hold harmless Seller and any employee, representative, agent, director, officer, affiliate or permitted assign of Seller (each, a “Seller Indemnified Party”) from and against any and all Losses asserted against, incurred or suffered by any Seller Indemnified Party as a result of, arising out of or relating to: (i) the failure of any representation or warranty of Buyer made in the Agreement to have been true and correct as of the date hereof or as of the Closing; (ii) the breach by Buyer of any covenant or agreement of Buyer contained in this Agreement or any agreement or certificate referred to in Sections 9.2 to the extent not waived by Seller, or (iii) the Assumed Liabilities.

(c) The term “Losses” is expressly limited to such Party’s actual out-of-pocket costs and expenses (including without limitation any destruction or diminution of value of the Purchased Assets) and does not and shall not include consequential or punitive damages unless paid in satisfaction of a Third Party Claim.

(d) Seller further agrees to indemnify and hold harmless each Buyer Indemnified Party from and against any Losses asserted against, incurred or suffered by Buyer or any other Buyer Indemnified Party arising out of, resulting from, or relating to the operation of the Station and ownership of the Purchased Assets prior to the Closing.

(e) Buyer further agrees to indemnify and hold harmless each Seller Indemnified Party from and against any Losses asserted against, incurred or suffered by Seller or any other Seller Indemnified Party arising out of, resulting from, or relating to the operation of the Station and the ownership of the Purchased Assets after the Closing.

10.3 General Procedures for Indemnification.

(a) The Seller Indemnified Party or Buyer Indemnified Party (each an “Indemnified Party”) seeking indemnification under this Agreement shall promptly notify in writing the party against whom indemnification is sought (the “Indemnifying Party”) of the assertion and basis of any claim, or the commencement and basis of any action, suit or proceeding by any third party in respect of which indemnity may be sought hereunder (a “Third Party Claim”) and will give the Indemnifying Party such information with respect thereto as the Indemnifying Party may reasonably request, but failure to give such notice shall not relieve the Indemnifying Party of any liability hereunder (unless the Indemnifying Party has suffered material prejudice by such failure). In the event any Indemnified Party should have a claim under Section 10.2 against any Indemnifying Party that does not involve a Third Party Claim, the Indemnifying Party shall notify the Indemnified Party within 30 days following its receipt of the notice described in Section 10.3(a) if the Indemnifying Party disputes its liability to the Indemnified Party under this Article 10. If the Indemnifying Party does not so notify the Indemnified Party, the claim specified by the

Indemnified Party in such notice shall be conclusively deemed to be a liability of the Indemnifying Party, and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand, or, in the case of any notice in which the amount of the claim (or any portion of the claim) is estimated, uncertain, or in dispute, on such later date when the amount of such claim (or such portion of the claim) becomes finally determined.

(b) With respect to Third Party Claims for which indemnification is claimed under this Article 10, the Indemnifying Party shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within thirty (30) days of receipt of notice from the Indemnified Party of the commencement of a Third Party Claim, to assume the defense and control the settlement of such Third Party Claim that involves (and continues to involve) solely money damages; provided, however, that prior to assuming any claim defense, the Indemnifying Party must show the Indemnified Party that they have the financial ability to pay out any potential monetary claim before they are allowed to assume its defense. Failure by the Indemnifying Party to so notify the Indemnified Party shall be deemed a waiver by the Indemnifying Party of its right to assume the defense of such claim.

(c) Whether or not the Indemnifying Party chooses to defend or prosecute any Third Party Claim, the Parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith.

(d) The Indemnifying Party or the Indemnified Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim that the other is defending, as provided in this Agreement, provided that the Indemnifying Party shall pay the cost of defense of both parties by separate counsel if a conflict of interest precludes common representation.

(e) The Indemnifying Party, if it has assumed the defense of any Third Party Claim as provided in this Agreement, shall not consent to, or enter into, any compromise or settlement of, or consent to the entry of any judgment arising from, any such Third Party Claim (which compromise, settlement, or judgment: (i) commits the Indemnified Party to take, or to forbear to take, any action; or (ii) does not provide for a complete release by such Third Party of the Indemnified Party) without the Indemnified Party's prior written consent. If the conditions set forth herein are met but the Indemnified Party refused to settle any Third Party Claim, the Indemnifying Party may tender the settlement amount and be relieved of further liability.

(f) The Indemnifying Party shall not be entitled to require that any action be brought against any other person before action is brought against it hereunder by the Indemnified Party, but shall be subrogated to any right of action to the extent that it has paid or successfully defended against any Third Party Claim.

10.4 **Limitations.**

(a) Neither Party shall be required to indemnify the other Party under Section 10.2(a)(i) or Section 10.2(b)(i) unless (i) written notice of a claim under this Article 10 was received by a Party prior to the expiration of the applicable survival period, and (ii) the aggregate

claim for Losses exceeds Twenty Thousand Dollars (\$20,000), after which the claimant shall be entitled to recover only such portion of the Losses that exceed such amount, subject to the Cap, as applicable. Further, the maximum aggregate liability of either Party, (the “Cap”) shall be an amount equal to the portion of the Purchase Price paid by Buyer prior to the date of final resolution of the claim.

(b) In calculating the amount of Losses to Buyer or Seller under Section 10.2 above, such Losses shall be reduced by any recovery from any third party (including insurance proceeds) as a result of the facts or circumstances giving rise to the Losses. The right to indemnification or any other remedy based on representations, warranties, covenants and agreements in this Agreement shall not be affected by any investigation conducted at any time, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement, waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any such covenant or agreements, will not affect the right to indemnification or any other remedy based on such representations, warranties, covenants and agreements.

10.5 **Manner of Payment.** Claims made by any Indemnified Party for indemnification pursuant to this Article 10 shall be satisfied by payment of cash or other immediately available funds by Seller or Buyer, as applicable, within 10 days after the determination of such Indemnified Party’s right to such indemnification.

10.6 **Exclusive Remedy.** From and after the Closing, the right to indemnification, defense, hold harmless, payment or reimbursement provided in this Article 10 will be the exclusive remedy of any Party with respect to Losses arising out of the transaction contemplated by this Agreement; provided, however, that in accordance with Section 1.4 hereof, and notwithstanding the Cap and the provisions of this Article 10, in the event of the loss or substantial impairment of the FCC Authorizations as defined in Section 1.4 resulting from Seller’s actions or inactions prior to Closing, Buyer shall, in addition to all other remedies available to Buyer, be relieved of any obligation to make any further Annual Payments; and further provided that, absent such loss or substantial impairment, neither the Cap nor the provisions of this Article 10 shall be applicable to Buyer’s continued obligation to complete payment of the Purchase Price.

ARTICLE 11: TERMINATION

11.1 **Termination.** This Agreement may be terminated at any time prior to Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by written notice of Seller to Buyer if Buyer: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Buyer on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Buyer’s representations or warranties; or (iii) defaults in any material respect in the performance of any of Buyer’s covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;

(c) by written notice of Buyer to Seller if Seller: (i) does not satisfy the conditions or perform the obligations to be satisfied or performed by Seller on or before the Closing Date in any material respect; (ii) breaches in any material respect any of Seller's representations or warranties; or (iii) defaults in any material respect in the performance of any of Seller's covenants or agreements under this Agreement; and in any of which events such breach or default is not cured within the Cure Period (as defined below), if applicable;

(d) by Buyer as provided in Section 12.6 (Risk of Loss);

(e) by Buyer immediately upon notice to Seller if the FCC cancels, revokes or otherwise adversely modifies the Station's license;

(f) by written notice of Seller to Buyer, or Buyer to Seller: (i) if the Closing has not been consummated on or prior to the date (the "End Date") that is twelve (12) months following the Effective Date of this Agreement (provided, that, in Buyer's sole discretion, such twelve-month period may be extended for three additional months); (ii) if, for any reason, the FCC denies or dismisses the Assignment Application and the time for reconsideration or court review under the Communications Act with respect to such denial or dismissal has expired and there is not then pending with respect thereto a timely filed petition for reconsideration or request for review; or (iii) if, for any reason, the Assignment Application is designated for an evidentiary hearing; provided, however, that the right to terminate this Agreement under this clause (f) shall not be available to any Party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date.

11.2 **Cure Period.** The term "Cure Period" as used herein means a period commencing with the date that Buyer or Seller receives from the other Party written notice of breach or default hereunder and continuing until thirty (30) days thereafter; provided, however, that (a) the Cure Period shall not extend beyond the End Date and (b) if the breach or default cannot reasonably be cured within such thirty (30)-day period but can be cured before the End Date, and if diligent efforts to cure promptly commence, then the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the End Date. Except as set forth below, the termination of this Agreement shall not relieve any Party of any liability for breach or default under this Agreement prior to the date of termination.

11.3 **Liability; Right to Terminate.** A termination of this Agreement shall not relieve any Party of any liability for breach by it prior to the effectiveness of such termination of its obligations under this Agreement.

11.4 **Effect of Termination.** Subject to Section 11.3 above, in the event that this Agreement is terminated in accordance with Section 11.1 above, the Seller shall refund the Deposit to the Buyer, no party to this Agreement shall have any further liability to any other party to this Agreement, and the parties hereto shall be released from all future obligations hereunder with respect to the Station, except as provided below:

(a) **Buyer's Default.** Upon a termination of this Agreement by Seller pursuant to Section 11.1(b) above due to a breach by Buyer of any of its obligations under this Agreement, Seller's sole remedy shall be to retain an amount equal to the Deposit as liquidated damages.

Seller and Buyer each acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyer's breach of any of its obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty.

(b) **Seller's Default.** Upon a termination of this Agreement by Buyer pursuant to Section 11.1(c) due to a breach by Seller of any of its obligations under this Agreement, Buyer may terminate this Agreement and shall be entitled to an amount equal to the Deposit, as liquidated damages. Seller and Buyer each acknowledge that these liquidated damages are reasonable in light of the anticipated harm that would be caused by Buyer's breach of any of its obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty. Instead of terminating this Agreement, upon a default by Seller, Buyer may seek specific performance as provided in Section 11.4(c) below.

(c) **Specific Performance.** Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

ARTICLE 12: MISCELLANEOUS

12.1 **Governing Law.** The validity, construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Utah (exclusive of those relating to conflicts of laws that would refer validity, construction or interpretation of this Agreement (or any dispute hereunder) to the substantive law of another jurisdiction). Any action at law, suit in equity or judicial proceeding arising directly, indirectly, or otherwise in connection with, out of, related to or from this Agreement, or any provision hereof, shall be litigated only in the courts of the State of Utah or the federal courts located therein. The Parties hereby consent to the personal and subject matter jurisdiction of such courts and waive any right to transfer or change the venue of any litigation between them.

12.2 **Expenses; Taxes.** Except as provided in Section 2.1 and in this Section 12.2, each Party hereto shall bear all of its expenses incurred in connection with the transaction contemplated by this Agreement, including without limitation, accounting, engineering and legal fees incurred in connection herewith. Any state or local sales, use, stamp or transfer taxes and other similar taxes payable in connection with consummation of the transactions contemplated herein shall be paid by the Party against whom such taxes are assessed by the applicable governmental authority.

12.3 **Entire Agreement; Amendment; No Waiver.** This Agreement, including the schedules and exhibits hereto, contain the entire agreement and understanding by and between the Parties, and no other representations, promises, agreements, or understanding, written or oral, not contained herein shall be of any force or effect, the terms of which are superseded and replaced by

this Agreement. This Agreement may only be amended in a writing signed by the Parties. No oral agreement shall have any effect. No failure or delay in exercising any right hereunder shall be deemed or construed to be a waiver of such right, either prospectively or in the particular instance. This Agreement has been prepared by all of the Parties hereto, and no inference of ambiguity against the drafter of a document therefore applies against any Party hereto.

12.4 **Confidentiality**. Except for information about the Station and the Purchased Assets acquired by Buyer at Closing and except where such information is known through other lawful sources or where its disclosure is required in accordance with applicable law, including requirements of the FCC pursuant to the Assignment Application, Buyer and Seller shall keep confidential all information obtained by it with respect to the other Party in connection with this Agreement. If the transaction contemplated hereby is not consummated for any reason, Buyer and Seller shall return to each other or destroy, without retaining a copy thereof in any medium whatsoever, any schedules, documents or other written information, including all financial information, obtained from the other in connection with this Agreement and the transaction contemplated hereby.

12.5 **Public Announcements**.

(a) Prior to the Closing Date, no Party shall, without the approval of the other Party hereto, make any press release or other public announcement concerning the transaction contemplated by this Agreement, except (i) to announce that the transaction has been entered into, and (ii) as and to the extent that such Party shall be so obligated by law, in which case such Party shall give advance notice to the other Party and the Parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

(b) Notwithstanding the foregoing, the Parties acknowledge that the rules and regulations of the FCC require that local public notice of the transaction contemplated by this Agreement be made after the Assignment Application has been filed with the FCC and that a copy of this Agreement be included as a part of the Assignment Application, which will be made available for public inspection at the Station and in the FCC's records. The form and substance of the required public notice, to the extent not dictated by the rules and regulations of the FCC, shall be mutually agreed upon by Seller and Buyer.

12.6 **Risk of Loss**. The risk of loss to any of the Purchased Assets on or prior to the Closing Date shall be upon Seller. Seller shall use all commercially reasonable efforts to repair or replace any damaged or lost Purchased Assets; provided, however, that in the event that any Purchased Asset or Purchased Assets incurs damages which are expected to exceed Forty Thousand Dollars (\$40,000) to repair or replace, or any Purchased Asset or Purchased Assets having a fair market value of Forty Thousand Dollars (\$40,000) or more, is lost as of the date otherwise scheduled for the Closing, then Buyer may, at its option, upon prior written notice to Seller, either (i) postpone the Closing for a period of up to sixty (60) days while Seller shall repair or replace such Purchased Asset or Purchased Assets, (ii) elect to close the transaction contemplated herein with the Purchased Asset or Purchased Assets in their damaged or lost condition, in which case Seller shall assign to Buyer all proceeds of insurance on such damaged or lost Purchased Asset or Purchased Assets, and Buyer shall have the responsibility to repair or replace the damaged or lost Purchased Asset or Purchased Assets, or (iii) if such damage or loss

exceeds Eighty Thousand Dollars (\$80,000), terminate this Agreement without penalty upon written notice to Seller. Should the Station not operate with at least 80% of its full, FCC-licensed facilities for a period of sixty (60) consecutive days, without appropriate notice or application the FCC, and for reasons other than *force majeure*, Buyer may elect to terminate this Agreement without penalty upon giving written notice thereof to Seller.

12.7 **Successors and Assigns.** Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective representatives, heirs, successors and assigns. Seller may not assign this Agreement or any part hereof without the prior written consent of Buyer, which shall not be withheld unreasonably, and any attempted assignment without such consent shall be void; provided, however, that, upon notice to Buyer, Seller may assign its rights and obligations set forth in Section 1.4(a)(iii) hereof with regard to invoicing and collection of Annual Payments to another person or entity without consent. Buyer may not assign this Agreement or any part hereof without the prior written consent of Seller, which shall not be withheld unreasonably. In the event of any assignment of this Agreement, the assignee shall enter into a written agreement accepting joint and several liability for all obligations under this Agreement; provided, however, that such assignment does not cause material delay, and Buyer remains responsible for payment of all unpaid Annual Payments under Section 1.4(a)(iii) hereinabove to the same extent Buyer would be responsible for payment of such Annual Payments in the absence of such assignment.

12.8 **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, addressed as set forth below:

If to **Seller**, then to:

Velton S. Casler
1105 East 300 North
Bountiful, UT 84010

and to (which shall not constitute notice):

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street
Eleventh Floor
Arlington, VA 22209
Attention: Susan A. Marshall

If to **Buyer**, then to:

John Greene
KUER General Manager
101 Wasatch Drive, Room 240
Salt Lake City, UT 84112-1792

and to (which shall not constitute notice):

Covington & Burling LLP
One CityCenter
850 10th St. NW
Washington, DC 20001
Attention: Michael Beder

Any Party may change the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this Section providing for the giving of notice.

12.9 **Further Assurances.** From time to time prior to, on and after the Closing Date, each Party hereto will execute all such instruments and take all such actions as any other party shall reasonably request, without payment of further consideration, in connection with carrying out and effectuating the intent and purpose hereof and all transactions contemplated by this Agreement, including without limitation the execution and delivery of any and all confirmatory and other instruments in addition to those to be delivered on the Closing Date, and any and all actions which may reasonably be necessary to complete the transaction contemplated hereby. The Parties shall cooperate fully with each other and with their respective counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement.

12.10 **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein, or its application to any particular circumstance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, such provision or such application shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without invalidating the remainder of such provision or any other provisions hereof, or its application in any other circumstance, unless such a construction would be unreasonable, and without invalidating such provision or its application in any other jurisdiction.

12.11 **Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to sections, schedules and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time; and (z) to a statute means such statute as amended and enforced as of the Effective Date. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. All references to “\$” or “dollars” mean United States Dollars. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate.

12.12 **Facsimile; Counterparts**. This Agreement may be executed by facsimile or email transmission in portable document format (PDF) and in counterparts, each of which shall constitute an original but together will constitute a single document.


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.


SELLER:

TRI STATE RADIO, LLC

By: 
Name: Velton S. Casler
Title: Managing Member

BUYER:

UNIVERSITY OF UTAH

By: 
Name: John Greene
Title: General Manager

SCHEDULES

- 1.1(a) FCC & Other Governmental Authorizations
- 1.1(b) Tangible Personal Property
- 1.1(c) Intangible Property
- 3.4(a) FCC Complaints and Inquiries
- 3.4(b) Tower
- 3.5 Liens
- 3.9 Required Consents
- 5.13 Required Repairs
- 8.8 Environmental or Engineering Issues

Schedule 1.1(a)
FCC & Other Governmental Authorizations

KYLZ(FM) (Facility ID 170181), Enoch, Utah (License File No. BLH-20120806ABE)

KYLZ(FM) (Facility ID 170181), Enoch, Utah (Construction Permit Application File No. BPH-20151201AGQ)

KYLZ(FM) (Facility ID 170181), Enoch, Utah (Remain Silent Authorization letter dated March 10, 2016, granting File No. BLSTA-20160302AEW and expiring September 6, 2016)

Schedule 1.1(b)
Tangible Personal Property

Approximately 200 Feet of $\frac{3}{4}$ inch lowloss hardline.

Two Tower Sections

Multiple bay small antenna (transmit)

1 500 Watt Transmitter (Agile) Nautel VS-300

All items now installed at the Parowan Airport in connection with the Station

Schedule 1.1(c)
Intangible Property

Call Sign KYLZ

Schedule 3.4(a)
FCC Complaints and Inquiries

None

Schedule 3.4(b)
Tower

Two section tower at Parowan, UT airport

Schedule 3.5
Liens

None

Schedule 3.9
Required Consents

None

Schedule 5.13
Required Repairs

None

Schedule 8.8
Environmental or Engineering Issues

None.