

## **ASSET PURCHASE AGREEMENT**

This Agreement (the "Agreement") is made this 10th day of April, 2003, by and between New Mexico-Roswell 21, LLC ("NMR"), a New Mexico limited liability company, and ACME Television Licenses of New Mexico, LLC ("ACME"), a Delaware limited liability company.

WHEREAS, NMR holds a construction permit (the "CP"), a copy of which is annexed hereto as Attachment A, from the Federal Communications Commission (the "FCC") to build a new television station on Channel 21 in Roswell, New Mexico (the "Station"); and

WHEREAS, ACME holds a Promissory Note (the "Note") from NMR, a copy of which is annexed hereto as Attachment B for payment of Seven Hundred Eighty Thousand Dollars (\$780,000) which requires payment of principal and accrued interest to be made to ACME upon the sale of the CP or any license covering the CP (the "License"); and

WHEREAS, ACME has an option (the "Option") under that certain Time Brokerage Agreement, dated January 25, 2003 (the "TBA"), to acquire the CP along with any and all other assets owned or held by NMR and used or useful in the operation of the Station (the "Station Assets"); and

WHEREAS, ACME has exercised the Option, and the parties are now desirous of executing and implementing this Agreement to effectuate that Option;

NOW, THEREFORE, in view of the foregoing and the mutual promises and covenants contained herein, the parties hereby agree as follows:

### **1. Assignment of CP and the Station Assets.**

At the Closing, as defined in this Agreement, NMR shall assign the CP along with all Station Assets to ACME free and clear of any and all liens, security interests, judgments, and other encumbrances of any kind or nature (collectively, "Liens") except those set forth on the CP itself or in FCC rules.

### **2. Consideration Conveyed by ACME.**

Upon assignment of the CP to ACME at the Closing in accordance with the terms of this Agreement, ACME will cancel the Note as being fully paid and pay the FCC of any and all monies that may be owed under FCC rules to enable the FCC to recapture some or all of the bidding credit which NMR received in the FCC auction which resulted in the grant of NMR's application and issuance of the CP to NMR.

### **3. FCC Application.**

Within ten (10) days after execution of this Agreement, the parties shall file an application (the "Application") with the FCC requesting the FCC's approval for the assignment of the CP to ACME. The parties will cooperate with each other in the preparation and prosecution of the Application and otherwise use any and all commercially reasonable efforts to have the FCC issue an order granting the Application at the earliest practicable date. To that end, the parties will promptly respond to any information the FCC may request with respect to the Application and make whatever amendments are reasonably requested or required by the FCC to this Agreement or the Application: provided, that such amendment does not have a material adverse effect on either party or otherwise defeat or frustrate the principal purpose for which this Agreement is being executed. Each party will promptly provide the other party with a copy of any and all correspondence or other communications to or from the FCC concerning the Application or the CP. The parties shall also cooperate with each other in defending against any petition, informal objection, complaint, or other challenge by a third party to the Application. The FCC filing fees for the Application will be paid by ACME.

### **4. NMR Representations and Warranties.**

NMR represents and warrants to ACME as follows:

(a) that NMR is a limited liability company organized under the laws of the State of New Mexico and is in good standing in that state;

(b) that this Agreement does not and will not, with the passage of time or the giving of notice or both, conflict with or be inconsistent with NMR's organizational documents or any agreement, order, judgment, decree or other commitment to which NMR is subject or by which it is bound;

(c) that NMR has taken any and all limited liability company actions required to authorize the execution and performance of this Agreement, and that this Agreement constitutes a valid, binding and enforceable obligation of NMR's except as enforceability may be affected by laws governing creditor rights or general equitable principles;

(d) that the copy of the CP is included in Attachment A and represents a true copy of the CP and that the CP is in full force and effect and has not been modified in any way;

(e) that the CP is not subject to any restrictions except those stated on the face of the CP or those set forth in the rules and regulations of the FCC as applied to construction permits of the same kind and class;

(f) that, aside from proceedings of general applicability to the television industry, there is no pending or, to NMR's knowledge, threatened petition, complaint, investigation, forfeiture notice, or other proceeding by or before the FCC, a court of competent jurisdiction, or any other governmental authority with respect to the CP or NMR;

(g) that the CP is in full force and effect and that NMR's operation of the Station is in material compliance with any and all applicable laws and government regulation, including but not limited to the Communications Act of 1934, as amended, and the FCC rules and policies promulgated thereunder (except for such noncompliance caused by ACME under the TBA);

(h) that all of the representations and warranties by NMR in this Agreement are true and correct as of the date of this Agreement and will be true and correct as of the date of Closing;

(i) that the other Station Assets, the material items of which are identified in Attachment C annexed hereto, are owned or held by NMR free and clear of any and all Liens;

(j) that NMR shall not solicit or entertain any other offer to acquire the CP or the other Station Assets until the termination or consummation of this Agreement;

(k) that NMR will not allow the CP or the other Station Assets to become subject to any Liens of any kind or nature;

(l) that, pending the Closing, NMR will take, or as the case may be, refrain from taking any and all actions which may in any way adversely affect the CP, the Station Assets or NMR's ability to assign the CP and the Station Assets to ACME in accordance with the terms and conditions of this Agreement; and

(m) that NMR has not failed to disclose any fact to ACME in this Agreement which would make any representation, warranty, or other statement in this Agreement inaccurate or misleading.

## **5. Representations and Warranties of ACME.**

ACME represents and warrants to NMR as follows:

(a) that ACME is a limited liability company organized under the laws of the State of Delaware and is in good standing in that state;

(b) that this Agreement does not and will not, with the passage of time or the giving of notice or both, conflict with or be inconsistent with ACME's organizational documents or any agreement, order, judgment, decree or other commitment to which ACME is subject or by which it is bound;

(c) that ACME has taken any and all limited liability company actions required to authorize the execution and performance of this Agreement, and that this Agreement constitutes a valid, binding and enforceable obligation of ACME except as enforceability may be affected by laws governing creditor rights and general equitable principles;

(d) that, pending the Closing, ACME will take, or as the case may be, refrain from taking any and all actions which may in any way adversely affect ACME's ability to acquire the CP from NMR in accordance with the terms and conditions of this Agreement;

(e) that all of the representations and warranties by ACME in this Agreement are true and correct as of the date of this Agreement and will be true and correct as of the date of Closing; and

(f) that ACME has not failed to disclose any fact to NMR in this Agreement which would make any representation, warranty, or other statement in this Agreement inaccurate or misleading.

## **6. Closing.**

The consummation of the transaction contemplated by this Agreement (the "Closing") will occur at a time and place selected by ACME within ten (10) days after the FCC order approving the Application (the "Order") becomes "Final" (meaning the Order is no longer subject to reconsideration or review by the FCC or a court of competent jurisdiction): provided, that ACME shall have the unilateral right to require that the Closing occur at any time after the Order is placed on public notice by the FCC and, in the event the Closing occurs before the Order becomes Final, the parties will execute an appropriate rescission agreement. At the Closing, the parties will execute whatever documents either party may reasonably request of the other, including but not limited to an Assignment and Assumption Agreement with respect to the assignment of the CP to ACME.

## **7. Conditions of Closing.**

(a) NMR's obligation to close the transaction contemplated by this Agreement is conditioned on (1) a certificate executed by an officer or managing member of ACME certifying that all representations and warranties of ACME remain true and correct as of the Closing Date; (2) the absence of any proceeding before the FCC or a court of competent jurisdiction which could result in a decision that would make the consummation of the transaction contemplated by this Agreement unlawful or materially incomplete; (3) the issuance of the Order by the FCC without any conditions materially adverse to NMR; and (4) receipt of a certified copy of a resolution adopted by ACME's Manager authorizing the execution and performance of this Agreement.

(b) ACME's obligation to close the transaction contemplated by this Agreement is conditioned on (1) a certificate executed by an officer or managing member of NMR certifying that all representations and warranties of NMR remain true and correct as of the Closing Date; (2) the absence of any proceeding before the FCC or a court of competent jurisdiction which could result in a decision that would make the consummation of the transaction contemplated by this Agreement unlawful or materially incomplete; (3) the issuance of the Order by the FCC without any conditions materially adverse to ACME and the Order having become Final; (4) receipt of a certified copy of a resolution adopted by NMR's Board of Advisors or other governing body authorizing the execution and performance of this Agreement; and (5) receipt of a lien search report dated within ten (10) days of the Closing Date (and paid for by ACME) which shows that there are no Liens of any kind or nature on the CP or the Station Assets.

**8. Deliveries at Closing.** At the Closing, (1) NMR shall execute and deliver to ACME an assignment and assumption agreement with respect to the CP, a bill of sale or other assignment agreement with respect to the Station Assets, and such other documents as ACME may reasonably request to consummate the transactions contemplated by this Agreement, and (2) ACME will execute and deliver to NMR an assignment and assumption agreement with respect to the CP, an assignment agreement (if warranted) with respect to the Station Assets, the original Note marked "Cancelled and Paid in Full," and such other documents as NMR may reasonably request to consummate the transactions contemplated by this Agreement.

## **9. Specific Performance.**

It is recognized that the CP and the Station Assets represent unique assets and that monetary damages alone would not be adequate to remedy NMR's breach of its obligations under this Agreement. Therefore, in addition to any and all other rights which it may have under this Agreement or under law or equity, ACME may institute an action for specific performance to require NMR's compliance with this Agreement without posting any bond. In the event that ACME seeks specific performance, NMR shall waive any defense that ACME has an adequate remedy at law.

## **10. Indemnification.**

Each party shall indemnify the other, along with such party's members, directors, officers, employees and agents, for any and all breaches of any representation, warranty, covenant or other agreement under this Agreement. In addition, NMR shall indemnify ACME for any costs and expenses (including reasonable attorney fees) incurred as a result of any third party claim based on NMR's ownership of the CP prior to Closing, and ACME shall indemnify NMR for all costs and expenses (including reasonable attorney fees) incurred as a result of any third party claim based on ACME's ownership of the CP after the Closing. The party seeking indemnification under this section shall provide the other party with notice promptly of the nature of and basis for such claim promptly after learning of the claim. The party providing the indemnification shall be solely responsible for the costs of defending against any such claim (if it involves a claim by a third party) and shall not settle any third party claim without the other party's consent, which shall not be unreasonably withheld or delayed (assuming that any such settlement includes a full release of any liability for the party seeking indemnification). Any claim for indemnification under this section must be made within twelve (12) months after the date of this Agreement.

## **11. Termination.**

### **(a) Basis for Termination**

The parties may terminate this Agreement under any one of the following circumstances:

(1) by NMR or ACME (if the terminating party is not then in material breach of its representations, warranties or obligations under this Agreement), if the other party is in material breach of its representation, warranties, or obligations under this Agreement and fails to cure such breach within thirty (30) days after receipt of notice from the non-breaching party identifying the nature of the breach but, in the case of NMR, only if the breach by ACME would be reasonably likely to result in the revocation, cancellation, non-renewal or adverse modification of the CP (with NMR being entitled to indemnification for such breach in all other circumstances); or

(2) by either party, if the FCC denies the Application in a decision which becomes a Final order.

**(b) Consequences of Termination.**

In the event this Agreement is terminated in accordance with the provisions of this section, (1) the parties shall have available to them whatever remedies may be available at law or equity; and (2) the principal and accrued interest for the Note will become due and payable in full six (6) months after the date of termination.

**12. Notices.**

Any and all notices or other communications required by or permitted under this Agreement shall be sent by facsimile (with confirmation of receipt), by hand, or by overnight courier (charges pre-paid) to the parties at the following addresses (or at such other address as either party may designate in writing to the other party):

If to NMR -

Aaron Barnes, Manager  
New Mexico - Roswell 21, LLC  
5925 Cromo  
El Paso, Texas 79912  
Fax Number: (505) 589-2225

To ACME -

Tom Allen  
Executive Vice President & CFO  
ACME Television Licenses of New Mexico, LLC  
Suite 202  
2101 East Fourth Street  
Santa Ana, CA 92705  
Fax: (714) 245-9494

and

Doug Gealy  
President & COO  
ACME Television Licenses of New Mexico, LLC  
Suite 202  
10829 Olive Boulevard  
St. Louis, MO 63141  
Fax: (314) 989-0616

**13. Assignment.**

NMR may not assign its rights or obligations under this Agreement without the prior written consent of ACME. This Agreement shall otherwise be binding on and inure to the benefit of the parties and their permitted successors and assigns.

**14. Litigation Expenses.**

In the event either party institutes formal legal action to enforce its rights under this Agreement, the prevailing party shall be reimbursed by the other party for all reasonable expenses incurred thereby, including reasonable attorneys' fees.

**15. Entire Agreement.**

This Agreement and the documents referenced herein represent the entire understanding of the parties with respect to the CP and the Station Assets and supercede any and all prior and contemporaneous agreements and understandings with respect to the CP and the Station Assets. This Agreement may not be amended except by a document executed by the parties.

**16. Construction.**

This Agreement shall be construed under the laws of the State of New Mexico without regard to conflict of laws provisions.

**17. Counterpart Signatures.**

This Agreement may be signed in counterpart, and all such counterparts shall collectively be deemed one and the same document. Facsimile signatures shall be deemed to be original signatures and sufficient to make this Agreement effective.

**18. Waiver.**

No waiver of any provision of this Agreement shall be effective unless in a writing executed by the party waiving any provision of this Agreement. A party's failure to insist on performance of any obligation by the other party, or any written waiver of any provision of this Agreement, shall not constitute a waiver of any breach or obligation of the same or any other provision of this Agreement.

**19. Headings.**

Headings are for convenience only and shall not affect the meaning of any term or provision of this Agreement.

*[Remainder of Page Intentionally Left Blank]*

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

NEW MEXICO - ROSWELL 21, LLC

By: \_\_\_\_\_  
Aaron Barnes  
Manager

ACME TELEVISION LICENSES OF NEW  
MEXICO, LLC

By: \_\_\_\_\_  
Thomas D. Allen  
Executive Vice President

**ATTACHMENT A**

**FCC CONSTRUCTION PERMIT**

**ATTACHMENT B**

**PROMISSORY NOTE**

## PROMISSORY NOTE

U.S. \$780,000

January 25, 2003  
Santa Ana, California

FOR VALUE RECEIVED, New Mexico Roswell 21, LLC ("Maker"), a limited liability company, formed under the laws of the State of Texas, hereby promises to pay to the order of ACME Television of New Mexico, LLC (the "Company"), a limited liability company organized under the laws of the State of Delaware, at 2101 East Fourth Street, Santa Ana, California 92705, or at such other address as the Company shall designate in writing to Maker, the principal sum of Seven Hundred Eighty Thousand and 00/100 Dollars (\$780,000)(the "Principal"). Payment of the Principal shall be made in accordance with the following terms and conditions:

1. The Principal shall be paid to the Company on the earlier of the date of consummation of the sale of the construction permit (or the license covering the construction permit) from the Federal Communications Commission for Channel 21 in Roswell, New Mexico to the Company or any other party.

2. Interest shall accrue on the Principal at the annual rate of 10 percent and shall be paid simultaneously upon payment of the Principal.

3. All payments of money shall be made in lawful currency of the United States and shall be applied first to the costs of collection, if any, second to interest, if any, and then to Principal.

4. Upon failure of Maker to make the payments specified in Paragraphs 1 or 2 hereof within ten (10) days of the due date, the Company shall be entitled to notify Maker in writing of such failure. If Maker fails to make such payment within ten (10) days of receiving such notice, Maker shall be deemed to be in default, and the Company shall be entitled to accelerate the due date for payment of the Principal and to institute legal action to collect the outstanding Principal and accrued interest.

5. The Principal may be prepaid in whole or in part at any time without penalty.

6. Maker (a) waives presentment, demand, protest and notice of presentment, notice of protest and notice of dishonor of this debt and each and every other notice of any kind respecting this Note, (b) agrees that the holder hereof, at any time or times, without notice to Maker or his consent, may grant extensions of time, without limit as to the number or the aggregate period of such extensions, for the payment or reduction of any Principal or interest due hereon, but in no event shall any such extension constitute a waiver of any right of the holder beyond the extension granted, (c) to the extent not prohibited by law, waives the benefit of any law or rule of law intended for Maker's benefit

or protection as an obligor hereunder or providing for Maker's release or discharge from liability hereon, in whole or in part, on account of any facts or circumstances other than full and complete payment of all amounts due hereunder, and (d) agrees that this Note shall be binding upon Maker.

7. If the Company institutes a lawsuit or other formal legal proceeding to enforce its rights hereunder upon Maker's default in making the payments required hereunder, Maker shall reimburse the Company for all reasonable costs of collection, including reasonable attorneys' fees. All payments received by the Company shall be applied first to costs of collection, then to interest and lastly to Principal.

8. In the event any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Note, and this Note shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

9. This Note shall be interpreted in accordance with the laws of the State of New Mexico without regard to conflict of laws provisions.

NEW MEXICO ROSWELL 21, LLC

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

Name:

Title: