

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made and entered into this 28th day of November, 2006, by and between **JODESHA BROADCASTING, INC.** ("JODESHA") and **COLLEGE CREEK BROADCASTING, INC.** ("Seller")

### **WITNESSETH THAT:**

WHEREAS, Seller is the permittee of unbuilt radio Station KANY, Facility ID 164149, Ocean Shores, Washington (the "Station");

WHEREAS, the parties desire that Buyer purchase from Seller all the assets used or useful in the operation of the Station and acquire from Seller the authorizations issued by FCC for the operation of the Station; and

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

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

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

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

- "Assignment Application" means the application on FCC Form 314 that Seller and Buyer shall jointly file with the FCC requesting its consent to the assignment of the Station's construction permit from Seller to Buyer.
- "Closing Date" means the date on which the Closing is to take place, as determined pursuant to Section 10 hereof.
- "Closing" means the consummation of the transactions contemplated by this Agreement.
- "Escrow Agent" means David Tillotson, Esq.
- "Escrow Deposit" means the sum of Sixty Thousand Dollars (\$60,000.00) that Buyer has deposited with Escrow Agent as security for the performance of Buyer's obligations hereunder.
- "Escrow Agreement" means the Escrow Agreement between Buyer, Seller and Escrow Agent dated as of the date of

this Agreement attached as Exhibit A hereto.

- "Final Order" means any FCC action that, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay.
- "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- "Knowledge" when used in connection with any representation or warranty by a person or entity means the actual knowledge of such person or entity at the time the representation is made without any requirement or expectation that such person or entity has made any investigation or inquiry regarding the matter at issue.
- "Transaction" means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of Seller and Buyer set forth herein.

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

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

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

**1.5. Computation of Time.** Whenever any time period provided for in this Agreement is measured in "business days" there shall be excluded from such time period each day that is a Saturday, Sunday, recognized federal legal holiday, or other day on which the FCC's offices are closed and are not reopened prior to 5:30 p.m. Washington, D.C. time. In all other cases all days shall be counted.

## **2. ASSETS TO BE CONVEYED**

On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Buyer, the following assets of Seller that are used or held for use by it for the operation of the Station (the "Station Assets") free and clear of all liens and encumbrances whatsoever except for statutory liens for taxes not yet due:

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

**2.2. Intangible Property.** All Seller's right, title and interest in and to the call signs and any intangible assets used exclusively in connection with the conduct of the business of the Station (the "Intangible Property").

**2.3. Business Records.** All business records of Seller (including without limitation logs, public file materials, and engineering records) relating to or used in the operation of the Station.

## **3. PURCHASE PRICE AND METHOD OF PAYMENT.**

The purchase price for the Station Assets is Six Hundred Thousand Dollars (\$600,000.00) (the "Purchase Price") and shall be paid to Seller in cash on the Closing Date.

## **4. PRORATIONS.**

Seller shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of the operation of the Station until 11:59 p.m. on the Closing Date and Buyer shall be entitled to all income attributable to, and shall be responsible for all expenses arising out of, the operation of the Station after 11:59 p.m. on the Closing Date. All overlapping items of income or expense customarily subject to

prorations in broadcast station transactions shall be prorated, or reimbursed, as the case may be, as of 11:59 p.m. on the Closing Date (the "Prorations"). In the event that the exact amount of any personal taxes or the Annual FCC Regulatory Fee which are to be prorated is not known on the Closing Date, such taxes or fee shall be prorated on the basis of the most recent tax or fee assessment and such proration shall be final. To the extent practical, the Prorations shall be made on the Closing Date and any net amount due as a result of the Prorations shall be added to, or subtracted from, the Purchase Price. Within 30 days after the Closing Date, Buyer's accountant and Seller's accountant shall agree to any final Prorations that are necessary to carry out the parties' intentions as reflected in this Section and any final amount due Seller, or Buyer, shall be paid promptly by check from the party owning the final amount made payable to the party to whom the payment is due.

**5. LIABILITIES.** Buyer shall not assume or be deemed to assume, pursuant to this Agreement or otherwise, any liabilities, obligations, or commitments of Seller of any nature whatsoever.

**6. Seller's REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Seller hereby makes the following representations, warranties, and covenants:

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

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

**6.3. No Violation.** Seller is currently not in violation of, and following the execution and performance of this Agreement by Seller will not be in violation of, Seller's articles of incorporation, by laws or any material order, rule, judgment or decree to which Seller or its principals or employees is subject. Seller is currently not in breach of, and following the execution and performance of this Agreement by Seller will not be in breach of, any contract, agreement or other commitment to which Seller or its principals or employees is a party or is bound.

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

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

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

**6.7. Compliance with Law.** (a) Seller has, in its conduct of the Station's business, complied in all respects material to this transaction with all applicable statutes, regulations and orders relating to the employment of labor, including, but not limited to, those concerning wages, hours, equal employment opportunity, collective bargaining, pension and welfare benefit plans, and the payment of Social Security and similar taxes, and Seller is not liable for any arrears of wages or any penalties due to any failure to comply with any of the foregoing. Seller has not been advised that any of its returns (including federal, state, local or foreign) have been or are being audited.

(b) On or before the Closing Date, Seller will pay and discharge all taxes, assessments, excises and other

levies relating to the Station Assets, and make any necessary filings, including all FCC Regulatory Fees, which, if due and not paid, would interfere with Buyer's full enjoyment and use of the Station Assets after Closing, except for such taxes, assessments, and other levies as will not be due until after the Closing Date.

#### **6.8. Additional FCC Matters.**

(a) With respect to FCC licenses, permits and authorizations, Seller is in material compliance with the conditions of each such FCC authorization, including, without limitation, the payment of all FCC regulatory fees.

(b) Seller is not aware of any facts indicating that Seller is not in compliance with all material requirements of the FCC, the Communications Act, or any other applicable federal, state and local statutes, regulations and ordinances. Seller is not aware of any facts and has received any notice or communication, formal or informal, indicating that the FCC is considering revoking, suspending, canceling, rescinding or terminating any of the FCC Licenses.

**6.9. Disclosure.** No provision of this Agreement or any other document or agreement delivered or made pursuant to the terms of this Agreement, relating to Seller, the Station or any of the Station Assets, knowingly contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated in order to make the statement, in light of the circumstances in which it is made, not misleading.

#### **7. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Buyer hereby makes the following representations, warranties and covenants:

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

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

**7.3. No Violation.** Buyer is currently not in violation of, and following the execution and performance of this Agreement by Seller will not be in violation of, Buyer's articles of incorporation or any material order, rule, judgment or decree to which Buyer or any of its principals or employees is subject. Buyer is currently not in breach of, and following the execution and performance of this Agreement by Buyer will not be in breach of, any contract, agreement or other commitment to which Buyer or any of its principals or employees is a party or is bound.

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

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

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

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

**8.2. Administrative Violations.** If Seller receives any finding, order, complaint, citation or notice prior to the Closing Date which states that any aspect of the Station's operations violates any rule, regulation or order of the FCC or of any other Governmental Authority which affects the Station Assets (an "Administrative Violation"), including, without limitation, any rule, regulation or order concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall use its best efforts to remove or correct the Administrative Violation and shall be solely responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed

or any fine or fee which may be incurred after the Closing Date relating to activities which occurred prior to the Closing Date.

**8.3. Control of Station.** This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operations of the Station.

## **9. CONDITIONS PRECEDENT.**

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

(a) **Approval of Assignment Applications.** The FCC shall have granted the Assignment Application and such grant shall be in full force and effect on the Closing Date and shall be a Final Order.

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

**9.2. Conditions to Buyer's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 9.1, the obligation of Buyer to consummate the Transaction is subject, at Buyer's option, to the satisfaction of each of the following conditions:

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

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

(c) **Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer all of the closing documents specified in Section 10.2.1, all of which documents shall be



dated as of the Closing Date, duly executed, and in a form reasonably acceptable to Buyer.

**9.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 9.1, the obligation of Seller to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

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

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

(c) Payment. Buyer shall have delivered to Seller the Purchase Price.

(d) Closing Documents. Buyer shall have delivered to Seller all the closing documents specified in Section 10.2.2, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably satisfactory to Seller.

## **10. CLOSING.**

**10.1. Closing Date and Method.** Unless Buyer and Seller agree otherwise: (i) the Closing Date shall be the tenth (10th) day after the date on which all of the closing conditions (except for the deliveries that Seller or Buyer is required to make on the Closing Date) have been satisfied or waived unless that day is a weekend or holiday in which event the Closing shall take place on the next regular business day and (ii) the Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require in person, by mail or air courier.

**10.2. Performance by Seller at Closing.** On the Closing Date, Seller shall deliver to Buyer:

(a) An Assignment, in form and substance reasonably satisfactory to Buyer, transferring to Buyer all of the interests of Seller in and to the FCC Licenses and all other transferable licenses, permits, and authorizations issued by any

other Governmental Authorities that are used in or necessary for the lawful operation of the Station;

(b) An instrument, in form and substance reasonably satisfactory to Buyer, conveying to Buyer all of the Intangible Property;

(c) Certified copies of 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;

(d) A certificate, dated as of the Closing Date and duly executed by an officer authorized on behalf of Seller, stating that the representations and warranties made by Seller in this Agreement are true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made; and

(e) Evidence reasonably satisfactory to Buyer's attorney that Seller is a corporation in good standing in the state of Delaware.

**10.3. Performance by Buyer at Closing.** On the Closing Date, Buyer shall deliver to Seller:

(a) Certified copies of resolutions, duly adopted, which shall be in full force and effect at the time of the Closing, authorizing the execution, delivery and performance by Buyer of this Agreement and the consummation of the Transaction;

(c) A certificate, dated as of the Closing Date and duly executed by an officer authorized on behalf of Buyer, stating that the representations and warranties made by Buyer in this Agreement are true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made; and

(d) Evidence reasonably satisfactory to Seller's attorney that Buyer is a corporation in good standing in the state of Washington.

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

**11.1 Buyer's Right to Indemnification.** For a period of

one (1) year following the Closing, Seller undertakes and agrees to indemnify and hold Buyer harmless against (i) any breach, misrepresentation, or violation of any of Seller's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Seller not assumed by Buyer; and (iii) any claims by third parties against Buyer attributable to Seller's ownership or operation of the Station Assets prior to Closing and not otherwise assumed by Buyer under this Agreement. This indemnity is intended by Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising within said one (1) year period with respect to any and all of the specific matters set forth in this indemnity.

**11.2. Seller's Right to Indemnification.** For a period of one (1) year following the Closing, Buyer undertakes and agrees to indemnify and hold Seller harmless against (i) any breach, misrepresentation, or violation of any of Buyer's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Buyer; and (iii) any claims by third parties against Seller attributable to Buyer's operation of the Station after Closing. This indemnity is intended by Buyer to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel), arising during said one (1) year period with respect to any and all of the specific matters set forth in this indemnity.

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

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

(2) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have thirty (30) days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purpose of this investigation, the Claimant

agrees to make available to the Indemnitor and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension hereof), the Claimant may seek appropriate legal remedies pursuant to the terms of this Agreement.

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

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

## **12. DEFAULT AND REMEDIES.**

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

**12.2. Buyer's Remedies.** Seller agrees that the Station

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

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

**12.3. Costs.** If either party brings an action for specific performance of the other party's obligations hereunder, the party prevailing in such action shall be entitled to recover from the losing party its court costs and reasonable attorney's fees.

### **13. TERMINATION.**

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

**13.2. Termination Due to Breach.** This Agreement may be terminated by either party due to a material breach of this Agreement which is not cured within any cure period provided for

in this Agreement by the nonbreaching party giving written notice of such termination.

**14. ENFORCEMENT OF REMEDIES; DISPUTES.** Except for the right of either party to seek specific performance of this Agreement which shall be pursued in an appropriate court and the right of either party to enforce the provisions of or any determination made pursuant to this section, the parties agree to resolve any disputes arising out of or in connection with this Agreement as provided in this section.

**14.1. Appointment of Dispute Panel.** If any dispute is not resolved in the time permitted by this Agreement or, if no time is specified, within fifteen (15) days of the date either party gives the other notice that it intends to invoke the provisions of this section, each party will immediately name one arbitrator who shall be a person with one of the following qualifications (a) substantial experience in radio ownership or management, (b) an accountant with experience in radio broadcasting, or (c) a radio broadcasting consultant, and, within five (5) days of their appointment, the two arbitrators so selected shall select a third arbitrator with similar qualifications (the "Dispute Panel"). In the event one party names an arbitrator within the time period specified herein and the other party fails to do so, the Dispute Panel shall be comprised of the sole arbitrator who was timely named who shall have the full power and authority to resolve the dispute pursuant to the provisions of this Article 14.

**14.2. Decision Process.** Each party may submit such materials as it may elect to the Dispute Panel provided that a copy of such material is delivered by hand or overnight courier to the other party. Neither party will contact any member of the Dispute Panel to discuss the dispute unless the other party is present in person or by conference telephone call or the other party consents. The Dispute Panel will request and review such information as its members deem necessary to resolve the dispute.

The Dispute Panel and each party will treat all information received by it as confidential and will destroy such information when the dispute is resolved. The Dispute Panel will resolve the matters presented to it so as to give each Party the benefit of its bargain by applying the provisions of this Agreement and, to the extent the Agreement is not dispositive, the customs and practices which, in the view of Dispute Panel, are common to transactions of this nature. The Dispute Panel will render its decision as soon as possible, but in any event, within thirty (30) days of the appointment of the third expert. The decision will be in writing and signed by each member of the dispute panel. The decision may include an award of damages as permitted

by this Agreement. Any third party may rely upon an original copy of the written decision or a copy of the decision certified by any member of the Dispute Panel as evidence of the decision.

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

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

## **15. GENERAL PROVISIONS.**

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

**15.2. Expenses.** The FCC filing fee for the Assignment Application shall be paid equally by Buyer and Seller and any sales, use or transfer taxes applicable to this Transaction shall be paid by the party who customarily pays such taxes in transactions completed in Washington. Except as otherwise provided herein, all other expenses incurred in connection with this Agreement or the Transaction shall be paid by the party incurring those expenses whether or not the Transaction is consummated.

**15.3. PRORATIONS.** There shall be no prorations of income or expenses in connection with the transactions provided for herein.

**15.4. Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or on the date of delivery by email

with a "read receipt" or other confirmation of delivery, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses:

To Buyer: Jodesha Broadcasting, Inc.  
P.O. Box 1198  
1520 Simpson Avenue  
Aberdeen WA 98520-0236  
Email: wolfenbarger@techline.com  
Attn: William Wolfenbarger

With a copy that shall not constitute notice to:

David Tillotson, Esq.  
4606 Charleston Terrace, N.W.  
Washington, DC 20007-1911  
Fax: 202-965-2018  
Email: dtlaw@starpower.net

To Seller: College Creek Broadcasting, Inc.  
980 North Michigan Avenue  
Suite 1880  
Chicago, IL 60611  
Email:  
Attn: Chris Devine and Bruce Buzil

With a copy that shall not constitute notice to:

Aaron Shainis, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, NW  
Suite 240  
Washington, DC 20036  
Email: aaron@s-plaw.com

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

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



**15.6. Exclusive Dealings.** For so long as this Agreement remains in effect and prior to the Closing Date, neither party, nor any person acting on either party's behalf shall solicit, initiate, or accept any offer from, or conduct any negotiations with, any person concerning the acquisition of the Station Assets , directly or indirectly, by any third party.

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

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

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

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

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

**15.12. Entire Agreement; Amendment.** This Agreement and the Exhibits and Schedules to this Agreement set forth the

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

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

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

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

**15.16. Waiver of Jury Trial; Attorney's Fees.** If, notwithstanding the provisions of Section 14, any law suit is filed to resolve an issue as to the interpretation or enforcement of this agreement and is not dismissed on the basis of Section 14, each party irrevocably waives trial by jury and the right thereto in any and all litigation in any court with respect to, in connection with, or arising out of this Agreement.

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

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

**COLLEGE CREEK BROADCASTING, INC.**

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

**JODESHA BROADCASTING, INC.**

By: \_\_\_\_\_  
William Wolfenbarger, President

**SCHEDULE 2.1(i)**

FCC LICENSES

Construction Permit BNPH- 20041228AAT for Station KANY,  
facility ID 164149, Ocean Shores, Washington