

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (the “Agreement”), dated as of this 7<sup>th</sup> day of August, 2009, is made and entered into by and between Lakeshore Media, L.L.C. (“Seller”), an Illinois limited liability company, and Cochise Media Licenses LLC (“Buyer”), a Wyoming limited liability company (individually, a “Party,” and, collectively, the “Parties”).

### **R E C I T A L S:**

WHEREAS, Seller is the licensee of FM radio broadcast Station KMXQ, Socorro, New Mexico, Facility ID No. 72615 (the “Station”), and holds the licenses and other authorizations issued by the Federal Communications Commission (the “FCC” or “Commission”) for the operation of the Station;

WHEREAS, Seller also owns or leases all tangible and intangible assets used or useful in the business and operation of the Station; and

WHEREAS, subject to the terms and conditions set forth in this Agreement, Seller desires to assign to Buyer and Buyer desires to acquire from Seller certain assets of Seller (hereinafter defined) used or useful in the operation of the Station.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, Seller and Buyer, intending to be legally bound, hereby agree as follows:

### **ARTICLE I** **TERMINOLOGY**

1.1 Act. The Communications Act of 1934, as amended.

1.2 Assignment Consent. An order or decision of the FCC granting its consent to the assignment of the FCC Authorizations (as defined hereinbelow) to Buyer.

1.3 Intentionally left blank.

1.4 Closing. The closing with respect to the transactions contemplated by this Agreement.

1.5 Closing Date. The date on which the transactions contemplated by this Agreement shall be consummated as provided in Section 10.1 hereto.

1.6 Closing Time. The time of 12:01 a.m. on the Closing Date.

1.7 Intentionally left blank.

1.8 Documents. This Agreement and all Exhibits and Schedules hereto, and each other agreement, certificate, or instrument delivered pursuant to or in connection with this Agreement, including amendments hereto that are expressly permitted under, or agreed upon by the Parties pursuant to, the terms of this Agreement.

1.9 FCC Authorizations. The licenses and authorizations issued by the FCC for the operation of the Station, as listed in Schedule 3.3 hereto.

1.10 Final Order. An action of the FCC that has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which no timely petition for reconsideration or administrative or judicial appeal or sua sponte action of the FCC with comparable effect is pending and as to which the time for filing any such petition or appeal (administrative or judicial) or for the taking of any such sua sponte action of the FCC has expired.

1.11 Lien. Any mortgage, deed of trust, pledge, security interest, encumbrance, claim, lien, lease or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any assets or property, including any written or oral agreement to give or grant any of the foregoing, any conditional sale or other title retention agreement, and the filing of or agreement to give any financing statement with respect to any assets or property under the Uniform Commercial Code ("UCC") or comparable law of any jurisdiction.

1.12 Seller's Attorney. Aaron Shainis, Esquire, of Shainis & Peltzman, Chartered ("Shainis & Peltzman"), 1850 M Street, N.W., Suite 240, Washington, D.C. 20036.

1.13 Seller's Lienholder(s). Any entity or entities holding a security interest, tax lien or judgment lien against the Assets, and any successor in interest to such entity or entities.

## **ARTICLE II** **PURCHASE AND SALE OF ASSETS**

2.1 Transfer of Assets. On the terms and conditions set forth herein, at Closing, Seller shall sell, assign, transfer, and convey to Buyer, and Buyer shall purchase and acquire from Seller, certain assets (except as hereinafter expressly excluded), now owned or hereafter acquired and used by Seller or useful in operating the Station (the "Assets"), as follows:

a. Personal Property. Title to all tangible personal property, whether owned or leased, of Seller and currently used or useful in the operation of the Station, including but not limited to all broadcasting equipment and all replacements and additions thereto and deletions therefrom arising in the ordinary course of business between the date of this Agreement and the Closing Date, as set forth in Schedule 3.4 hereto.

b. FCC Authorizations. All FCC Authorizations, permits and other authorizations necessary to operate the Station as presently authorized to operate as set forth on Schedule 3.3 hereto.

c. Station Contracts. Subject to Buyer's right to reject contracts pursuant to the terms of Section 3.13 below, the Station's contracts, if any, which are identified at Schedule 3.13 hereto, and any contracts for advertising to be run on the Station (the "Station Contracts").

d. FCC Reports/Files. Copies of all documents required by the FCC to be maintained by the Seller relating to the operation of the Station, including but not limited to, all documents contained in the Station's local public inspection files, and all books of account, logs, and records necessary or useful for the Buyer's operation of the Station;

e. Intangible Assets. Any trademarks, trade names, service marks, copyrights, patents, registrations (and pending applications for registration) of any of the foregoing, slogans, emblems, the call sign "KMXQ," logos, jingles, music formats, music libraries,

commercial spot productions, programs materials, production materials, computer software and any Internet domain name and web pages used by Seller or useful in the Station's operation, together with the goodwill associated with the Station and other intangible property listed and described on Schedule 3.18 hereto (collectively, the "Intellectual Property").

f. Advertising Client Information. Any research and documents in Seller's possession relating to advertising clients, including any past and present client files and contracts, and potential client lists and any computer records for traffic and billing.

g. Leased Real Property. Subject to Buyer's right to reject Contracts pursuant to the terms of Section 3.13 below, a leasehold interest in the real property leased by Seller pursuant to the real property lease(s) listed in Schedule 3.13 hereto (the "Real Property Lease(s)").

The Assets shall be transferred to Buyer free and clear of all Liens except (i) Liens for taxes not yet due and payable and for which Buyer receives a credit pursuant to Section 2.4(c) hereinbelow, and (ii) in the case of the Leased Real Property, such liens, easements, rights of way, building and use restrictions, exceptions, reservations and limitations that do not in any material respect detract from the value of the property subject thereto or impair the lease thereof in the ordinary course of the business of the Station (collectively, "Permitted Liens"). All Liens on the Assets held by Seller's Lienholders shall be released by Seller's Lienholder(s) on the Closing Date, in accordance with Section 8.5 below.

2.2. Excluded Assets. The following assets are expressly excluded from the Assets to be purchased and sold (the "Excluded Assets"):

- a. Seller's cash on hand as of the Closing Date;
- b. Seller's deposit accounts as of the Closing Date;
- c. Seller's accounts receivable, if any;

d. Seller's contracts, agreements and leases (other than advertising contracts) not described in Schedule 3.13 hereto, and any Station Contracts that Buyer rejects pursuant to the terms of Section 3.13. below;

e. Seller's books and records relating to internal matters and financial relationships with Seller's Lienholders;

f. Seller's insurance policies;

g. The Station's tangible and intangible personal property disposed of or consumed between the date of this Agreement and the Closing Date as permitted in this Agreement;

h. Any of Seller's interest in and refunds for federal, state or local franchise, income or other taxes for periods prior to the Closing Date;

i. Any tangible personal property not listed in Schedule 3.4 hereto; and

j. Any real property other than the Leased Real Property.

2.3 No Assumption of Liabilities. Buyer shall assume no liabilities or obligations of Seller, including, without limitation, accounts payable, debts, liabilities, and other obligations, whether pursuant to a contract or otherwise, except liabilities and obligations under the Station Contracts that Buyer specifically assumes and that arise during and are attributable to any period after the Closing Date (the "Assumed Obligations"), or as provided in Section 2.4(c) herein. Without limiting the generality of the foregoing: (a) Buyer shall assume no liabilities or obligations whatsoever of Seller or any third party regarding any of the Excluded Assets; and (b) Buyer shall be under no obligation to hire any of the Station's employees or to assume any liability whatsoever for any of Seller's employment contracts, collective bargaining agreements, pension plans, profit sharing plans, severance pay or any other employee compensation benefits, programs or plans heretofore created by and/or existing with Seller.

## 2.4 Purchase Price.

a. Purchase Price. The purchase price for the Station's Assets shall be Sixty Thousand Dollars (\$60,000.00) (the "Purchase Price"), which shall be paid by Buyer to Seller via wire transfer by Buyer of immediately-available funds to the trust account of Seller's Attorney upon execution of this Agreement. Notwithstanding anything herein to the contrary, Buyer shall be entitled to a credit of Thirty Five Thousand Dollars (\$35,000.00) (the "Credited Amount") at the closing of the transactions contemplated under that certain May 29, 2009 Asset Purchase Agreement, as amended August \_\_, 2009, by and between College Creek Media, LLC ("College Creek Media") and Buyer, for the sale and purchase of FM radio broadcasts Stations KYEN, Severance, Colorado, and KPAU, Center, Colorado (the "Colorado Stations") (the "Severance/Center APA"). In the event Buyer fails to deliver the Purchase Price in accordance with the terms hereof upon execution of this Agreement, Seller shall be entitled to terminate this Agreement, without Buyer's opportunity to cure pursuant to Section 14.2 hereinbelow. In the event that the Severance/Center APA is terminated without Buyer acquiring the Colorado Stations, Seller shall either refund the Credited Amount to Buyer or otherwise compensate Buyer for the value of the Credited Amount in the form of an offset of amounts owed by Buyer to Seller or any affiliate of Seller unrelated to this Agreement or the Severance/Center APA, or in the form of delivery to Buyer by Seller or an affiliate of Seller of other assets with a value equal to the Credited Amount.

b. Allocation of Purchase Price. Buyer and Seller agree to file with their respective Federal income tax returns as required an initial asset acquisition statement and any supplemental statements on Internal Revenue Service forms, all in accordance with, and accurately reflecting, any agreed upon allocation of the Purchase Price.

### c. Proration of Expenses and Revenues.

(1) Except as otherwise provided in this Agreement, the following prorations will be made as of the Closing Time, in accordance with generally accepted accounting principles, with Seller liable to the extent such items relate to any time period up to

and including the Closing Time and Buyer liable to the extent such items relate to periods subsequent to the Closing Time:

(i) The following expenses, as of the Closing Time, both those for which liability has accrued but for which payment has not yet been paid by Seller and those for which liability has not accrued but for which payment has been paid by Seller: expenses in connection with the Station Contracts; personal property taxes in connection with the Assets; annual regulatory fees required to be paid to the FCC for the FCC Authorizations; any of the Station's utility bills; any of the Station's telephone service and former benefit accruals for any of the Station's employees who may be hired by Buyer;

(ii) Revenue from the Station Contracts (if any) for which, as of the Closing Time, the amounts received by Seller have not yet been earned under the Station Contracts.

(2) The following items will not be prorated and Seller and Buyer shall notify the respective service provider that, as of the Closing Time, Seller shall no longer be responsible for payment for services rendered after the Closing Time and Buyer will commence new service as Buyer may desire: any music licensing fees of BMI, ASCAP and SESAC; and any other Station contracts, fees or services not specified in Section 2.4(c)(1). Seller shall be responsible for the recovery of any of Seller's deposits or prepaid amounts for the items specified herein.

(3) Notwithstanding the foregoing, other than Buyer's assumed Station Contracts, there shall be no adjustment for, and Seller shall remain solely liable with respect to, any agreement or any other obligation or liability not being specifically assumed by Buyer.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that the statements contained in this Article III are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date as though made then and as though the Closing Date was substituted for the date of this Agreement throughout this Article III. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

3.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois. Seller has authority to conduct business in the State of New Mexico. Seller has all requisite power and authority to own, operate and lease the Assets and carry on the business of the Station as they are presently conducted. Seller further agrees to furnish at Closing a certificate of good standings from the State of Illinois and a certificate of authority to conduct business in the State of New Mexico.

3.2 Authorization and Binding Effect of Documents. Seller has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and each of the other Documents and to consummate the transactions contemplated hereby and thereby. By the Closing, all appropriate actions taken by the members of Seller approving this Agreement and Seller's obligations hereunder shall have been taken. This Agreement and each of the other Documents executed or to be executed by Seller have been, or at or prior to the Closing will be, duly executed and delivered by Seller. The execution, delivery and performance of the terms of this Agreement will not conflict with, or result in the breach of or constitute a violation of or default under, any of the terms, conditions or provisions of Seller's articles of organization, operating agreement, or any judgment, order, decree, law, regulation, rule or ruling of any court, arbitration or governmental authority to which Seller is subject, or, except as set forth in



Schedule 3.13, conflict with, result in the breach of, or constitute a default under, any other agreement, lease, contract or other commitment to which Seller, its members or any of the Assets are subject and will not result in the creation of any Lien on any of the Assets to be conveyed, except as set forth in Schedule 3.13. Subject to obtaining the FCC's Assignment Consent and any required consents to assignment of the Station Contracts, the execution, delivery and performance of this Agreement by Seller does not require the consent of any governmental authority or other third party. This Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms.

3.3 FCC Authorizations. Seller is the legal holder of the FCC Authorizations listed in Schedule 3.3 in connection with the operation of the Station. The FCC Authorizations are in full force and effect, unimpaired by any act or omission of Seller, or its agents, and constitute all of the permits and authorizations, including amendments and modifications thereto and renewals thereof, issued by the FCC to Seller and required by the Act, the rules and regulations thereunder or the FCC for, or used in, the operation of the Station as presently operated. Except as set forth in Schedule 3.3, none of the FCC Authorizations is subject to any restriction or condition which would limit in any respect the full operation of the Station in accordance with the specifications set forth in the FCC Authorizations; nor is there any action, either pending or to Seller's knowledge threatened, by the FCC to revoke, cancel, rescind, modify or refuse to renew in the ordinary course any of the FCC Authorizations; nor is there any FCC investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability, or Notice of Forfeiture, nor any FCC material complaint or other FCC order or notice imposing a fine, forfeiture or penalty of any kind or nature against the Station or Seller with respect to any violation by the Station or by Seller of any rule, regulations or order of the FCC which could adversely affect Seller's ability to consummate the transactions contemplated herein or adversely affect Buyer's ownership or operation of the Station ("FCC Authorization Claims"). Except as set forth in Schedule 3.3, Seller does not know of any basis for such FCC Authorization Claims. All material reports, forms and statements required to be filed by Seller with respect to the Station are complete and accurate in all material respects and have been filed with the FCC. The

Station's operations are in accordance with its FCC Authorizations, and in material compliance with the Act and the rules and regulations of the FCC.

3.4 Tangible Personal Property.

a. Schedule 3.4 lists all tangible personal property (other than office supplies and other incidental items) currently used in the conduct of the business and operation of the Station (the "Tangible Personal Property").

b. Seller has good and marketable title to all of the Tangible Personal Property (except for the items indicated on Schedule 3.4 as leased or licensed by Seller), free and clear of all Liens, except Permitted Liens and Seller's Lienholder(s) Liens that will be released at Closing. Any leases held by Seller as of the Closing Date for the use of any of the Tangible Personal Property shall be terminated and any such Tangible Personal Property which had been the subject of such leases shall have been purchased by Seller and then transferred to Buyer free and clear of any Liens thereon, other than Permitted Liens.

c. The Tangible Personal Property is sold in "as is" condition. Notwithstanding the preceding sentence, Seller warrants that the Tangible Personal Property is in reasonable and functional condition, is available for immediate use in the conduct of the business or operation of the Station and, to the knowledge of Seller, is free from hidden defects which would not be discovered through normal inspection. At Closing, the Tangible Personal Property shall be in substantially the same condition, normal wear and tear excepted, as of the date of this Agreement. As of the Closing Time, Buyer shall be responsible for the reasonable and functional condition of the Tangible Personal Property; provided however, Seller still has the obligation to restore or repair any such Assets in the event of fire, casualty or other cause as provided in Section 13.1 hereinbelow.

3.5 Litigation. With the exception of any investigations and rule making proceedings affecting the broadcasting industry generally and except as set forth in Schedule 3.5 hereto ("Litigation Claims"), there are no actions, judgments (issued or outstanding), suits, claims, investigations or administrative, arbitration or other proceedings pending or, to the knowledge

of Seller, threatened against Seller or the Station before or by any court, arbitration tribunal or governmental department or agency of any kind, domestic or foreign, that would give any third party the right to enjoin the transactions contemplated by this Agreement, or that could adversely affect Seller's ability to consummate the transactions contemplated hereunder or that could adversely affect Buyer's ownership and operation of the Station (a "Litigation Claim"). Except as described in Schedule 3.5, Seller does not know of any basis for such litigation, proceeding or investigation. Should any such litigation or other proceeding commence or be threatened after the date of this Agreement, Seller shall use its commercially reasonable efforts to accomplish the prompt removal or dismissal thereof and promptly, and in no event later than five (5) days after becoming aware of it, notify Buyer with: (a) a list of all documents sent to or received regarding the Litigation Claim; and (b) a narrative from Seller's counsel fully describing the basis, nature and status of the Litigation Claim. Seller shall provide Buyer with copies of all documents in Seller's possession or reasonably available to Seller, regarding such Litigation Claim which Buyer may reasonably request.

3.6 Broker's or Finder's Fees. No agent, broker, investment banker, or other person or firm acting on behalf of Seller or under its authority is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, from Seller in connection with the transactions contemplated by this Agreement.

3.7 Disclosure. No representation, warranty or other statement made by Seller in this Agreement, or in any other Document furnished by Seller or on its behalf, contains, or will contain, any untrue statement of a material fact, or omits to state a material fact necessary to make any representation, warranty or statement contained herein or therein not misleading and to provide Buyer with complete and accurate information as to the Station and its affairs.

3.8 Leased Real Property. Schedule 3.13 includes the Station's Real Property Lease(s) (if any). To the best of Seller's knowledge, Seller's use of any real property described in the Real Property Leases (the "Leased Real Property") conforms in all material respects to all restrictions, restrictive covenants, building codes, fire regulations, building restrictions, and

federal, state and local laws, regulations and ordinances, including applicable governmental statutes, laws, and policies (“Environmental Laws”) pertaining to environmental contamination, clean-up or disclosure of Environmental Hazards, as that term is defined in such Environmental Laws. Seller has no knowledge of any Environmental Hazards in or on any Leased Real Property. With respect to the Station’s transmitting facilities located in and on any Leased Real Property, to the best of Seller’s knowledge, all towers, guy lines, anchors, ground systems and all other structures are located entirely within the confines of the Leased Real Property. In addition, to the best of Seller’s knowledge, any such Leased Real Property is fully accessible directly from public streets, or, if not, to Seller’s knowledge, any use of adjoining private land to access such Leased Real Property is in accordance with valid easements of record. All tower and antenna structure registrations required to be obtained in connection with the operation of the Station have been obtained, true and correct copies of all such registrations are identified in Schedule 3.3 herein and all such structures comply with all FCC painting and lighting requirements.

3.9 Absence of Conflicts. Seller's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents, and, except as set forth in Schedule 3.13, the consummation by Seller of the transactions contemplated herein or therein will not cause or result in the alteration or modification to the detriment of Buyer of the terms, conditions or provisions of any contract, lease agreement or other instrument to which Seller is a party or to which any of the Assets hereunder are subject.

3.10 Discharge of Liens. As of the Closing Date, Seller will have paid and discharged all taxes, assessments, excises, liens, levies and judgments for which it is obligated and which are then due and payable in connection with the Station and its operation or business and Seller shall promptly pay and discharge, as and when they become due and payable after Closing, all taxes, assessments, excises, levies and judgments for which Seller becomes obligated or which constitute a Lien on any of the Assets immediately prior to the Closing.

3.11 Insurance. Seller currently has, and through the Closing Date will maintain, in full force and effect, adequate property damage, liability and other insurance with respect to the Assets, providing coverage against such risks in at least the amounts provided for by Seller's current insurable policies.

3.12 Compliance with Laws. Seller warrants and represents that Seller's operation of the Station complies in all material respects with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders of governmental authorities.

3.13 Station Contracts. A full and complete copy of any current Station Contracts shall be provided to Buyer within ten (10) days of the execution of this Agreement. Buyer shall have the right to reject and thereafter not be obligated to receive an assignment or assume any of the Station Contracts; by giving notice to Seller at the Closing. Up to and including the Closing, Seller shall update Schedule 3.13 on a continuous basis to reflect any changes thereto and provide Buyer with copies of any additional or modified existing Station Contracts; and Buyer shall, at or prior to Closing, notify Seller as to which, if any, additional Station Contracts Buyer intends to assume.

3.14 Insolvency. Except as set forth in Schedule 3.14 hereto, Seller is not now, and after giving effect to the transactions contemplated by this Agreement, Seller will not be insolvent, as such term is defined in the federal bankruptcy code.

3.15 Taxes and Reports. Any federal, state and local taxes, interest, penalties, assessments and deficiencies that shall become due and payable with respect to any tax return or tax obligation of Seller arising from the Station or its operation or business prior to the Closing Time shall be the responsibility of Seller. All taxes, levies and other assessments which Seller is required by law to withhold or to collect have been duly withheld and collected, and have been paid to the proper governmental authorities or held by the Seller for such payment.

3.16 Intentionally left blank.

3.17 Operation in Ordinary Course. Since initiating each Station's operation, Seller has operated the Station in the ordinary course of business consistent with Seller's past practices.

3.18 Intellectual Property. Schedule 3.18 lists all Intellectual Property applied for, owned, used or licensed (either as licensor or licensee) in connection with the operation or business of the Station. Except as disclosed on Schedule 3.18:

a. Seller owns, free and clear of conflicting claims or restrictions and without infringement on the rights of others, all rights and interest in, and right and authority to use in connection with the operation or business of the Station, all of the Intellectual Property listed on Schedule 3.18 and all of Seller's rights and interest in, and authority to use, such Intellectual Property is in full force and effect.

b. There are no outstanding or, to the knowledge of Seller, threatened judicial or adversary proceedings with respect to any Seller's rights and interest in, and authority to use the Intellectual Property listed on Schedule 3.18.

c. No person or entity has been granted any license or other right or interest in or authority to use any of the Intellectual Property listed on Schedule 3.18.

d. Seller has no knowledge of any infringement or unlawful use of any of the Intellectual Property listed on Schedule 3.18.

e. Seller has delivered to Buyer copies of all state and federal registrations, and pending applications for registration and other material documents, if any, establishing any of Seller's rights and properties in, and authority to use, such Intellectual Property.

3.19 Intentionally left blank.

3.20 Governmental Consent and Consents of Third Parties. With the exception of the FCC's Assignment Consent and the consents specified in Schedule 3.13, including estoppel certificates, if any, which Seller will have obtained as of the Closing Date, Seller's execution and delivery of, and the performance of its obligations under, this Agreement and each of the

other Documents and the consummation by Seller of the transactions contemplated hereby and thereby, do not require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority, or the consent of any person under any agreement, arrangement or commitment of any nature to which Seller is a party or by which Seller is bound, the failure of which to obtain would have a material adverse effect on the ability of Seller to consummate the transactions or perform its obligations hereunder or under any other Document. Seller hereby represents and warrants that Seller has advised Seller's Lienholders about the transactions contemplated by this Agreement and that Seller's Lienholders have consented to the transactions and to the disposition of the proceeds contemplated herein.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

4.1 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Wyoming. Buyer has all requisite power and authority to acquire the FCC Authorizations and become the licensee of, and operate, the Station. Buyer agrees to furnish at Closing a certificate of good standing issued by the Wyoming Corporation Commission.

4.2 Authorization and Binding Effect of Documents. Buyer has, or as of the Closing Date will have, the power and authority to execute, deliver, and perform its obligations under this Agreement and each of the other Documents, and to consummate the transactions contemplated hereby and thereby. By the Closing, all appropriate actions taken by the members of Buyer approving this Agreement and Buyer's obligations hereunder shall have been taken. This Agreement and each of the other Documents executed or to be executed by Buyer have been, or at or prior to the Closing will be, duly executed and delivered by Buyer. The execution, delivery and performance of the terms of this Agreement will not conflict with or

result in the breach of or constitute a violation of or default under any of the terms, conditions or provisions of Buyer's articles of organization, operating agreement, or any judgment, order, decree, law, regulation, rule or ruling of any court, arbitration or governmental authority to which Buyer is subject, or result in the breach of, or constitute a default under, any other agreement, lease, contract or other commitment to which Buyer, its members or any of its assets are subject. Subject to obtaining the FCC's Assignment Consent, the execution, delivery and performance of this Agreement by Buyer does not require the consent of any governmental authority or other third party. This Agreement constitutes a legal and valid obligation of Buyer enforceable against Buyer in accordance with its terms.

4.3 Absence of Conflicts. Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents, and the consummation by Buyer of the transactions contemplated herein and therein:

a. Do not violate, or result in the creation of any claim, lien, charge or encumbrance on any of the assets or properties of Buyer under any provision of law, rule or regulation or under any order, judgment, injunction, decree or ruling applicable to Buyer in any manner which would have a material adverse effect on Buyer's ability lawfully to close on the transactions contemplated hereby;

b. Do not (with or without the giving of notice or the passage of time or both) conflict with or result in a breach or termination of, or constitute a default or give rise to a right of termination or acceleration under, the articles of organization or operating agreement of Buyer or any lease, agreement, commitment or other instrument which Buyer is a party to or bound by or by which any of its assets or properties may be bound, other than conflicts, breaches, terminations, defaults or accelerations which, individually or in the aggregate, do not and will not have a material adverse effect on the business, operations or financial condition of Buyer or on the ability of Buyer to perform its obligations hereunder or under any other Document or to conduct the operation of the Station following the Closing.



4.4 Governmental Consent and Consents of Third Parties. With the exception of the FCC's Assignment Consent, Buyer's execution and delivery of, and the performance of its obligations under, this Agreement and each of the other Documents and the consummation by Buyer of the transactions contemplated hereby and thereby, do not require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or public agency or other authority, or the consent of any person under any agreement, arrangement or commitment of any nature to which Buyer is a party, or by which Buyer is bound, the failure of which to obtain would have a material adverse effect on the ability of Buyer to consummate the transactions or perform its obligations hereunder or under any other Document.

4.5 Qualifications.

a. Buyer is legally, financially and otherwise qualified to be licensee of, to acquire, own and operate the Station under the Act and the rules, regulations and policies of the FCC. Buyer has sufficient funds to enable it to consummate the transactions contemplated by this Agreement. Buyer has no knowledge of any facts concerning Buyer or any person with an attributable interest (as such term is defined under decisions, rules and regulations of the FCC) in Buyer which would, under present law (including the Act) and present rules, regulations and practices of the FCC: (1) disqualify Buyer from owning and operating the Station; (2) raise a substantial and material question of fact respecting Buyer's qualifications; or (3) raise a questions of fact concerning Buyer's level of market concentration concerns which could result in further investigation by the FCC, the Department of Justice or the Federal Trade Commission, or delay or prevent the grant of the assignment contemplated herein.

b. Buyer will not take, or fail to take, any action it knows or has reason to know would cause such disqualification or raise such questions of fact. Should Buyer become aware of any such facts, it will promptly notify Seller in writing thereof and use its best efforts to prevent such disqualification. Buyer further represents and warrants that it is financially

qualified to meet all terms, conditions and obligations arising or contemplated under this Agreement.

4.6 Litigation. With the exception of any investigation or rule making proceedings affecting the broadcasting industry generally, there are no legal, administrative, arbitration or other proceedings, judgments (issued or outstanding), suits, claims, or governmental investigations pending or, to the knowledge of Buyer, threatened against Buyer before any court, arbitration tribunal or governmental department or agency of any kind that would give any third party the right to enjoin the transactions contemplated by this Agreement or that could adversely affect Buyer's ability to consummate the transactions contemplated hereunder or to operate the Station following the Closing. Buyer does not know of any basis for such claim, litigation, proceeding, or investigation. Should any such litigation commence after the date of this Agreement and before the Closing, Buyer shall promptly, and in no event later than five (5) days after becoming aware of it, notify Seller, and use its best efforts to accomplish the prompt removal or dismissal thereof.

4.7 Disclosure. No representation, warranty or other statement by Buyer in this Agreement or any other Document furnished by Buyer or on its behalf, contains or will contain, any untrue statement of a material fact, or omits to state a material fact necessary to make any representation, warranty or statement contained herein or therein not misleading.

4.8 Broker's or Finder's Fees. No agent, broker, investment banker, or other person or firm acting on behalf of Buyer or under its authority is or will be entitled to any broker's or finder's fee or any other commission or similar fee, directly or indirectly, from Buyer in connection with the transactions contemplated by this Agreement.

## **ARTICLE V** **COVENANTS**

5.1 Affirmative Covenants of Seller. Between the date hereof and the Closing Date, except as otherwise contemplated by this Agreement, Seller shall:

a. Continued Operation of Station. Continue to operate the Station in the ordinary course consistent with Seller's past practices and in conformity in all material respects with the FCC Authorizations, the Act, the rules and regulations of the FCC, and all other applicable laws, ordinances, regulations, rules and orders of other governmental bodies. If Seller receives any finding, order, complaint, citation or notice prior to Closing which asserts that Seller or any aspect of the Station's operation or business violates any rule, regulation or order of the FCC or any other governmental authority (an "Administrative Violation"), Seller shall promptly notify Buyer of such Administrative Violation, take action promptly to remove or correct such Administrative Violation, and be responsible for the payment of all costs associated therewith, including any fines or penalties that may be assessed.

b. Reasonable Access. Provide Buyer and representatives of Buyer with reasonable access, during normal business hours on reasonable advance notice, to the Assets and affairs of the Station, and furnish such additional information concerning the Station as Buyer may from time to time reasonably request.

c. Consent to Assignment. Use commercially reasonable efforts to procure and accomplish the consent of any third parties necessary for the assignment to Buyer of any of the Station Contracts.

d. Maintain Assets/Revenues/Goodwill. Maintain all of the Assets in their present operating condition, repair and order, reasonable wear and tear in ordinary usage excepted, and maintain the inventories of spare parts and tubes for the Station's technical operating equipment at the levels normally maintained for the Station.

e. Timely Payments. Timely make or provide all payments, services, or other considerations due under the Station Contracts, if any, so that all payments required to be made as of the Closing Time will have been made.

f. Maintain Licenses and Resumption of Operation. Maintain in full force and effect the FCC Authorizations and any other Station licenses, permits and authorizations all in compliance with the Commission's Rules.

g. Modification of Facilities. Fully cooperate with Buyer and file with the FCC, without unreasonable delay, requests for modifications of the Station's facilities (including a request for a new CP application, requests for new or modified auxiliary facilities, requests for special temporary authorization, or amendments to or dismissal of such permitted filings) as may be reasonably requested by Buyer ("Requested FCC Filings"). All reasonable costs incurred by Seller associated with such filings shall be reimbursed by Buyer. Seller's filing and good faith prosecution of such Requested FCC Filings shall be conditioned on Buyer's good faith compliance with its responsibilities and obligations contemplated herein. Additionally, on the date of execution of this Agreement, Seller shall also provide to Buyer a signed permission letter in the form attached hereto as Exhibit A (the "Permission Letter") to allow Buyer at its option to file the Requested FCC Filings in its own name on the date of or after the filing with the FCC of the Assignment Application (as defined hereinbelow). It is also specifically understood that any such Requested FCC Filings submitted by Buyer shall be contingent upon FCC approval of the Assignment Application and the consummation of the transactions contemplated by this Agreement, shall not materially delay or impede the Closing and shall be made at Buyer's sole expense.

h. Litigation. Take all actions necessary to diligently oppose, remove or satisfy any Litigation Claim so that it does not affect the Assets.

i. FCC Matters. Promptly deliver to Buyer copies of any reports, applications or responses submitted to the FCC relating to the Station that are filed between the date of this Agreement and the Closing.

j. Lien Search Reports. At Seller's expense, obtain and deliver to Buyer UCC, judgment, and state and federal tax lien search reports (showing searches in the name of Seller and the current and any prior call letters of the Station) necessary to assure that no unsatisfied Liens are filed or recorded against the Assets (the "Lien Search Reports") as of the Closing. The Lien Search Reports shall be dated as near as practicable to the Closing and shall be delivered to Buyer at Closing.

k. Intentionally Left Blank.

l. Estoppel Certificate. For any Station Real Property Leases, Seller will obtain and deliver at Closing estoppel certificates (the “Estoppel Certificates”), dated as near as practicable to the Closing Date in a form similar to Exhibit B hereto, signed by the lessor under any Real Property Lease to be assumed by Buyer.

m. Time Brokerage Agreement. Consider in good faith, if requested by Buyer prior to Closing, entering into a Time Brokerage Agreement (“TBA”) which would specify a monthly fee no greater than the reasonable cost of permitted expense reimbursement to Seller for the Station’s operation, contain other provisions as may be mutually agreed to by the Parties, and specify termination upon the termination/cancellation of this Agreement.

n. Provision of On-air Audio Materials. Cooperate with Buyer in making available to Buyer electronic copies of the Station’s on-air materials, if any, as they now exist and on a continuous basis as they are created, including but not limited to, commercial productions, liners, the Station’s identification announcements and promotional announcements.

o. Representations and Warranties. Provide detailed written notice to Buyer promptly upon learning of the occurrence of any event that would cause or constitute a breach by Seller of its representations, warranties or covenants in this Agreement and in Documents attached hereto, or that would have constituted a breach had such event occurred or been known to Seller on or before the date of this Agreement. Any such notice to Buyer, similar informal notice by Seller to Buyer, or independent investigation, examination, or other source of knowledge by Buyer regarding a breach of Seller’s representations and warranties before the Closing shall not in any way diminish or obviate any representations or warranties of Seller made in this Agreement or in the Documents delivered pursuant to this Agreement.

5.2 Negative Covenants of Seller. Between the date hereof and the Closing Date, except as otherwise contemplated by this Agreement, Seller shall not, without the prior written consent of Buyer, which consent shall not be unreasonably withheld:

a. Mortgages. Create, assume or permit to exist any new mortgage or pledge, or subject to Lien or encumbrance, any of the Assets, whether now owned or hereafter acquired, unless discharged of record prior to or at Closing.

b. Transfers. Sell, assign, lease or otherwise transfer or dispose of any of the Assets, whether now owned or hereafter acquired, except for disposal and consumption of supplies and inventories in the ordinary course and retirements in the normal and usual course of business of items no longer required for use in connection with the Station's operations or business, or in connection with the acquisition of similar property or assets of equal or greater value, with the cost of any such replacement property to be Seller's responsibility.

c. Call Letters. Change the call letters of the Station.

d. FCC Modification Filings. File with the FCC any modifications of the Station's facilities, authorizations, applications, requests for temporary authorizations or other submissions regarding the Station without the prior consent of Buyer, which consent shall not be unreasonably withheld.

e. Inconsistent Action. Take any action (i) inconsistent with its warranties, representations or obligations hereunder, (ii) which could jeopardize or delay consummation of the transactions contemplated herein, (iii) which would be inconsistent with the operation of the Station with the Station's licensed specifications, or (iv) which may prevent, jeopardize or delay the grant of the Buyer's Requested FCC Filings.

f. Contractual Obligations. Do, or omit to do, any act which will cause a material breach of, or material default under, or termination of, any Station Contract, except as set forth in Schedule 3.13.

g. Trade Contracts. Enter into any trade contracts, or modify or amend any existing such agreements or understandings which would survive the Closing Date and obligate Buyer, without the prior written consent of Buyer.

5.3 Negative Covenants of Buyer. Between the date hereof and the Closing Date, Buyer shall not take any action inconsistent with its representations, warranties and other obligations hereunder or which could jeopardize or delay the consummation of the transactions contemplated herein.

5.4 No Solicitation. From the date hereof until the earlier of Closing or termination of this Agreement, neither Seller nor any affiliate of Seller shall directly or indirectly (a) solicit, initiate or encourage submission of any proposal or offer from any person relating to any acquisition or purchase of any material asset of the Station or any merger, consolidation or business combination with Seller (each an “Acquisition Proposal”), or (b) participate in any discussions or negotiations regarding, furnish to any person any information with respect to, or otherwise assist, facilitate, encourage or participate in or cooperate with, any effort or attempt by any person to make or effect an Acquisition Proposal.

5.5 Update of Schedules. Seller shall provide Buyer with documentation regarding any material changes to the Schedules hereto within a reasonable period of time of the changes.

## **ARTICLE VI** **FCC CONSENT**

6.1 FCC Consent. Seller and Buyer shall jointly file an assignment application with the FCC on FCC Form 314 (the “Assignment Application”) within five (5) business days of the execution of this Agreement. Seller and Buyer shall take all steps necessary to prosecute such filing with diligence and shall diligently oppose any objections to, appeals from or petitions to reconsider the Assignment Consent, to the end that the Assignment Consent shall become a Final Order as soon as practicable. Neither Seller nor Buyer (or any employee, member, officer, or owner of Seller or Buyer) shall take any action that such Party knows or has reason to know would materially and adversely affect, or materially delay issuance of, the Assignment Consent, or materially and adversely affect or materially delay the Assignment Consent from becoming a Final Order. Should Buyer or Seller become aware of any facts not disclosed which

could reasonably be expected to materially and adversely affect, or materially delay issuance of, the Assignment Consent, or prevent or materially delay the Assignment Consent from becoming a Final Order, such Party shall promptly notify the other Party thereof in writing. Buyer and Seller shall share equally any filing fee required by the FCC for the Assignment Application, but the Parties shall otherwise bear their own expenses in connection with preparation and filing of the Assignment Application.

6.2 Time for FCC Approvals. In the event that the Assignment Consent has not been issued and become a Final Order by the last day of the twelfth (12<sup>th</sup>) calendar month following the FCC's acceptance for filing of the Assignment Application (the "Drop Dead Date"), either Buyer or Seller may, within ten (10) days thereafter, terminate this Agreement upon written notice to the other Party; provided, however, no Party shall be entitled to terminate this Agreement if such Party is in material breach hereunder.

## **ARTICLE VII** **OTHER COVENANTS**

7.1 Good Faith; Reasonable Efforts. Subject to the terms and conditions of this Agreement, each Party shall use its best reasonable efforts to take all actions and to do all things necessary, proper or advisable in good faith to satisfy any condition to the Parties' obligations hereunder and to consummate and make effective as soon as practicable the transactions contemplated by this Agreement.

## **ARTICLE VIII** **CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE**

Buyer's obligation to close the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Buyer in writing:



8.1 Accuracy of Representations and Warranties. The representations and warranties of Seller contained in this Agreement or in any other Document shall be complete and correct in all material respects on the date hereof and at the Closing Date with the same effect as though made at such time, except for changes permitted under this Agreement.

8.2 Performance of Agreement. Seller shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement to be performed or complied with prior to or upon the Closing Date, including, but not limited to Seller's obligations set forth in Sections 5.1(f) and (g).

8.3 Issuance of Required Consents.

a. The FCC shall have issued the Assignment Consent (this condition may not be waived), and such Consent shall have become a Final Order without any condition materially adverse to Buyer and without any suit, action or other proceeding pending, or to the Parties' knowledge threatened, to revoke, cancel or dismiss such Consent.

b. Conditions which the Assignment Consent or any order, ruling or decree of any judicial or administrative body relating thereto or in connection therewith specifies and requires to be satisfied prior to assignment of the Station's FCC Authorizations to Buyer shall have been satisfied.

c. All other authorizations, consents, approvals and clearances of all federal, state and local governmental agencies required to permit the consummation by Seller of the transactions contemplated by this Agreement shall have been obtained; all statutory and regulatory requirements for such consummation shall have been fulfilled; and no such authorizations, consents, approvals or clearances shall contain any conditions that individually or in the aggregate would have a material adverse effect on the Station or on Buyer's operation of the Station, or on Buyer's effectuation of the transactions contemplated herein.

d. An Estoppel Certificate shall have been obtained and signed by the lessor under any Station Real Property Lease as provided in Section 5.1(l) hereinabove, and all other

necessary approvals and consents, or any other third party consents, to the assignment to Buyer of the Station Contracts which are material to the operation of the Station, shall have been obtained and delivered to Buyer.

e. The FCC shall have issued its consent to the assignment to Buyer of licenses for the Colorado Stations and for FM broadcast Stations KHUN, Huntington, Utah and KEMR, Castle Dale, Utah (the “Utah Stations”), and KHSK, Allen, Nebraska (the “Nebraska Station”) and all other conditions precedent to the obligations, of Buyer and College Creek Media to close on the sale and purchase of the respective Colorado Stations, Utah Stations, and Nebraska Station assets, pursuant to the terms of the Severance/Center APA and pursuant to the terms of that certain June 25, 2009 Asset Purchase Agreement by and between College Creek Media and Buyer for the sale and purchase of the Utah Stations (the “Huntington/Castle Dale APA”), and that certain August 5, 2009 Asset Purchase Agreement by and between College Creek Media and Buyer for the sale and purchase of the Nebraska Station (the “Allen APA”) shall have been satisfied.

8.4 No Adverse/Insolvency Proceedings. No suit, action or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against Seller that would make it unlawful for Seller to consummate the transactions contemplated by this Agreement in accordance with the terms hereof, or which might reasonably result in any material adverse effect on the business, prospects or condition of the Station or the Assets to be conveyed under this Agreement, or which question the validity of any action taken or to be taken pursuant to or in connection with this Agreement, or which would reasonably be expected to result in a claim for damages for which Buyer would be responsible. No insolvency proceedings of any character against Seller or any of the Assets shall be pending or, to the knowledge of Seller threatened, and Seller shall not have taken any action in contemplation of, or which would constitute the basis for, the institution of any such insolvency proceeding.

8.5 Termination of Security Interests and Discharge of Liens. Buyer shall have been provided by Seller (a) with the Lien Search Reports, and (b) (with respect to the Lien Search Reports and the results of any other UCC, judgment, and state and federal tax lien searches) with executed documentation necessary, in the reasonable judgment of Buyer, including, without limitation, UCC-3 financing statements (or, in lieu thereof, pay-off letters from the holders of such security interests certifying the security interests holders' release of the related security interests or a comparable letter from Seller's Attorney certifying that Seller's Attorney has been given assurance by Seller's Lienholders that, upon the Closing, Seller's Lienholders will release their Liens on the Assets ("Seller's Attorney Certification Letter") (substantially in the form attached as Exhibit D to the Severance/Center APA), and other customary instruments and documents, dated as of the most recent practicable date, evidencing no litigation, judgments, attachments, financing statements, tax liens, mechanics, materialmens, or other statutory liens on record, and evidencing the release of all security interests, mortgages, claims or other encumbrances of any kind securing indebtedness of the Station or affecting any of the Assets.

8.6 Delivery of Closing Documents. Seller shall have delivered on or before the Closing Date the Assets and each of the documents required to be delivered pursuant to Section 10.2 herein or as otherwise provided in this Agreement.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE**

The obligation of Seller to close the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, unless waived by Seller in writing:

9.1 Accuracy of Representations and Warranties. The representations and warranties of Buyer contained in this Agreement or in any other Document shall be complete and correct in all material respects on the date hereof and at the Closing Date with the same effect as though made at such time, except for changes permitted under this Agreement.

9.2 Performance of Agreement. Buyer shall have performed in all material respects all of its covenants, agreements and obligations required by this Agreement to be performed or complied with prior to or upon the Closing Date.

9.3 FCC and Other Consents.

a. The FCC shall have issued the Assignment Consent (this condition may not be waived), and such Consent shall have become a Final Order without any suit, action or other proceeding pending, or to the Parties' knowledge threatened, to revoke, cancel or dismiss such Consent.

b. Conditions which the Assignment Consent or any order, ruling or decree of any judicial or administrative body relating thereto or in connection therewith specifies and requires to be satisfied prior to assignment of the Station's Assets to Buyer shall have been satisfied.

c. All other authorizations, consents, approvals and clearances of all federal, state and local governmental agencies required to permit the consummation by Seller of the transactions contemplated by this Agreement shall have been obtained; all statutory and regulatory requirements for such consummation shall have been fulfilled; and no such authorizations, consents, approvals or clearances shall contain any conditions that individually or in the aggregate would have a material adverse effect on the Station or Seller's effectuation of the transactions contemplated herein.

9.4 No Adverse/Insolvency Proceedings. No suit, action or governmental proceeding shall be pending, and no order, decree or judgment of any court, agency or other governmental authority shall have been rendered, against Buyer that would make it unlawful for Buyer to consummate the transactions contemplated by this Agreement in accordance with the terms hereof, or which question the validity of any action taken or to be taken pursuant to or in connection with this Agreement or which would reasonably be expected to result in a claim for damages for which Seller would be responsible. No insolvency proceedings of any character against Buyer shall be pending, or to the knowledge of Buyer threatened, and Buyer shall not

have taken any action in contemplation of, or which would constitute the basis for, the institution of any such insolvency proceeding.

9.5 Delivery of Closing Documents. Buyer shall have delivered on or before the Closing Date each of the items required to be delivered pursuant to Section 10.3 herein or as otherwise provided in this Agreement.

## **ARTICLE X CLOSING**

10.1 Closing Date. The Closing shall take place on a mutually-acceptable date and at a mutually-acceptable location, with the date being no later than (5) business days after the later of either (a) the satisfaction of all conditions set forth in Articles VIII and IX above, or (b) the Assignment Consent has become a Final Order, unless the Parties mutually agree to waive the requirement for a Final Order. At the Parties' option, the Closing may be completed through an exchange of documents through facsimile or electronic transmission and overnight courier. Unless waived by Buyer, the Closing on the sale and purchase of the Station's Assets herein and on the sale and purchase of the Colorado Stations', the Utah Stations' and the Nebraska Station's assets pursuant to the terms and conditions of the Severance/Center APA, the Huntington/Castle Dale APA, and the Allen APA, respectively, shall take place at the same time.

10.2 At Closing, Seller shall deliver or cause to be delivered to Buyer the following, in each case in form and substance which is customary and reasonably satisfactory to Buyer:

- a. License Assignment. Assignment to Buyer of the FCC Authorizations.
- b. Bill of Sale. A bill of sale and all other appropriate documents and instruments assigning to Buyer good and marketable title to the Tangible Personal Property and all other Assets free and clear of any Liens.
- c. Station Contracts Assignment. Such assignments and further instruments of transfer to assign to Buyer all of Seller's rights under the Station Contracts free and clear of all

Liens and any other adverse claims, with, where required, the necessary consents to such assignments.

d. Additional Documents. Such other information, materials and documentation as counsel for Buyer shall have reasonably requested for the purpose of consummating the transactions described herein and to evidence Seller's satisfaction of the conditions to Buyer's obligations hereunder, and any other documents expressly required by this Agreement to be delivered by Seller at Closing.

e. Certificates. (1) A certificate by Seller dated as of the Closing Date certifying that, except as set forth in such certificate, all of Seller's undertakings and obligations under this Agreement are satisfied as of the Closing Date, and all of its warranties and representations remain true and accurate as of the Closing Date; (2) a certificate from the Secretary of the State of Illinois, dated as near as practicable to the Closing Date, showing that Seller is organized and in existence in the State of Illinois; (3) a certificate from the Secretary of the State of New Mexico dated as near as practicable to the Closing Date, showing that Seller is authorized to do business there; (4) a certificate of the Seller's managing member attesting to the incumbency of each member of Seller who executes this Agreement and any of the other Documents; and (5) a certified copy of its members' resolutions authorizing Seller's execution, delivery and performance of this Agreement, including consummation of the transactions contemplated hereby.

f. Intentionally Omitted.

g. Records. Copies of the records and documents referenced in Section 2.1(d) above. Such documents need not be provided in person but may be located at the Station's offices.

h. Intentionally Omitted.

i. Lien Search Reports. Copies of Seller's Lien Search Reports evidencing Seller's termination of any security interests as described in Section 8.5 herein, including, but

not limited to, any pay-off letter(s) and UCC-3 financing statement(s) from any and all Lienholders of Seller who have a security interest in Seller or in any of the Station's Assets as defined herein or Seller's Attorney Certification Letter.

j. Estoppel Certificates. Any necessary estoppel certificate(s).

k. Counsel's Opinion. Opinion of Seller's counsel substantially in the form attached as Exhibit C hereto.

10.3 Deliveries to Seller by Buyer. At Closing, Buyer shall deliver or cause to be delivered to Seller the following, in each case in form and substance which is customary and reasonably satisfactory to Seller:

a. Intentionally left blank.

b. Certificates. (1) A certificate by Buyer dated as of the Closing Date certifying that, except as set forth in such certificate, all of Buyer's undertakings and obligations under this Agreement are satisfied as of the Closing Date, and all of its warranties and representations remain true and accurate as of the Closing Date; (2) a certificate from the Secretary of the State of Wyoming, dated as near as practicable to the Closing Date, showing that Buyer is organized and in existence in the State of Wyoming; (3) a certificate of the managing member of Buyer attesting to the incumbency of each member of Buyer who executes this Agreement and any of the other Documents; and (4) a certified copy of its members' resolutions authorizing Buyer's execution, delivery and performance of this Agreement, including consummation of the transactions contemplated thereby.

c. Additional Documents. Such additional information, materials, and documentation as counsel to Seller shall have reasonably requested for the purpose of consummating the transactions described herein and to evidence Buyer's satisfaction of the conditions to Seller's obligations hereunder, and any other documents expressly required by this Agreement to be delivered by Buyer at Closing.

d. Assumption Agreement. Documentation in a form reasonably satisfactory to counsel for Seller that Buyer has assumed the Assumed Obligations.

10.4 Waiver of Conditions. In the event that due to a material default by Seller under the terms of this Agreement, one or more of the conditions precedent to the Obligations of Buyer to Close set forth in Article VIII above shall have failed to be satisfied, then Buyer may, in its sole discretion, elect to waive such condition(s) precedent, and Buyer and Seller shall Close with the condition(s) precedent to the obligations of Seller deemed to be waived; provided, however, that the condition requiring grant of the Assignment Consent shall not be waivable by Buyer or Seller.

## **ARTICLE XI**

### **SURVIVAL OF REPRESENTATIONS AND WARRANTIES: INDEMNIFICATION**

11.1 Survival of Representations and Warranties. All representations, warranties, covenants and agreements contained in this Agreement or in any other Document shall survive the Closing, regardless of any investigation, inquiry or knowledge on the part of any Party, and the Closing shall not be deemed a waiver by either Party of the representations, warranties, covenants or agreements of the other Party contained herein or in any other Documents; provided, however, that the period of survival shall end one (1) year after the Closing Date, whereupon such representations, warranties, covenants and agreements shall expire and be of no further force or effect; provided, however, that Seller's representations and warranties set forth in Section 3.15 herein (Tax Claims) shall survive until the expiration of the applicable statutes of limitations for claims relating thereto; that Seller's representations and warranties set forth in Section 3.3 herein relating to the Station's FCC Authorizations (FCC Authorization Claims) shall survive for a period of eighteen (18) months from the Closing Date and that Seller's covenants set forth in Section 5.1(a) herein relating to any Administrative Violations (Violation Claims) shall survive until such Violation Claims have been removed or corrected and the payment of all costs associated therewith, including fines, forfeitures and costs of



compliance requirements therefore, have been made (the “Survival Period”). With the exception of such Tax and FCC Authorization Claims, no claim may be brought under this Agreement or any other Document, unless written notice describing in reasonable detail the nature and basis of such claim is given on or prior to the last day of the Survival Period. In the event such a notice is so given, the right to indemnification with respect thereto under this Article shall survive the applicable Survival Period until such claim is finally resolved and any obligations with respect thereto are fully satisfied.

11.2 Indemnification by Seller. Seller shall indemnify, defend, and hold harmless Buyer, any principal thereof, and their permitted assigns, with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, obligations, liabilities, recoveries, deficiencies, and expenses (including interest, penalties and reasonable attorneys' fees) of every kind and description (collectively “Claim”) relating to or arising out of:

a. Any material breach or non-performance by Seller of any of its representations, warranties, covenants or agreements set forth in this Agreement or any other Document;

b. Any debt, liability or obligation of Seller or the Station that arises or results from or is attributable to the operations or business of the Seller or the Station prior to the Closing Time, including but not limited to any and all liabilities or obligations to third parties relating to the Assets or Excluded Assets (arising at any time) and any and all liabilities and obligations under any letters of intent or agreements to sell or share in proceeds from the sale of the Station, and under the Station Contracts to the extent such liabilities and obligations relate to any period prior to the Closing Time, regardless of whether disclosed in any Schedule or Document and regardless of whether constituting a breach by Seller of any representation, warranty, covenant or agreement, and any other liability or obligation of Seller; excluding, however, the Assumed Obligations; or

c. Any and all Claims relating to or arising out of any federal, state, county and local income, property, sales, use, or franchise tax returns which are required to have been filed

by Seller, and the payment of all such taxes, including but not limited to, personal property taxes, which have become due and payable pursuant to such returns or pursuant to any assessments which have become due and payable.

11.3 Indemnification by Buyer. Buyer shall indemnify, defend, and hold harmless Seller, any principal thereof, and their permitted assigns, with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, obligations, liabilities, recoveries, deficiencies, and expenses (including interest, penalties and reasonable attorneys' fees) of every kind and description relating to or arising out of:

a. Any material breach or non-performance by Buyer of any of its representations, warranties, covenants or agreements set forth in this Agreement or any other Document; or

b. The Assumed Obligations and any other liability, obligation or debt of Buyer or the Station that arises or results from and is attributable to the operations or business of the Buyer or the Station after the Closing Time.

11.4 Indemnification Procedure. For purposes of administering the indemnification provisions set forth in Sections 11.2 and 11.3, the following procedures shall apply:

a. Whenever a claim for indemnification shall arise under this Section, the Party entitled to indemnification (the "Indemnified Party") shall promptly and in no event later than fifteen (15) days after receipt of such a claim, give written notice to the Party from whom indemnification is sought (the "Indemnifying Party") setting forth in reasonable detail, to the extent then available, the facts concerning the nature of such claim and the basis upon which the Indemnified Party believes that it is entitled to indemnification hereunder, provided that the Indemnified Party's failure to do so shall not preclude it from seeking indemnification hereunder unless such failure has materially prejudiced the Indemnifying Party's ability to defend such claim.

b. In the event of any claim for indemnification hereunder resulting from or in connection with any claim, action, suit or legal proceedings brought by a third party, the Indemnifying Party shall be entitled, at its sole expense, either:

(1) to participate therein, or

(2) to assume the entire defense thereof with counsel who is selected by it and who is reasonably satisfactory to the Indemnified Party provided that: the Indemnifying Party agrees in writing that it does not and will not contest its responsibility for indemnifying the Indemnified Party in respect of such claim or proceeding, and that no settlement shall be made without the prior written consent of the Indemnified Party which shall not be unreasonably withheld. If, however, the claim, action, suit or proceeding would, if successful, result in the imposition of damages for which the Indemnifying Party would not be solely responsible hereunder, or representation of both Parties by the same counsel would otherwise be inappropriate due to actual or potential differing interests between them, then the Indemnifying Party shall not be entitled to assume the entire defense and each Party shall be entitled to retain counsel who shall cooperate with one another in defending against such action, claim or proceeding.

c. If the Indemnifying Party does not choose to defend against a claim, action, suit or legal proceeding by a third party, the Indemnified Party may defend against such claim, action, suit or proceeding in such manner as it deems appropriate or settle such claim, action, suit or proceeding (after giving notice thereof to the Indemnifying Party) on such terms as the Indemnified Party may deem appropriate, and the Indemnified Party shall be entitled to periodic reimbursement of expenses incurred in connection therewith and prompt indemnification from the Indemnifying Party, including reasonable attorneys' fees, in accordance with this Article.

d. The Indemnifying Party will not, without the Indemnified Party's written consent, settle or compromise any claim or consent to any entry of judgment which does not include, as an unconditional term thereof, the giving by the claimant to the Indemnified Party of a release from all liability with respect to such claim. Neither Buyer nor Seller shall be deemed

to have notice of any claim by reason of any knowledge acquired on or prior to the Closing Date by an employee of the Station unless express evidence is available establishing actual notice to either Party.

## **ARTICLE XII** **TERMINATION**

12.1 Events of Termination. If Closing shall not have previously occurred, this Agreement shall terminate with written notice as follows:

- a. By mutual consent of Seller and Buyer;
- b. By either Party if the FCC's Assignment Consent has not been issued and become a Final Order by the Drop Dead Date, as provided for in Section 6.2 hereinabove; or Closing has not occurred by the Drop Dead Date; or if the FCC denies the Assignment Application or designates the Assignment Application for an evidentiary hearing;
- c. Fifteen (15) days after written notice is given by one Party to the other Party specifying a material breach hereunder by the other Party and specifying the fifteen (15)-day cure period, and such breach remains uncured after the expiration of such fifteen (15)-day period;
- d. By either Party pursuant to and in accordance with the provisions of Section 16.17 hereinbelow; or
- e. By Buyer pursuant to and in accordance with the provisions of Section 16.18 hereinbelow.

Notwithstanding the foregoing, no Party shall be entitled to terminate this Agreement while such Party is in material breach hereunder. With the exception of the termination provisions contained in Subsections 12.1(a), (b) and (d) herein, no Party shall be entitled to terminate this Agreement unless the termination is based on the material breach of the other

Party. In the event this Agreement is terminated for any reason other than Buyer's material breach hereunder, Buyer shall be entitled to the remedies as provided in Section 14.3 below.

### **ARTICLE XIII** **RISK OF LOSS**

13.1 Damage to any of the Tangible Personal Property to be conveyed hereunder from fire, casualty or other cause shall, at all times up to and including the Closing Time, be the responsibility of Seller to repair or cause to be repaired and to restore the Tangible Personal Property as closely as practicable to its condition, prior to any such loss or damage. Upon the occurrence of any such casualty, loss, damage or destruction, material to the operation of the Station prior to the Closing Date, Seller shall immediately give Buyer written notice setting forth in detail the extent of such loss, damage or destruction, the cause thereof if known, and the insurance coverage and Seller shall use its best efforts promptly to commence and thereafter diligently to proceed to repair or replace any such lost, damaged or destroyed property.

### **ARTICLE XIV** **DEFAULT AND REMEDIES**

14.1 Material Breaches. Only material breaches or failures to perform by a Party shall be grounds for postponing the Closing or terminating this Agreement.

14.2 Opportunity to Cure. No Party shall be deemed in default hereunder unless such default continues for fifteen (15) days after receipt of written notice from the non-defaulting Party specifying in reasonable detail the nature of such default. The defaulting Party shall have the right to cure such default within such fifteen (15)-day period, provided that if Closing is scheduled prior to the end of this period, the cure must be accomplished by the Closing Date.

14.3 Buyer's Remedies. Seller agrees that the Assets to be conveyed 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 to specific enforcement of 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. In addition, in the event that Closing does not take place due to a material breach of the Agreement caused by Seller, or due to a material breach known to Seller on the date of execution of this Agreement, Buyer shall be entitled to reasonable out-of-pocket expenses incurred for the preparation, filing and prosecution of the transactions contemplated herein (including reasonable attorneys' fees) as may be mutually agreed upon by the Parties or if the Parties are unable to agree, by the resolution of disputes procedure set forth in Section 14.6 hereinbelow. The remedies described in this Section shall be in lieu of any other remedies to which Buyer might otherwise be entitled due to Seller's wrongful failure to consummate the transactions contemplated by this Agreement.

14.4 Intentionally Omitted.

14.5 Limits of Liability. Except as provided for herein, neither Seller nor Buyer shall have any liability to the other for lost profits or for special, consequential or incidental damages of any kind.

14.6 Resolution of Disputes.

a. Arbitration Any controversy, dispute or claim arising out of or in connection with or relating to this Agreement or any of the Documents in connection herewith or therewith, or the breach, termination or validity hereof or any transaction contemplated hereby or thereby (any such controversy, dispute or claim being referred to as a "Dispute") shall be finally settled by arbitration conducted expeditiously in accordance with the Commercial Arbitration Rules and Procedures then in force (the "AAA Rules") of the American Arbitration Association (the "AAA").

b. Procedures: No Appeal. There shall be a panel of three arbitrators who shall be appointed pursuant to AAA procedures, in each case, within fifteen (15) business days following receipt by one Party of a demand by the other Party for arbitration in any such proceeding. Each of the arbitrators shall be an attorney with no less than fifteen (15) years

experience in the practice of business and communications law (preferably with experience in the acquisition and financing of radio stations) who shall not have performed any significant services for either Party or person controlled by either Party for a period of five (5) years prior to the date the demand for arbitration is made. Any arbitration pursuant to this Section shall take place in a location selected by Seller and Buyer. A final award shall be rendered as soon as reasonably possible and, in any event, within ninety (90) days of the appointment of the panel of arbitrators; provided, however, that if the arbitrators determine by majority vote that fairness so requires, such ninety (90)-day period may be extended by no more than sixty (60) additional days. The Parties agree that the arbitrators shall have the right and power to shorten the length of any notice periods or other time periods provided in the AAA Rules and to implement expedited procedures under the AAA Rules in order to ensure that the arbitration process is completed within the time frames provided herein. The arbitration decision or award shall be reasoned and in writing, and the arbitrators shall have thirty (30) days thereafter to reconsider and modify such decision if any Party so requests such reconsideration or modification in writing within ten (10) days after the decision. Judgment on the decision or award rendered by the arbitrators may be entered and specifically enforced in any court having jurisdiction thereof. Thereafter, the decision of the Arbitrator shall be final, binding, and nonappealable with respect to the Parties.

c. Authority. The arbitrators shall have authority to award relief under legal or equitable principles, including interim or preliminary relief, and to allocate responsibility for the costs of the arbitration and to award recovery of reasonable attorneys' fees and expenses in such manner as is determined to be appropriate by the arbitrators. Notwithstanding the provisions of Section 16.6 to the contrary, any arbitration held pursuant to the provisions of this Section 14.6 shall be governed by the Rules of the AAA. All arbitrations commenced pursuant to this Agreement, while any other arbitration hereunder may be in progress shall be consolidated and heard by the initially constituted panel of arbitrators.

**ARTICLE XV**  
**POST CLOSING OBLIGATIONS**

15.1 Intentionally left blank.

15.2 Handling of Mail. After the Closing Date, Seller shall promptly forward all mail received by Seller and intended for Buyer or the Station and Buyer shall promptly forward all mail received by Buyer and intended for Seller. The addresses for Seller and Buyer shall be those set forth in Section 16.3 herein without copies to their respective counsel.

**ARTICLE XVI**  
**MISCELLANEOUS**

16.1. Further Actions. From time to time before, at and after the Closing, each Party, at its expense and without further consideration, will execute and deliver such documents to the other Party as the other Party may reasonably request in order to accomplish the transactions contemplated hereby.

16.2 Payment of Expenses.

a. All state or local sales or use, stamp or transfer, grant and other similar taxes payable in connection with consummation of the transactions contemplated hereby shall be paid by the Party primarily liable under applicable law to pay such tax.

b. Except as otherwise expressly provided in this Agreement, each of the Parties shall bear its own expenses, including the fees of any attorneys and accountants engaged by such Party, in connection with this Agreement and the consummation of the transactions contemplated herein.

16.3 Notices. All notices, demands or other communications given hereunder shall be in writing and shall be sufficiently given if delivered by hand; by courier (including nationally-recognized overnight delivery service); sent by registered or certified first-class mail, return receipt requested, postage prepaid; or by facsimile, with receipt confirmation and a follow-up



copy sent by a nationally-recognized overnight delivery service on the same day as such facsimile, addressed as follows:

If to Seller:	Lake Shore Media, L.L.C. 980 North Michigan Avenue Suite 1880 Chicago, Illinois 60611 Atten: Christopher F. Devine
Copy to: (which shall not constitute notice)	Aaron Shainis, Esquire Shainis & Peltzman, Chartered 1850 M Street, N.W. Suite 240 Washington, D.C. 20036
If to Buyer:	Cochise Media Licenses LLC P.O. Box 11060 Jackson, Wyoming 83002 Atten: Ted Tucker
Copy to: (which shall not constitute notice)	Susan A. Marshall, Esquire Fletcher, Heald and Hildreth, P.L.C. 11 <sup>th</sup> Floor, 1300 N. 17th Street Arlington, Virginia 22209

or such other address with respect to either Party as such Party may from time to time specify (as provided above) to the other Party hereto. Any such notice, demand or communication shall be deemed to have been given:

- a. if sent by first class mail, as of the close of the third (3<sup>rd</sup>) business day following the date so mailed;
- b. if personally delivered or sent by overnight courier, on the date delivered; and
- c. if faxed, on the date faxed, provided written or verbal confirmation of receipt has been obtained by the sending Party.

16.4 Entire Agreement. This Agreement, the Schedules and Exhibits hereto, and the other Documents, constitute the entire agreement and understanding between the Parties with

respect to the subject matter hereof and supersede any prior offers, negotiations, agreements, understandings or arrangements between the Parties with respect to the subject matter hereof.

16.5 Benefit and Assignment. Except as may be provided herein, neither Party may assign its rights or obligations hereunder to another party without the advance written consent of the other Party; provided, however, that (i) upon notice to Seller, Buyer may assign its rights under this Agreement to a newly formed affiliate or subsidiary of Buyer, provided such affiliate or subsidiary is controlled by or under common control of Buyer, and (ii) any Party's rights to indemnification under Article XI hereof will inure to the benefit of and be enforceable by any successor-in-interest, by merger or consolidation or by any lienholder secured by a security interest in such rights to indemnification. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors or permitted assigns.

16.6 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the internal laws of the State of New Mexico, including all matters of construction, validity and performance, without regard to its principles of conflicts of law.

16.7 Amendments and Waivers. No term or provision of this Agreement may be amended, waived, modified, discharged or terminated orally but rather only by an instrument in writing signed by both Parties. Any written waiver shall be effective only in accordance with its express terms and conditions.

16.8 Severability. Any provision of this Agreement which is held by any court of competent jurisdiction or as a result of further legislative or administrative action, unenforceable shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without affecting the validity or enforceability of any other provision hereof.

16.9 Headings. The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

16.10 Counterparts. This Agreement may be executed in any number of counterparts, and by either Party on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16.11 References. All references in this Agreement to Schedules and Exhibits are to Schedules and Exhibits contained in this Agreement unless a different document is expressly specified.

16.12 Time of Essence. Time is of the essence of this Agreement and the performance of each and every provision hereof.

16.13 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 provision of this Agreement shall be interpreted or construed against the Party whose counsel drafted that provision.

16.14 Confidentiality. Buyer and Seller shall keep confidential all information obtained with respect to the other in connection with this Agreement and the negotiations preceding this Agreement, and will use such information solely in connection with the transactions contemplated by this Agreement. If the transactions contemplated hereby are not consummated for any reason, each Party shall return to the other, without retaining a copy thereof, any schedules, documents or other written information obtained from the other in connection with this Agreement and the transactions contemplated hereby. Notwithstanding the foregoing, neither Party shall be required to keep confidential or return any information which (a) is known or available through other lawful sources, not bound by a confidentiality agreement with the disclosing Party, (b) is or becomes publicly available or known through no fault of the receiving Party or its agents, or (c) is required to be disclosed pursuant to an order or request of a judicial or governmental authority or under applicable law.

16.15 News Releases. In the event either Party wishes to issue a news release or other announcement regarding this Agreement (other than public notices required by Section 73.3580 of the FCC's rules), such Party shall be required to obtain the consent of the other Party, which may be withheld.

16.16 Attorneys' Fees. If either Seller or Buyer brings suit against the other in connection with this Agreement, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and other costs and expenses incurred by such Party in connection with such suit regardless of whether such suit is prosecuted to judgment. As used herein, the "prevailing Party" shall mean, in the case of a claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of a defendant or respondent, one who is successful in denying substantially all of the relief sought by the claimant.

16.17 Force Majeure. Either Party's failure to perform its covenants or agreements, in whole or part, due to any Acts of God, strikes or threats thereof, *force majeure*, or any other cause beyond the reasonable control of that Party shall not constitute a breach of this Agreement, and Buyer or Seller, as the case may be, will not be liable to the other Party therefor, provided that the failing Party uses reasonable diligence to correct such failure or impairment as soon as reasonably possible, or in any event, no later than thirty (30) days from the date of the failure or impairment. In the event that the failing Party has not completed the correction of such failure or impairment within the thirty (30)-day period, that Party's failure to perform shall constitute a breach of this Agreement and the other Party shall have the right to terminate this Agreement without liability to that Party.

16.18 Adverse Order. In the event, before Closing, any court, arbitration tribunal or governmental department or agency of any kind, domestic or foreign, enjoins the transactions contemplated by this Agreement or issues an order, judgment or determination of any kind that prohibits Seller's consummation of the transactions contemplated by this Agreement or would prohibit Buyer's ownership and operation of the Station after Closing, Seller shall promptly

notify Buyer in writing of such injunction, order, judgment or determination, and Buyer, at its sole option, shall have the right to terminate this Agreement without liability to Buyer.

[Signatures appear on next page.]

[Signature page to Asset Purchase Agreement.]

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed as of the date first written above.

**BUYER:**

**COCHISE MEDIA LICENSES LLC**

By: Ted Tucker  
Ted Tucker, Managing Member

**SELLER:**

**LAKESHORE MEDIA, L.L.C.**

By: \_\_\_\_\_  
Christopher F. Devine, Managing Member

[Signature page to Asset Purchase Agreement.]

**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed as of the date first written above.

BUYER:

**COCHISE MEDIA LICENSES LLC**

By: \_\_\_\_\_  
Ted Tucker, Managing Member

SELLER:

**LAKESHORE MEDIA, L.L.C.**

By:  \_\_\_\_\_  
Christopher F. Devine, Managing Member

**SCHEDULES**

Schedule 3.3	-	FCC Authorizations
Schedule 3.4	-	Tangible Personal Property
Schedule 3.5	-	Litigation Claims
Schedule 3.13	-	Station Contracts
Schedule 3.14	-	Insolvency Proceedings
Schedule 3.18	-	Intellectual Property

**EXHIBITS**

Exhibit A	-	Permission Letter
Exhibit B	-	Form of Estoppel Certificate
Exhibit C	-	Form of Counsel Opinion Letter



### **SCHEDULE 3.3**

#### **FCC AUTHORIZATIONS**

- 1. LICENSE AUTHORIZATION (BLH-19950130KE) FOR STATION KMXQ TO OPERATE AT SOCORRO, NEW MEXICO, WITH FCC FACILITY ID NO. 72615.**
- 2. SPECIAL TEMPORARY AUTHORITY REQUEST, FILED ON AUGUST \_\_, 2009, BY LAKESHORE MEDIA, L.L.C., FOR PERMISSION TO OPERATE THE STATION WITH REDUCED POWER.**