

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** is made as of the 6th day of July, 2001 (the "Effective Date"), by and between AGM - Nevada, LLC, a Nevada limited liability company ("Buyer"), and Laramie Mountain Broadcasting, L.L.C., a Virginia limited liability company, licensee of KRQU(FM) and Mountain States Radio, Inc., a Wyoming corporation, licensee of KRRR(FM) ("Seller").

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

A. Seller is engaged in the business of radio broadcasting and presently owns certain assets of and operates commercial radio broadcast Stations KRRR(FM), licensed to Cheyenne, Wyoming and KRQU(FM), licensed to Laramie, Wyoming (collectively, the "Stations" and individually "Station").

B. Seller is willing to sell to Buyer and Buyer is willing to purchase from Seller, substantially all of the assets, business, and rights of Seller related to the conduct of the Stations on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the Recitals and of the mutual covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

### **ARTICLE I. DEFINITIONS**

1.1. **Definitions.** Except as specified otherwise, when used in this Agreement, the following terms shall have the meanings specified:

**"Agreement"** shall mean this Purchase and Sale Agreement, together with the Schedules and the Exhibits attached hereto, as the same shall be amended from time to time in accordance with the terms hereof;

**"Assumed Liabilities"** shall mean the obligations of Seller under the Contracts listed on Schedule 1.1;

**"Bill of Sale and Assignment"** shall mean an instrument in the form of Exhibit "A" attached hereto, by which Seller shall convey to Buyer; the Customer Lists, the Equipment, the Intangible Property, the Licenses, the Miscellaneous Assets and the Records;

**"Buyer"** shall mean AGM Fort Collins, LLC;

**"Buyer's Closing Certificate"** shall mean the certificate of Buyer in the form of Exhibit "C" attached hereto;

**“Closing”** shall mean the conference to be held at 10.00 a.m. Colorado time, and at such place as mutually agreed upon by Buyer and Seller on the Closing Date at which time the transactions contemplated by this Agreement shall be consummated;

**“Closing Date”** shall mean (a) the date designated by Buyer upon at least five (5) days prior written notice to Seller which is no later than ten (10) business days after the date on which FCC Consent has become a Final Order; or (b) such other date as Buyer and Seller may agree upon in writing. The Closing shall be deemed effective as of 12:01 a.m. on the first day subsequent to the Closing Date;

**“Communications Act”** means the Communications Act of 1934, as amended, together with the rules, regulations and policies of the FCC;

**“Contract Assignment”** shall mean the Assignment and Assumption of Contracts, in the form of Exhibit “B” attached hereto, by which Seller shall assign the Contracts to Buyer and Buyer shall assume the then remaining rights and obligations of Seller under the Contracts;

**“Contracts”** shall mean those agreements listed on Schedule 1.1 (other than the Leases) under which Seller conducts the business of the Stations, whether written, oral or implied, including all contractual obligations incurred by Seller for sale of time for the broadcast of advertising and programs, and for the Program Rights;

**“Copyrights”** shall mean all of Seller's rights to any copyrights and copyright applications related to the Stations;

**“Customer Lists”** shall mean all lists and computer tapes and programs in Seller's possession concerning past, present and potential purchasers of advertising or services from the Stations;

**“Earnest Money”** shall mean the sum of One Hundred Thousand Dollars (\$100,000), in the form of an irrevocable letter of credit in form acceptable to Seller issued by a financial institution reasonably acceptable to the Seller, to be deposited by Buyer with the Escrow Agent concurrently with the execution hereof to be held by Escrow Agent in accordance with the terms and provisions of this Agreement and the Escrow Agreement;

**“Environmental Laws”** shall mean the rules and regulations of the FCC, the Environmental Protection Agency and any other federal, state or local government authority pertaining to human exposure to RF radiation and all applicable rules and regulations of federal, state and local laws, including statutes, regulations, ordinances, codes, rules, as amended, relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Materials or toxic substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulations of the Environmental Protection Agency,

regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency now or at any time hereafter in effect;

**“Equipment”** shall mean all machinery, equipment, furniture, fixtures, furnishings, and other items of tangible personal property owned or leased by Seller which are used or useable in the operation of the Stations, including without limitation to those items listed on Schedule 1.2;

**“Escrow Agent”** shall mean Star Media Group, Inc.;

**“Escrow Agreement”** shall mean the Escrow Agreement in the form of Exhibit “D” attached hereto between Escrow Agent, Buyer and Seller to be entered into contemporaneously with the execution of this Agreement;

**“Event of Loss”** shall mean any material loss, taking, condemnation, damage or destruction of or to any of the Purchased Assets or the Stations;

**“FCC”** means the Federal Communications Commission;

**“FCC Consent”** shall mean action by the FCC granting its consent to the assignment of the Licenses from Seller to Buyer;

**“FCC Rulemaking Authorization”** shall mean FCC final approval for a change in the city of license for KRQU from Laramie, Wyoming to Laporte, Colorado. FCC final approval contemplates grant of the rulemaking request authorizing the change in the city of license which is no longer subject to reconsideration or appeal. In addition, FCC Rulemaking Authorization shall require initial grant of a construction permit for a site providing city grade service to Laporte, Colorado. The application for the construction permit for such site shall be filed immediately on initial grant of the rulemaking request for a change in city of license for Laporte.

**“Final Order”** shall mean an FCC Consent, with respect to which no action, request for stay, petition for rehearing or reconsideration, appeal or review by the FCC on its own motion is pending and as to which the time for filing or initiation of any such request, petition, appeal or review has expired;

**“Hazardous Materials”** shall mean any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including without limitation, substances defined as “hazardous wastes,” “hazardous substances,” “toxic substances,” “radioactive materials,” or other similar designations in, or otherwise subject to regulation under, any Environmental Laws. “Hazardous Materials” includes but is not limited to polychlorinated biphenyls (PCB's) asbestos, lead-based paints, infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including, without limitation, crude oil or any fraction thereof);

**“Intangible Property”** shall mean: (a) the Copyrights; (b) the Trademarks; (c) all of the rights of the Seller in and to the call letters of the Stations; (d) all computer software for Stations

which the Seller owns, licenses or otherwise has the legal right to use with Stations (including any upgrade, alteration or enhancement with respect thereto); (e) all domain names, if any, which the Seller owns, licenses or otherwise has the legal right to use with the Stations; (f) any designs owned by Seller relating to any inter or intranet web site of the Stations; and (g) all goodwill associated with Stations;

**“Lease Assignment”** shall mean the Assignment and Assumption of Leases in the form of Exhibit “E” attached hereto, by which Seller shall assign to Buyer the Leases and Leases of Real Property;

**“Leases”** shall mean those leases of Leased Real Property and leases of Equipment related to the Stations as listed on Schedule 1.3;

**“Licenses”** shall mean all licenses, permits and authorizations issued by the FCC to Seller for the operation of the Stations and all auxiliary facilities licensed by the FCC for operation in connection with the Stations, as listed on Schedule 1.4;

**“Lien”** shall mean any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, claim, lien, lease (including any capitalized lease) or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, with respect to any of the Purchased Assets or the Stations, including any 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 of the Purchased Assets or the Stations under the Uniform Commercial Code of the State of Colorado or comparable law of any jurisdiction;

**“Miscellaneous Assets”** shall mean all tangible and intangible assets used or useable in the operation of the Stations and not otherwise specifically referred to in this Agreement, including any warranties related to any of the Purchased Assets, excepting therefrom only the Retained Assets;

**“Person”** shall mean any natural person, general or limited partnership, corporation, limited liability company or other entity;

**“Program Rights”** shall mean all rights of Seller presently existing or obtained prior to the Closing, in accordance with this Agreement, to broadcast programs as part of the Stations' programming and for which Seller is or will be obligated to compensate the vendor of such Program Rights, including all program barter agreements;

**“Purchased Assets”** shall mean the right, title and interest of Seller in and to all assets used or useable in the operation of the Stations, including but not limited to (a) the Contracts; (b) the Customer Lists; (c) the Equipment; (d) the Intangible Property; (e) the Leases; (f) the Licenses; (g) the Miscellaneous Assets; (h) Leased Real Property; and (i) the Records, and excluding all of Seller's cash and accounts receivable;

**“Purchase Price”** shall mean the sum of five million and one hundred thousand (\$5,100,000) dollars;

**“Leased Real Property”** shall mean the Seller's leasehold interest in the real property more particularly described on Schedule 1.5, and all buildings, improvements and fixtures thereon, together with all rights of way;

**“Records”** shall mean files and records, including technical information and engineering data, programming information, sales records, advertising records, and FCC logs, relating to the Stations; provided, however, that Records shall not include the financial records of the Seller or records of other businesses or activities of Seller;

**“Schedules”** shall mean those schedules referred to in this Agreement which have been delivered concurrently with the execution of this Agreement;

**“Seller”** shall collectively mean Mountain States Radio, Inc. and Laramie Mountain Broadcasting, L.L.C.

**“Seller's Closing Certificate”** shall mean the certificate of Seller in the form of Exhibit “F” attached hereto;

**“Seller's Opinion of Counsel”** means the legal opinion of counsel to Seller addressed to Buyer in the form of Exhibit “G” attached hereto;

**“Stations”** shall have the meaning set forth in the Recitals;

**“Trademarks”** shall mean all of those names, trademarks, service marks, jingles, slogans, logos, trademark and service mark registrations and trademark and service mark applications owned, used, held for use, licensed by or leased by Seller, if any, relating to the Stations;

**“Tradeout Agreement”** shall mean any contract, agreement or commitment of Seller, oral or written, pursuant to which Seller has sold or traded commercial air time of the Stations in consideration for any property or services in lieu of or in addition to cash, excluding film and program barter agreements;

**1.2. Singular/Plural; Gender.** Where the context so requires or permits, the use of the singular form includes the plural, and the use of the plural form includes the singular, and the use of any gender includes any and all genders. Except as specifically set forth herein, all Section and Article references are to Sections and Articles of this Agreement.

## **ARTICLE II. PURCHASE AND SALE**

**2.1. Purchase and Sale.** At the Closing on the Closing Date, and upon all of the terms and subject to all of the conditions of this Agreement, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase all of Seller's right, title and interest, legal and equitable, in and to the Purchased Assets.

**2.2. Payment on Closing.** At the Closing on the Closing Date, Buyer shall disburse the Purchase Price as follows:

(a) deliver to Seller, by wire transfer in immediately available funds, Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00), plus or less any Purchase Price adjustments as set forth in Section 2 hereof;

(b) deliver to the Escrow Agent an irrevocable letter of credit with an expiration date of no earlier than thirty-six (36) months after the Effective Date in the amount of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000.00) (the "Deferred Purchase Price") reasonably satisfactory to Seller in favor of the Seller and to be held by the Escrow Agent in accordance with the terms of this Agreement and the Escrow Agreement (the "Deferred Purchase Price Deposit").

**2.3. Earnest Money.** On execution of this Agreement, Buyer shall deliver the Earnest Money to the Escrow Agent. Upon the Buyer's delivery of the funds and an irrevocable letter of credit required in Section 2.2(a) and (b) hereof and the Closing Date Deliveries described in Section 2.5(b) hereof, the Escrow Agent shall return the Earnest Money letter of credit to the Buyer.

**2.4. Deferred Purchase Price/Deposit.** The Deferred Purchase Price shall be paid and/or reduced and the Deferred Purchase Price Deposit shall be held, disbursed and/or released, as follows:

(a) If within thirty-six (36) months following the Effective Date, the Seller obtains, or, if the Seller causes the Buyer to obtain, FCC Rulemaking Authorization through a rule making to change KRQU(FM)'s city of license to Laporte, Colorado, which would allow utilization of KRQU(FM) at the current KRRR(FM) tower site, then the Buyer shall immediately transfer by wire transfer in immediately available funds the Deferred Purchase Price, and immediately thereafter, the Escrow Agent shall return the Deferred Purchase Price Deposit to the Buyer. The Seller shall use its best, commercially reasonable efforts during the first twelve (12) months immediately following the Effective Date to cause the above to occur within thirty-six (36) months following the Effective Date. Or;

(b) Seller may within thirty-six (36) months following the Effective date in addition to or in lieu of obtaining an FCC Rulemaking Authorization, specify a tower site for KRQU(FM) which provides at least a (F50, 50) 60 dbu protected contour over the entire city of Fort Collins, Colorado. In the event Seller (i) obtains or causes Buyer to obtain the construction permit for such site, and (ii) obtains and transfers to Buyer or causes the Buyer to obtain a lease for immediately available tower space at such site with rent not to exceed \$500 per month with annual CPI escalators for a term of at least five (5) years with two additional renewal terms of at least five (5) years and that is otherwise reasonably acceptable to Buyer, and (iii) Buyer has no obligation to construct a tower at such site or to reimburse Seller for any such tower construction, then the Purchase Price and the Deferred Purchase Price shall each be reduced by Two Hundred Thousand Dollars (\$200,000.00), and the Buyer shall immediately transfer to the Seller by wire transfer in immediately available funds, the sum of Two Million One Hundred Fifty Thousand Dollars (\$2,150,000.00), and immediately thereafter, the Escrow Agent shall return the Deferred Purchase Price Deposit to the Buyer. Or;

(c) If, within thirty-six (36) months after the Effective Date, the Seller is unable to satisfy either the conditions set forth in Section 2.4(a) above, or the conditions set forth in Section 2.4(b) above, then the Deferred Purchase Price and the Purchase Price shall each be reduced by the amount of Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000.00), and the Escrow Agent shall immediately thereafter return the Deferred Purchase Price Deposit to the Buyer.

Buyer hereby agrees that for a period of thirty-six (36) months after the Effective Date, or upon termination of the Agreement, whichever is earlier, that it will expeditiously and in good faith file all pleadings, applications, rule making requests, and other paperwork requested by Seller to effectuate the intent of Sections 2.4(a) and 2.4(b) above. Seller shall prepare at its expense any and all necessary filings. Buyer, after the date of Closing, as licensee of the station, shall have ultimate discretion and control over what paperwork if any is to be filed; provided, however, if Buyer determines not to submit or file applications, requests, forms or other paperwork reasonably requested by Seller in order to effectuate Sections 2.4(a) or 2.4(b), the Deferred Purchase Deposit shall become due and payable if such failure is not cured within thirty (30) days after written notice by Seller.

In the event any portion of the Purchase Price and Deferred Purchase Price are reduced, the Allocation of Purchase Price shall be automatically deemed as revised to reflect such reduction as a reduction of the amount allocated among the parties to the value of the Intangible Assets for Station KRQU-FM.

**2.5. Closing Date Deliveries.** At the Closing on the Closing Date:

(a) Seller shall deliver, or cause to be delivered to Buyer, properly executed and dated as of the Closing Date: (i) the Bill of Sale and Assignment; (ii) the Contract Assignment; (iii) Lease Assignments, if any; (iv) Seller's Closing Certificate; (v) Seller's Opinion of Counsel; (vi) a certificate of existence or good standing from the Secretary of State of the Seller's state of organization; and (vii) such other documents as provided in Article VII hereof; and

(b) In addition to the payments described in Section 2.2, Buyer shall deliver, or cause to be delivered to Seller, properly executed and dated as of the Closing Date: (i) the Bill of Sale and Assignment; (ii) Buyer's Closing Certificate; (iii) the Contract Assignment; (iv) Lease Assignments; (v) a certificate of existence or good standing from the Secretary of State of Buyer's state of organization and the State of Colorado; and (vi) such other documents as provided in Article VIII hereof.

**2.6. Adjustments to Purchase Price.**

(a) Prorations. At the Closing, all income of the Stations and all taxes and assessments, rent, water, sewer and other utility charges and lienable municipal services, if any, with respect to the Stations' Assets to be acquired by Buyer shall be apportioned and allocated between Buyer and Seller on the basis of the period of time to which such income or liabilities apply in accordance with generally accepted accounting principles. To the extent such items cannot be determined at Closing, a final settlement on such prorations shall be made within thirty (30) days

after the Closing Date. If the Closing occurs before the tax rate is fixed for the then current term, the apportionment of taxes at Closing shall be upon the basis of the tax rate for the preceding tax year applied to the latest assessed valuation. If the tax rate is changed with respect to any period of time prior to the Closing Date, as defined herein, the post-Closing prorations shall include a corresponding adjustment in the final prorations made pursuant to this Section.

(b) Disputes. In the event of any disputes between the parties as to any adjustments under this Section, the amounts not in dispute shall be paid at the time provided herein and the dispute shall be resolved by an independent certified public accountant ("ACPA") who shall be jointly selected by the parties within thirty (30) days after the Closing or after the final settlement on prorations, as the case may be. The decision of the CPA shall be binding on each of the parties and enforceable by a court of competent jurisdiction. The fees and expenses of the CPA shall be paid one-half by Seller and one-half by Buyer.

**2.7. Non-Assumption of Liabilities.** Buyer does not and shall not assume or become obligated to pay any debt, obligation or liability of any kind or nature of Seller or the Stations, except for the Assumed Liabilities or such other obligations, debts, or charges as are specifically allocated to Buyer elsewhere in this Agreement.

**2.8. Risk of Loss.** Subject to Section 10.1 hereof, the risk of all Events of Loss prior to the Closing shall be upon Seller.

**2.9. Allocation of Purchase Price.** Buyer and Seller agree that the Purchase Price shall be allocated as set forth in attached hereto as Exhibit H.

**2.10. Excluded Assets.** The following are specifically excluded from the Purchased Assets: Accounts Receivable, Cash on hand at the time of Closing, corporate books and records.

### **ARTICLE III. GOVERNMENTAL APPROVALS AND CONTROL OF STATIONS**

**3.1. FCC Consent.** It is specifically understood and agreed by Buyer and Seller that the Closing shall be in all respects subject to, and conditioned upon, the receipt of prior FCC Consent. Buyer and Seller shall prepare and file with the FCC as soon as practicable but in no event later than five (5) business days after the execution of this Agreement, all requisite applications and other necessary instruments and documents to request the FCC Consent. After the aforesaid applications, instruments and documents have been filed with the FCC, Buyer and Seller shall prosecute such applications with all reasonable diligence and take all steps reasonably necessary to obtain the requisite FCC Consent. Seller and Buyer shall each pay one-half (2) of all FCC filing or transfer fees relating to the transactions contemplated hereby irrespective of whether the transactions contemplated by this Agreement are consummated and irrespective of whether such fees are assessed before or after the Closing. Notwithstanding the foregoing, Seller shall pay all filing and transfer fees relating to the relicensing of Station KRQU-FM described in Section 2.4 hereof.



**3.2. Control Prior to Closing.** Between the date hereof and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct, the operation of the Stations. Such operation, including complete control and supervision of all programs, employees and policies, shall be the sole responsibility of Seller.

#### **ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer (which representations and warranties shall survive the Closing for a period of eighteen (18) months from the Closing Date) as follows:

**4.1. Organization.** Mountain States Radio, Inc. is incorporated in the State of Wyoming. Laramie Mountain Broadcasting, L.L.C. is organized in the Commonwealth of Virginia. Seller has the power and authority to own, lease, and operate the Purchased Assets and to conduct the business of the Stations as it is now being conducted.

**4.2. Authorization; Enforceability.** The execution, delivery and performance of this Agreement and all of the documents and instruments required hereby by Seller are within the power of Seller. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Seller, the valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or rights of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

**4.3. Absence of Conflicting Agreements.** Neither the execution, delivery or performance of this Agreement in accordance with its terms by Seller nor the consummation of the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement, does or will, after the giving of notice, or the lapse of time or both, or otherwise:

(a) conflict with, result in a breach of any federal, state or local law, statute, ordinance, rule or regulation applicable to Seller, or any court of administrative order or process, or any contract, agreement, arrangement, commitment or plan to which Seller is a party and which relates to, the ownership or operation of the Stations or the Purchased Assets;

(b) result in the creation of any Lien upon any of the Purchased Assets;

(c) terminate, amend or modify, or give any party the right to terminate, amend, modify, abandon or refuse to perform any contract, agreement, arrangement, commitment or plan to which Seller is a party and which relates to, the ownership or operation of the Stations or the Purchased Assets;

(d) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or governmental or public agency or other authority other than the FCC (except as may be required under any Lease); or

(e) require the consent of any person under any agreement, arrangement or commitment of any nature which Seller is a party to or bound or by or which the Purchased Assets are bound or subject (except as required by consents necessary under any Lease or Contract).

**4.4. Purchased Assets.** The Purchased Assets include all of the assets, properties and rights of every type and description, personal and mixed, tangible and intangible, that are necessary for, used or useable in the conduct of the business of owning and operating the Stations in the manner in which that business has been and is now conducted.

**4.5. Title to Purchased Assets; Liens and Encumbrances.** Seller owns good and marketable title to or has valid leasehold interests in all of the Purchased Assets free and clear of any and all Liens.

**4.6. Equipment.** The following is true with regard to the Equipment:

(a) each material item of Equipment is in operating condition and repair, ordinary wear and tear excepted;

(b) the Equipment includes all items of tangible personal property utilized by Seller in connection with owning and operating the Stations; and

(c) the list of Equipment on Schedule 1.2 is a true and correct list of all items of tangible personal property necessary for or used in the operation of the Stations in the manner in which they have been and are now operated.

**4.7. The Contracts.** The following is true with regard to the Contracts:

(a) Schedule 1.1 lists all Contracts for the sale of time on the Stations;

(b) Seller has performed in all material respects each term, covenant and condition of each of the Contracts listed on Schedule 1.1, and no default or any event which with the passing of time or giving of notice would constitute a default on the part of Seller, or any other party thereto, exists under any of the Contracts;

(c) Each of the Contracts listed on Schedule 1.1 is in full force and effect, and to Knowledge of Seller unimpaired by any acts or omissions of Seller, and constitutes the legal and binding obligation of, and is legally enforceable against Seller, and against each other party thereto in accordance with its terms;

(d) Seller has furnished true and complete copies of all Contracts listed on Schedule 1.1, including all amendments, modifications and supplements thereto, and Schedule 1.1 contains summaries of all oral contracts;

(e) Schedule 1.1 sets forth an accurate and complete list of all Tradeout Agreements, and sets forth for each Tradeout Agreement the parties thereto, the value of broadcast time required to be provided on the Stations from and after the date shown on such Schedule and the value of goods and services to be provided to the Stations from and after such date.

**4.8. Intangible Property.** The following is true with regard to the Intangible Property:

(a) There are no claims, demands or proceedings instituted, pending or threatened by any third party pertaining to or challenging Seller's right to use any of the Intangible Property;

(b) Seller is not infringing upon or otherwise acting adversely to any trademark, trade name, patent or copyright owned by a third party;

(c) there are no royalty agreements between Seller and any third party relating to any of the Intangible Property;

(d) to the best of the Seller's knowledge and belief, the Intangible Property constitutes all of the intangible and intellectual property not otherwise in the public domain that is used in the operation of the Stations (other than Copyrights and Trademarks with respect to Program Rights).

**4.9. The Leases.** The following is true with regard to the Leases:

(a) The Leases described on Schedule 1.3 constitute all of the lease agreements between Seller and third parties relating to the operation of the Stations or the Purchased Assets;

(b) Seller has performed in all material respects each term, covenant and condition of each of the Leases which is required to be performed by Seller at or before the date hereof, and no default or event which with the passing of time or giving of notice or both would constitute a default on the part of the Seller or on the part of any other party thereto, exists under any Lease;

(c) Each of the Leases is in full force and effect and constitutes the legal and binding obligation of, and is legally enforceable against Seller and against each other party thereto in accordance with its terms.

**4.10. Financial Statements.** As of the date hereof, the Seller has provided the Buyer with true and complete copies of the unaudited balance sheet of Seller, as of March 31, 2001.

**4.11. No Changes.** Since March 31, 2001, there has not been any:

- (a) Contract or transaction contemplated by Seller with respect to the Stations except in the ordinary course of business consistent with past practices conducted as of that date;
- (b) Default under any indebtedness of Seller, or any event which with the lapse of time or the giving of notice, or both, would constitute such a default;
- (c) Amendment or termination of any Contract, Lease, or License to which Seller is a party, except in the ordinary course of business;
- (d) Material increase in compensation paid, payable or to become payable to any of its employees at the Stations or any material change in personnel policies or benefits, except in the ordinary course of business consistent with past practices;
- (e) Commitment to or liability to any labor organization which represents, or proposes to represent, employees of the Stations;
- (f) A sale, assignment, lease or other transfer or disposition of any of the Purchased Assets or properties of the Stations except in the ordinary course of business or in connection with the acquisition of similar property or assets in the ordinary course of business;
- (g) Agreement by Seller to do any of the foregoing.

**4.12. No Litigation; Labor Disputes..** The following is true with regard to Litigation and Labor Disputes:

- (a) Except for FCC rulemaking procedures generally affecting the radio broadcasting industry, there is no decree, judgment, order, investigation litigation at law or in equity, arbitration proceeding or proceeding before or by any commission, agency or other administrative or regulatory body or authority pending or, threatened to which Seller is a party or otherwise relating to the Stations or the Purchased Assets.
- (b) The Stations are not subject to or bound by any labor agreement or collective bargaining agreement, there is no labor dispute, grievance, controversy, strike or request for union representation pending or threatened against Seller relating to or affecting the business or operations of the Stations and there has been no occurrence of any events which would give rise to any such labor dispute, controversy, strike or request for representation.

**4.13. Governmental Authorizations.** Seller holds, and on the Closing Date Seller will hold, all valid Licenses from the FCC to operate the Stations as radio broadcast stations. Schedule 1.4 includes a true and complete list of the Licenses. The Licenses are in full force and effect and Seller is the authorized legal holder thereof. As of the date hereof, no action or proceeding is pending or threatened before the FCC or any other governmental authority to revoke, refuse to renew or modify such Licenses or other authorizations of the Stations.

**4.14. Compliance with FCC Requirements.** The Stations, their physical facilities, electrical and mechanical systems and transmitting and studio equipment are being and have been operated in all material respects in accordance with the specifications of the applicable Licenses and with each document submitted in support of such Licenses, and the Seller and the Stations are in compliance in all material respects with all requirements, rules and regulations of the FCC. Seller has complied in all material respects with all requirements of the FCC and the Federal Aviation Administration with respect to the construction and/or alteration of Seller's antenna structures, and "no hazard" determinations for each antenna structure have been obtained, where required. All obligations, reports and other filings required by the FCC with respect to the Stations, including without limitation items required to be placed in the Stations' public inspection file have, in all material respects been duly and currently filed as of the date hereof, and are true and complete in all material respects and after the Closing Date, Seller shall furnish to Buyer all information required by the FCC relating to the operation of the Stations prior to the Closing Date.

**4.15. Insurance.** Schedule 4.15 is a correct list of all liability and casualty insurance and errors and omissions insurance policies insuring the business, properties and assets of the Stations and all of such policies are in full force and effect. Seller is not in default with respect to such insurance policies, nor has Seller failed to give any notice or present any claim under any policies in a due and timely fashion.

**4.16. Brokers.** Neither this Agreement nor the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement was induced or produced through any Person acting on behalf of or representing Seller as broker, finder, investment banker, financial advisor or in any similar capacity, other than Star Media Group, Inc., whose fees and expenses shall be paid and satisfied by Seller at the Closing.

**4.17. Environmental Compliance.**

(a) To Seller's knowledge, and without having made any inquiry, Seller has complied and is in material compliance with, all Environmental Laws.

(b) Seller is not a party to any litigation or administrative proceeding or, to the Seller's knowledge, is any litigation or administrative proceeding threatened against it, which in either case (i) asserts or alleges that Seller violated any Environmental Laws, (ii) asserts or alleges that Seller is required to clean up, remove or take remedial or other response action due to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials at the Leased Real Property or (iii) asserts or alleges that Seller is required to pay all or a portion of the cost of any past, present or future cleanup, removal or remedial or other response action which arises out of or is related to the disposal, depositing, discharge, leaking or other release of any Hazardous Materials by Seller at the Leased Real Property.

(c) To the Seller's knowledge, and without having made any inquiry, with respect to the period during which Seller occupied the Leased Real Property, and, with respect to the time before Seller occupied any Leased Real Property, no person has caused or permitted Hazardous

Materials to be stored, deposited, treated, recycled or disposed of on, under or at any Leased Real Property leased, used or occupied by Seller.

(d) To the Seller's knowledge, and without having made any inquiry, there are not now, nor have there previously been, tanks or other facilities on, under, or at the Leased Real Property which contained any Hazardous Materials.

(e) To the Seller's knowledge, the operation of the Stations does not exceed the permissible levels of exposure to RF radiation specified in either the FCC's current rules, regulations and policies concerning RF radiation.

**4.18. Representation as of the Closing Date.** Seller's representations and warranties set forth in this Agreement shall be true and correct on and as of the Closing Date, as though such representations and warranties were made as of a specified date, which need only be true as of such date or as otherwise provided in this Agreement.

## **ARTICLE V. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller (which representations and warranties shall survive the Closing for a period of eighteen (18) months) from the Closing Date as follows:

**5.1. Organization.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland and on the Closing Date Buyer shall be duly qualified to do business in Colorado, and Buyer has full corporate power to purchase the Purchased Assets pursuant to this Agreement.

**5.2. Authorization; Enforceability.** The execution, delivery and performance of this Agreement and all of the documents and instruments required herein by Buyer are within the power of Buyer and have been duly authorized by all necessary limited liability company action by Buyer. This Agreement is, and the other documents and instruments required hereby will be, when executed and delivered by Buyer, the valid and binding obligations of Buyer enforceable against reorganization, moratoriums or similar laws at the time in effect affecting the enforceability or right of creditors generally and by general equitable principles which may limit the right to obtain equitable remedies.

**5.3. Absence of Conflicting Laws and Agreements.** Neither the execution, delivery or performance of this Agreement by Buyer nor the consummation of the sale and purchase of the Purchased Assets or any other transaction contemplated by this Agreement, does or will, after the giving of notice, or the lapse of time, or otherwise;

(a) conflict with, result in a breach of, or constitute a default under, the limited liability company operating agreement or other organizational agreements or documents of any type of Buyer, or any federal, state or local law, statute, ordinance, rule or regulation, or any court or

administrative order or process, or any material contract, agreement, arrangement, commitment or plan to which Buyer is a party or by which Buyer or its assets is bound;

(b) require the consent, waiver, approval, permit, license, clearance or authorization of, or any declaration or filing with, any court or governmental or public agency other than the FCC Consent; or

(c) require the consent of any person under any agreement, arrangement or commitment of any nature to which Buyer is a party or by which it is bound.

**5.4. Qualifications.** Buyer is financially and otherwise qualified to be an FCC licensee of the Stations under all requirements, rules, and regulations of the FCC. Further, Buyer has no reason to believe that an FCC application for assignment of the Licenses to Buyer would not be approved.

**5.5. Representations and Warranties.** Buyer's representations and warranties set forth in this Agreement shall be true and correct on and as of the Closing Date, as though such representations and warranties were made on and as of such time, except for representations and warranties made as of a specified date, which need only be true as of such date or as otherwise provided in this Agreement.

## **ARTICLE VI. CERTAIN MATTERS PENDING THE CLOSING**

From and after the date of this Agreement and until the Closing (unless otherwise provided herein):

**6.1. Access.** Buyer and its authorized agent, officers and representatives shall have reasonable access to the Stations and the Purchased Assets to conduct such examination and investigation of the Stations, and the Purchased Assets as it deems reasonably necessary, provided that such examinations shall be during the Stations' normal business hours, shall not unreasonably interfere with the Stations' normal operations and activities and shall not be in violation of Section 3.2 concerning "control."

**6.2. Operations Pending Closing.** Subject to the provisions of Section 3.2 regarding control of the Stations, after the date hereof and prior to the Closing, Seller shall:

(a) Operate the Stations in accordance with applicable FCC requirements, rules and regulations;

(b) Maintain the Equipment in its present working order, ordinary wear and tear and usage excepted, and replace any of the Equipment which shall be worn out, broken, lost, stolen or destroyed, which Equipment would have been replaced in the ordinary course of business in accordance with past practices;

(c) Not sell, lease, mortgage, pledge or otherwise dispose of any of the Purchased Assets except for transactions in the ordinary and regular course of the operation of the Stations;

(d) Maintain in full force and effect policies of liability and casualty insurance of substantially the same type, character and coverage as the policies currently carried with respect to the business, operations and assets of the Stations;

(e) Not enter into any Tradeout Agreements relating to the Stations which create obligations or liabilities of Seller extending to or beyond the Closing Date without the prior written consent of Buyer;

(f) Proceed with all reasonable diligence to satisfy its obligations pursuant to Tradeout Agreements in the ordinary course of business of the Stations;

**6.3. Consents.** Seller shall attempt to obtain all consents and approvals required from third Persons, whose consent or approval is required in order to assign any Contract or Lease for towers and tower sites to the Buyer, prior to the Closing Date. Seller shall use good faith efforts to obtain all consents and approvals required from third Persons, whose consent or approval is required in order to assign any other Contract or Lease to the Buyer, prior to the Closing Date.

**6.4. Cooperation.** Buyer and Seller will cooperate in all respects in connection with:  
(a) securing any non-governmental approvals, consents and waivers required of third parties; and  
(b) giving notices to any governmental authority, or securing the permission, approval, determination, consent or waiver of any governmental authority, required by law in connection with the transfer of the Purchased Assets from Seller to Buyer.

**6.5. Release of Liens.** At or prior to the Closing, Seller shall obtain the release of all Liens disclosed in the Schedules hereto and any other Liens on the Purchased Assets and shall duly file releases or terminations of all such Liens in each governmental agency or office in which any such Lien or evidence thereof shall have been previously filed.

**6.6. Public Announcement.** Seller shall publish and broadcast a public notice concerning the filing of the application for assignment of the Licenses in accordance with the requirements of the FCC's Rules. As to any other announcements, no party hereto shall issue any press release or public announcement without prior approval of the other parties hereto which shall not be unreasonably withheld except as and to the extent that such party shall be obligated by law, rule or regulation, in which case the other party shall be so advised and the parties shall use their best efforts to cause a mutually agreeable release or announcement to be issued.

## **ARTICLE VII. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER**

Each and every obligation of Buyer to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent:



**7.1. Compliance with Agreement.** Seller shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing.

**7.2. Intentionally Omitted.**

**7.3. Representations and Warranties.** The representations and warranties made by Seller in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date, except for changes permitted or contemplated by this Agreement.

**7.4. Event of Loss.** Between the date of this Agreement and the Closing, neither the Stations nor the Purchased Assets shall have sustained an Event of Loss which individually or in the aggregate would cost in excess of \$100,000 to repair and such repair shall not have been completed on or prior to the Closing Date; provided, however, Seller may elect to extend the Closing Date for a reasonable period not to exceed ninety (90) days necessary to complete such repairs.

**7.5. Deliveries at Closing.** Seller shall have delivered or caused to be delivered to Buyer the documents, each properly executed and dated as of the Closing Date as required pursuant to Section 2.5(a).

**7.6. Absence of Investigations and Proceedings.** Except for governmental investigations relating to the broadcast industry generally, there shall be no decree, judgment, order, or litigation at law or in equity, no arbitration proceedings, and no proceeding before or by any commission, agency or other administrative or regulatory body or authority pending to which Seller is a party or to which the Stations or the Purchased Assets are subject, including any with respect to condemnation, zoning, use or occupancy, which would materially adversely affect the ability of Buyer to operate the Stations or to use or acquire the Purchased Assets in the same manner as operated and used by Seller. Without limiting the generality of the foregoing, no action or proceeding shall be pending before the FCC or any governmental authority to revoke, modify in any material respect or refuse to renew any of the Licenses. No suit, action or other proceeding shall be pending before any court or governmental authority in which it is sought to restrain or prohibit, or obtain damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby.

**7.7. Governmental Consents.** The FCC Consent shall have been issued, and shall, at Closing, be a Final Order and in full force and effect and shall contain no provision materially adverse to Buyer. All other authorizations, consents and approvals of any and all governmental regulatory authorities necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

**7.8. Absence of Liens.** On the Closing Date and simultaneously with the Closing, there shall not be any Liens on the Purchased Assets.

If any of the conditions set forth in this Article VII have not been satisfied, Buyer may in its sole discretion nevertheless elect to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE VIII.**

### **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

Each and every obligation of Seller to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following express conditions precedent;

**8.1. Compliance with Agreement.** Buyer shall have performed and complied in all material respects with all of its obligations under this Agreement which are to be performed or complied with by it prior to or at the Closing.

**8.2. Intentionally Omitted.**

**8.3. Representations and Warranties.** The representations and warranties made by Buyer shall be true and correct in all material respects as of the Closing Date with the same force and effect as though such representations and warranties had been made on the Closing Date.

**8.4. Deliveries at Closing.** Buyer shall have delivered or caused to be delivered to Seller the documents, each properly executed and dated as of the Closing Date required pursuant to Section 2.5. Buyer shall also have made the payments described in Section 2.2.

**8.5. Required Approvals and Consent.** There shall have been secured such permissions, approvals, determinations, consents and waivers, if any, as may be required by law, regulatory authorities, the Leases or the Contracts.

**8.6. Absence of Investigations and Proceedings.** Except for governmental investigations relating to the broadcast industry generally, there shall be no decree, judgment, order, or litigation at law or in equity, no arbitration proceedings, and no proceeding before or by any commission, agency or other administrative or regulatory body or authority pending to which Buyer or Seller is a party or to which the Stations or the Purchased Assets are subject, including any with respect to condemnation, zoning, use or occupancy, which would materially adversely affect the ability of Buyer to operate the Stations or to use or acquire the Purchased Assets after Closing in the same manner as operated and used by Seller. Without limiting the generality of the foregoing, no action or proceeding shall be pending before the FCC or any governmental authority to revoke, modify in any material respect or refuse to renew any of the Licenses. No suit, action or other proceeding shall be pending before any court or governmental authority in which it is sought to restrain or prohibit, or obtain damages or other relief in connection with, this Agreement or the consummation of the transactions contemplated hereby.

**8.7. Governmental Consents.** The FCC Consent shall have been issued, and shall, at Closing be a Final Order and in full force and effect and shall contain no provision adverse to Seller. All other material authorizations, consents or approvals of any and all governmental regulatory

authorities necessary in connection with the consummation of the transactions contemplated by this Agreement shall have been obtained and be in full force and effect.

If any of the conditions set forth in this Article VIII have not been satisfied, Seller may nevertheless elect to proceed with the consummation of the transactions contemplated hereby.

## **ARTICLE IX. INDEMNIFICATION**

### **9.1. Indemnification by Seller.**

(a) Seller shall indemnify and hold Buyer, Buyer's employees, officers, and managers (collectively, "Buyer Indemnified Parties") harmless from and against, and agree promptly to defend Buyer from and reimburse Buyer Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorney fees and other legal costs and expenses) which Buyer Indemnified Parties may within the time limits set forth herein suffer or incur, or become subject to, as a result of or in connection with:

(i) any breach or inaccuracy of any of the representations and warranties made by Seller in or pursuant to this Agreement, or in any instrument, certificate or affidavit delivered by Seller at the Closing in accordance with the provisions of any Section hereof;

(ii) any failure by Seller to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and materials delivered by Seller pursuant to this Agreement;

(iii) the operation or ownership of the Stations or the Purchased Assets prior to the Closing; or

(iv) any suit, action or other proceeding brought by any governmental authority or Person arising out of any of the matters referred to in Sections 9.1(a)(i), 9.1(a)(ii) or 9.1(a)(iii).

(b) The amounts for which Seller shall be liable under Section 9.1 of this Agreement shall be credited for (i) any insurance proceeds payable to Buyer Indemnified Parties in connection with the facts giving rise to the right of indemnification and (ii) any tax benefits received by or accruing to the Buyer Indemnified Parties. Moreover, notwithstanding any other provisions herein, the aggregate amount of Seller's liability for indemnification to Buyer Indemnified Parties under this Agreement shall not exceed the Purchase Price paid by Buyer.

(c) Notwithstanding any other provision to the contrary, Seller shall not be required to indemnify and hold harmless Buyer Indemnified Parties unless: (1) Buyer has asserted a claim with respect to such matters within eighteen (18) months after the Closing, except for the Seller's obligations under Section 2.4 hereof for which the Buyer shall have thirty-six (36) months after the Effective Date to assert a claim; and (2) such claims in the aggregate meet a minimum threshold amount of at least Five Thousand Dollars (\$5,000.00).

(d) Nothing contained in this Section 9.1, or elsewhere herein, shall provide Buyer Indemnified Parties with rights of indemnification or remedies against Seller in amounts greater than as set forth in Section 11.2(b) if the transactions contemplated by this Agreement fail to close.

## **9.2. Indemnification by Buyer.**

(a) Buyer shall indemnify and hold Seller, Stations' Employees Seller's and any other employees, agents, or managers of Seller (collectively, "Seller Indemnified Parties") harmless from and against, and agrees to promptly defend Seller Indemnified Parties from and reimburse Seller Indemnified Parties for, any and all losses, damages, costs, expenses, liabilities, obligations and claims of any kind (including, without limitation, reasonable attorney fees and other legal costs and expenses) which Seller Indemnified Parties may at any time suffer or incur, or become subject to, as a result of or in connection with:

(i) any breach or inaccuracy of any representations and warranties made by Buyer in or pursuant to this Agreement, or in any certificate or affidavit delivered by Buyer at the Closing in accordance with the provisions of any Section hereof;

(ii) any failure by Buyer to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings, liabilities or obligations under this Agreement or under any of the documents and materials delivered by Buyer pursuant to this Agreement;

(iii) the operation and ownership of the Stations and the Purchased Assets by Buyer from and after the Closing Date; or

(iv) any suit, action or other proceeding brought by any governmental authority or person arising out of any of the matters referred to in Sections 9.2(a)(i), 9.2(a)(ii) or 9.2(a)(iii).

(b) The amounts for which Buyer shall be liable under Section 9.2(a) of this Agreement shall be credited for (i) any insurance proceeds payable to Seller Indemnified Parties from insurance policies in connection with the facts giving rise to the right of indemnification and (ii) any tax benefits received by or accruing to the Seller Indemnified Parties.

(c) Notwithstanding any other provision to the contrary, Buyer shall not be required to indemnify and hold harmless Seller Indemnified Parties unless: (1) Seller has asserted a claim with respect to such matters within eighteen (18) months after the Closing, except for the Buyer's obligations under Section 2.4 hereof for which the Seller shall have thirty-six (36) months after the Effective Date to assert a claim; and (2) such claims in the aggregate meet a minimum threshold amount of at least Five Thousand Dollars (\$5,000.00).

(d) Nothing contained in this Section 9.2, or elsewhere herein, shall provide Seller Indemnified Parties with rights of indemnification or remedies against Buyer in amounts greater than as set forth in Section 11.3 if the transactions contemplated by this Agreement fail to close.

## **9.3. Notification of Claims.**

(a) A party entitled to be indemnified pursuant to Section 9.1 or 9.2 (the "Indemnified Party") shall notify the party liable for such indemnification (the "Indemnifying Party")

in writing of any claim or demand which the Indemnified Party has determined has given or could give rise to a right of indemnification under this Agreement. Subject to the Indemnifying Party's right to defend in good faith third party claims as hereinafter provided, the Indemnifying Party shall satisfy its obligations under this Article IX within thirty (30) days after the receipt of written notice thereof from the Indemnified Party.

(b) If the Indemnified Party shall notify the Indemnifying Party of any claim or demand pursuant to Section 9.3(a), and if such claim or demand relates to a claim or demand asserted by a third party against the Indemnified Party which the Indemnifying Party acknowledges is a claim or demand for which it must indemnify or hold harmless the Indemnified Party under Section 9.1 or 9.2, the Indemnifying Party shall have the right to employ counsel acceptable to the Indemnified Party to defend any such claim or demand asserted against the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any such claim or demand at its own expense. The Indemnifying Party shall notify the Indemnified Party in writing, as promptly as possible (but in any case before the due date for the answer or response to a claim) after the date of the notice of claim given by the Indemnified Party to the Indemnifying Party under Section 9.3(a) of its election to defend in good faith any such third party claim or demand. So long as the Indemnifying Party is defending in good faith any such claim or demand asserted by a third party against the Indemnified Party, the Indemnified Party shall not settle or compromise such claim or demand. The Indemnified Party shall make available to the Indemnifying Party or its agents all records and other materials in the Indemnified Party's possession reasonably required by it for its use in contesting any third party claim or demand. Whether or not the Indemnifying Party elects to defend any such claim or demand, the Indemnified Party shall have no obligation to do so.

## **ARTICLE X. FURTHER AGREEMENTS**

**10.1. Event of Loss.** Upon the occurrence of an Event of Loss in excess of \$10,000 prior to the Closing, Seller shall reasonable good faith take steps to repair, replace and restore the damaged, destroyed or lost property to its former condition. At Closing if Buyer has waived the condition set forth in Section 7.4, Seller shall assign to Buyer all its rights under any insurance and all proceeds of insurance (excluding business interruption proceeds for periods prior to the Closing Date) covering the property damage, destruction or loss not so repaired, replaced or restored prior to Closing.

**10.2. Bulk Transfer.** Buyer and Seller hereby waive compliance with the Colorado Bulk Transfer provisions of the Uniform Commercial Code and all similar laws.

**10.3. Technical Consulting Agreement.** At Closing, Buyer and Seller shall enter into a Technical Consulting Agreement, in the form of Exhibit "I" attached hereto, by which Seller shall provide technical expertise to Buyer for Buyer's development of studios in Ft. Collins, Colorado and shall use best efforts to license KRQU-FM to develop a signal over all of Ft. Collins, Colorado as provided in Sections 2.4(a) and (b). Buyer shall deliver \$250,000 at Closing to Seller for this Agreement.

**10.4. Collection of Accounts Receivable.** On the Closing Date, Seller shall turn over to Buyer for collection only all accounts receivable of Seller relating to the Stations existing as of such date (the "Accounts Receivable") and shall deliver to Buyer a list of the Accounts Receivable. During the one hundred twenty (120) day period following Closing Date (the "Collection Period"), Buyer shall use reasonable efforts, consistent with its usual collection practices (but without obligation to institute proceedings or use any other extraordinary means of collection) to collect the Accounts Receivable. In the absence of any dispute by a receivable debtor concerning an Account Receivable or a debtor indicating that a payment should be applied to a particular invoice, all monies received from a debtor will be applied by Buyer to the oldest Account Receivable. Payments indicating application to a particular invoice or invoices will be applied to that invoice. In the event that an Account Receivables debtor notifies Buyer of a dispute by such debtor concerning an Account Receivable, the Buyer shall notify the Seller of such dispute, and all monies received from such debtor will be applied to the undisputed portion, if any, of such Accounts Receivable. Buyer shall remit each months' collections to Seller on or before the twentieth (20th) day of the following month with a report of all collections and remaining Accounts Receivable. Buyer shall not compromise, settle or adjust the amount of any Accounts Receivable without Seller's prior written consent. Seller shall not attempt to collect any of the Accounts Receivable during the Collection Period. If Seller receives a payment from an account debtor of any of the Stations, Seller shall promptly notify Buyer thereof. At the end of the Collection Period, Buyer shall turn back to Seller any uncollected Accounts Receivable, and Buyer shall have no further obligation with respect to the Accounts Receivable.

## **ARTICLE XI. TERMINATION; MISCELLANEOUS**

**11.1. Termination.** This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date, as follows:

- (a) by mutual written agreement of Seller and Buyer; or
- (b) by Buyer, provided Buyer is not in material breach of this Agreement, if any of the conditions set forth in Article VII of this Agreement shall not have been fulfilled by the Closing Date; or
- (c) by Seller, provided Seller is not in material breach of this Agreement, if any of the conditions set forth in Article VIII of this Agreement shall not have been fulfilled by the Closing Date; or
- (d) by Buyer or Seller if a Final Order shall not have been issued on or before December 31, 2001; or
- (e) by Buyer, if Buyer is not then in material breach of this Agreement and Seller is then in material breach of this Agreement, and such breach remains uncured within fifteen (15) days after receipt of written notice thereof from Buyer; or

(f) by Seller, if Seller is not then in material breach of this Agreement and Buyer is then in material breach of this Agreement, and such breach remains uncured within fifteen (15) days after receipt of written notice thereof from Seller.

#### **11.2. Rights on Termination; Waiver.**

(a) If this Agreement is terminated pursuant to Section 11.1(a), 11.1(b), 11.1(c), or 11.1(d), all further obligations of the parties under or pursuant to this Agreement shall immediately terminate without further liability of any party to the other and the Earnest Money together with all interest accrued thereon shall be returned promptly to Buyer; provided, however, if Seller objects to such claims the Escrow Agent shall hold the Earnest Money pursuant to the terms of the Escrow Agreement.

(b) If this Agreement is terminated by Buyer pursuant to Section 11.1(b) or Section 11.1(e), then Buyer shall be entitled to pursue all legal and equitable remedies against Seller, including but not limited to specific performance and Buyer shall be entitled to claim a return of the Earnest Money pursuant to the terms of the Escrow Agreement; provided, however, that (i) in the event Buyer elects to pursue recovery or monetary damages against the Seller, the Buyer may not recover, and the Seller shall not be liable for, monetary damages in excess of \$100,000 in the aggregate; and (ii) if Seller objects to such claims the Escrow Agent shall hold the Earnest Money pursuant to the terms of the Escrow Agreement.

(c) If this Agreement is terminated by Seller pursuant to Section 11.1(c) or Section 11.1(f), then Seller shall be entitled to claim and be paid as its sole liquidated damages, pursuant to Section 11.3, the Earnest Money pursuant to the terms of the Escrow Agreement; provided, however, if Buyer objects to such claims, the Escrow Agent shall hold the Earnest Money pursuant to the terms of the Escrow Agreement.

(d) The rights and duties of the parties hereto vis-a-vis instructions and notices to the Escrow Agent shall be controlled by the Escrow Agreement.

**11.3. Liquidated Damages.** Buyer and Seller agree that if the transactions contemplated herein fail to close for any reason set forth in Section 11.2(c), Seller's sole and exclusive remedy under Section 11.2(c) shall be the right to claim and be paid the Earnest Money as liquidated damages. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm which would be caused by Buyer's breach and failure to close under the terms of the Agreement. The parties further acknowledge and agree that the amount of actual loss caused by Buyer's breach of this Agreement is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder. The provisions of this Section 11.3 shall apply regardless of whether or not Seller has terminated this Agreement pursuant to Section 11.1.

**11.4. Schedules.** Any disclosure with respect to a Section of this Agreement requires a specific reference in the Schedules to such Section of the Agreement to which any such disclosure



applies, and no disclosure shall be deemed to apply with respect to any Section to which it does not expressly apply.

**11.5. Survival.** The obligations to indemnify contained in Article IX hereof, the agreements contained herein and, as limited by the introductory paragraphs of Articles IV and V and provisions of Article IX hereof, the representations and warranties made in this Agreement or made pursuant hereto shall survive the Closing and the consummation of the transactions contemplated by this Agreement, and shall survive any dissolution, merger or consolidation of Buyer or Seller and shall bind, assigns and successors of Buyer and Seller.

**11.6. Entire Agreement; Amendment; and Waivers.** This Agreement and the documents required to be delivered pursuant hereto constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No amendment, supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

**11.7. Expenses.** Except as otherwise specifically provided herein, whether or not the transactions contemplated by this Agreement are consummated, each of the parties shall pay the fees and expenses of its respective counsel, accountants and other experts incident to the negotiation, drafting and execution of this Agreement and consummation of the transactions contemplated hereby.

**11.8. Benefit; Assignment.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by Buyer and Seller and their respective proper successors and assigns. This Agreement (and any rights, obligations or liabilities hereunder) may not be assigned or delegated in whole or in part by any party without the prior written consent of the other party. Provided, however, either party may assign this Agreement to an entity wholly owned by such party, provided such party continues to be fully obliged hereunder.

**11.9. Confidentiality.**

(a) Buyer agrees that prior to Closing, Buyer and its respective agents and representatives shall not use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with Buyer's financing of the transaction and Buyer's investigation of the Stations and its assets in connection with this Agreement), and shall hold in strict confidence and not disclose, (i) any data or information relating to Seller, its affiliates, or the Stations obtained from Seller or any of its employees, agents or representatives in connection with this Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of the Stations which is confidential in nature and not generally known to the public (clauses (i) and (ii) together, "Seller's Information"). If the transactions contemplated in

this Agreement are not consummated for any reason, Buyer shall return to Seller all data, information and any other written material obtained by Buyer from Seller in connection with this transaction and any copies, summaries or extracts thereof, and shall refrain from disclosing any of Seller's Information to any third party or using any of Seller's Information for its own benefit or that of any other person.

(b) Seller agrees that Seller and its agents and representatives shall not use for its or their own benefit (except when required by law, rule or regulation and except for use in connection with their investigations and review of Buyer in connection with this Agreement), and shall hold in strict confidence and not disclose, (i) any data or information, relating to Buyer or its affiliates obtained from Buyer, or from any of its officers, employees, agents or representatives, in connection with this Agreement, or (ii) any data and information relating to the business, customers, financial statements, conditions or operations of the Buyer which is confidential in nature and not generally known to the public (clauses (i) and (ii) together "Buyer's Information"). If the transactions contemplated in this Agreement are not consummated for any reason, Seller shall return to Buyer all data, information and any other written material obtained by Seller from Buyer in connection with this transaction and any copies, summaries or extracts, thereof and shall refrain from disclosing any of Buyer's Information to any third party or using any of Buyer's Information for its own benefit or that of any other person.

(c) Notwithstanding any other provision to the contrary herein, the provisions of this Section 11.9 shall survive the termination of this Agreement.

**11.10. Notices.** All communications or notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) on the date of personal delivery to an officer of the other party, or (ii) if sent by telecopy or facsimile machine to the number shown below, on the date of such confirmed facsimile or telecopy transmission, provided a copy is also sent by commercial overnight delivery service, prepaid, or by deposit in accordance with this Section of a change of address or change of telecopy number:

If to Buyer: Anthony S. Brandon  
AGM Fort Collins, LLC  
901 Dulaney Valley Road, Suite 401  
Towson, Maryland 21204  
Telefax: 410-321-8863

With a copy to: Timothy J. Pursel, Esq.  
Hodes, Ulman, Pessin & Katz  
901 Dulaney Valley Road, Suite 400  
Baltimore, MD 21204  
Telefax: 410-938-8378

If to Seller: Victor A. Michael, Jr.  
Mountain States Radio, Inc.  
6807 Foxglove Drive

Cheyenne, WY 82009  
Fax: (307) 632-9349

Victor A. Michael, Jr.  
Laramie Mountain Broadcasting, L.L.C.  
6807 Foxglove Drive  
Cheyenne, WY 82009  
Telefax: 307-632-9349

With a copy to: A. Wray Fitch, III, Esq.  
Gammon & Grange  
8280 Greensboro Drive  
McLean, VA 22102  
Telefax: 703-761-5023

**11.11. Counterparts; Headings.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed and delivered in counterpart signature pages executed and delivered via facsimile transmission, and any such counterpart executed and delivered via facsimile transmission shall be deemed an original for all intents and purposes. The Table of Contents and Article and Section headings in this Agreement are inserted for convenience of reference only and shall not constitute a part hereof.

**11.12. No Reliance.** Except for any assignees permitted by Section 11.8 of this Agreement:

(a) no third party is entitled to rely on any of the representations, warranties or agreements of Buyer or Seller contained in this Agreement; and

(b) Buyer and Seller assume no liability to any third party because of any reliance on the representations, warranties or agreements of Buyer and Seller contained in this Agreement.

**11.13. Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the parties hereto agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party which itself or through its agent prepared the same, it being agreed that the agents of each party have participated in the preparation hereof.

**11.14. Saturdays, Sundays and Legal Holidays.** If the time period by which any acts or payments required hereunder must be performed or paid expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regularly scheduled business day.

**11.15. Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of Colorado, without regard to the conflict of law principles thereof.

**11.16 Cure Period.** No breach shall become a material breach unless the breaching party fails to remedy such breach within fifteen (15) days of written notice of breach.

**11.17 Exhibits/Schedules.** Buyer and Seller agree to provide all referenced Exhibits and Schedules, which shall be mutually agreeable to Buyer and Seller, within thirty (30) days of execution of this Agreement. The parties shall use good faith efforts to reach agreement on such Schedules and Exhibits that in the event agreement cannot be reached after such effort either party may terminate this Agreement.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**“BUYER”**

**AGM - NEVADA, LLC**

By: \_\_\_\_\_  
Name: Anthony S. Brandon  
Title: President

**“SELLER”**

**MOUNTAIN STATES RADIO, INC.**

By: \_\_\_\_\_  
Victor A. Michael, Jr., President

**LARAMIE MOUNTAIN BROADCASTING, L.L.C.**

By: \_\_\_\_\_  
Victor A. Michael, Jr., Sole Member